



Administrative
Appeals Tribunal

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Compensation

[Hillman and Australian Postal Corporation](#) (Compensation) [2017] AATA 1411 (5 September 2017); LM Gallagher, Member

Ruptured long head of bicep (left arm) – request for reconsideration out of time – extension of time to seek reconsideration refused – application for extension of time – guidelines to be considered – length of delay – no acceptable explanation for delay – prejudice to respondent – decision under review affirmed

[Scarpello and Australian Postal Corporation](#) (Compensation) [2017] AATA 1410 (6 September 2017); Miss EA Shanahan, Member

WORKERS' COMPENSATION – postal delivery officer – right arm pain and paraesthesia – C6/7 cervical disc prolapse – questionable radiculopathy – questionable right elbow extensor tendonitis – right shoulder pathology – divergent expert opinion – symptomatic improvement with the passage of time – return to work at greater hours than pre-injury – decision affirmed

Freedom of Information

[Lever and Australian Federal Police](#) (Freedom of information) [2017] AATA 1407 (22 August 2017); Deputy President BW Rayment

Request for access to documents – scope of documents sought under freedom of information request – 'personal information' – whether disclosure would involve the unreasonable disclosure of personal information – whether disclosure would be contrary to the public interest – whether disclosure would disclose information irrelevant to request – whether all reasonable steps taken to find documents – decision varied

Migration

[Peters and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1414 (6 September 2017); Deputy President BW Rayment

Non-revocation of mandatory cancellation of visa – character test – substantial criminal record – primary and other considerations under Ministerial Direction No. 65 – protection of the Australian community – expectations of the Australian community – decision affirmed

[Trikilis and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1409 (6 September 2017); Deputy President JW Constance

Visa – partner visa – refusal to grant visa – visa applicant in Palestine – character test – substantial criminal record – Israeli Military Court – convictions – guilty plea – conspiracy to commit homicide – membership of banned organisation – circumstances of conviction taken into account – false and misleading statement on application form – best interests of minor children in Australia – daughter – health issues – step-son – other considerations – impact on family – wife – serious health problems – decision set aside and remitted for reconsideration

[Santos](#) (Migration) [2017] AATA 1377 (8 August 2017); W Shum, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 – Graduate Work stream – Skills assessment – Child Care Centre Manager – Valid successful Provisional Skills Assessment – Qualification obtained in Australia – Decision under review remitted

[Arafat](#) (Migration) [2017] AATA 1370 (9 August 2017); C Carney-Orsborn, Member

Migration – Skilled (Residence) (Class VB) visa – Subclass 886 – Bogus document/misleading information – Trades Recognition Australian assessment – Issue with hours of work submitted – Credibility issues – No compelling circumstances – Decision under review affirmed

[Li](#) (Migration) [2017] AATA 1375 (9 August 2017); A McMurrin, Member

Migration – Temporary Business Entry (Class UC) visa – Subclass 457 – English language proficiency – Achieved necessary score – Evidence provided – Decision under review remitted

[Dang](#) (Migration) [2017] AATA 1371 (10 August 2017); A Mercer, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Graduate Work stream – Australian study requirement – Completed course 6 months immediately preceding visa application date – Decision under review remitted

[Seralthan](#) (Migration) [2017] AATA 1373 (15 August 2017); A Dronjic, Member

Migration – Temporary Business Entry (Class UC) visa – Subclass 457 – No approved – nomination – No response to tribunal communication – Decision under review affirmed

[1702551](#) (Migration) [2017] AATA 1415 (22 August 2017); Deputy President J Redfern and A Murphy, Member

MIGRATION – Cancellation – Subclass 444 (Special Category) visa – applicant suffering from mental illness – low level criminal offending – allegation of criminal gang links – whether the applicant may or might be a risk to the safety of the community – exercise of discretion in context of Subclass 444 statutory framework – relevance of department policy – impact of illness on offending – hardship to applicant and family – Decision under review set aside

PRACTICE AND PROCEDURE – Fact-finding and sufficiency of evidence – procedure to be adopted where the decision under review has serious consequences – non-disclosure orders and direction under s.378 – s.375A certificate

Refugee

[1516302](#) (Refugee) [2017] AATA 1381 (25 July 2017); C Smolicz, Member

Refugee – Protection visa – South Africa – Race – Coloured – Crime rate – Police inefficiency and corruption – Employment prospects – Decision under review affirmed

[1620392](#) (Refugee) [2017] AATA 1351 (26 July 2017); J Silva, Member

Refugee – Protection visa – China – Political opinion – Founder of secret group – Reforms to education and political system – Discovery by authorities of group – Credibility issues – Evidence vague, hesitant and uncertain – Decision under review affirmed

[1713555](#) (Refugee) [2017] AATA 1380 (4 August 2017); A Cranston, Member

Refugee – Protection Visa – Lebanon – Out of time – No jurisdiction

[1513288](#) (Refugee) [2017] AATA 1378 (4 August 2017); L Symons, Member

Refugee – Protection visa – Egypt – Imputed political opinion – Supporter of Muslim Brotherhood – Credibility issues – Inconsistent evidence – False information provided – Decision under review affirmed

[1705272](#) (Refugee) [2017] AATA 1382 (8 August 2017); A Murphy, Member

Refugee – Protection visa – Malaysia – Human Rights activist – Fears being charged for sedition – Claims similar or identical to other recent protection visa applicants – Credibility issues – Decision under review affirmed

Practice and Procedure

[Greenfield Education Pty Ltd and Australian Skills Quality Authority](#) [2017] AATA 1418 (7 September 2017); Deputy President BW Rayment

Applications for extension of time to apply for review – explanation for the delay – alleged issues of construction informing reviewable decision – applicant entitled to lodge fresh application with the respondent – applications refused

[Hutchison and Australian Securities and Investments Commission](#) [2017] AATA 1419 (7 September 2017); Deputy President BW Rayment

Application for stay of decision – relevant considerations – prospects of success – no repetition of misconduct – stay granted

Professions and Trades

[Riaz and Queensland Building and Construction Commission](#) [2017] AATA 1406 (24 August 2017); Deputy President BW Rayment

Mutual recognition – building practitioners – registration refused on basis the applicant did not hold an equivalent licence – licence relied upon under mutual recognition granted in error and revoked prior to reviewable decision – decision affirmed

Social Security

[Brundish and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1417 (6 September 2017); LM Gallagher, Member

Age pension – date of effect provisions – whether start date of payment correct – statutory interpretation – Tribunal's discretion to otherwise order – decision affirmed

[Collett and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1412 (6 September 2017); LM Gallagher, Member

Disability support pension – whether applicant had conditions that were fully diagnosed treated and stabilised – whether applicant had 20 impairment points – upper limb condition (bilateral shoulder pain) – spine condition (osteoarthritis) – obstructive sleep apnoea – insomnia – obesity – rheumatological condition – hypothyroidism – bipolar affective disorder – attention deficit hyperactivity disorder – decision under review affirmed

[McKeough and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1413 (7 September 2017); Senior Member AC Cotter

DEBT RECOVERY – Family Tax Benefit – Rent Assistance – Schoolkids Bonus – whether overpayment – write off – waiver – whether sole administrative error – whether special circumstances – decision under review affirmed

Taxation

[MSAUS Pty Ltd as the Trustee for the Melissa Trust and Commissioner of Taxation](#) (Taxation) [2017] AATA 1408 (31 August 2017); Deputy President BJ McCabe

Goods and Services Tax – sale of an apartment subject to a lease – whether sale was a GST-free supply of a going concern – interpretation of contractual terms – written agreement that the sale was a supply of a going concern – conditional agreement to apply margin scheme where transaction constitutes a taxable supply – agreement made on or before the making of the supply – consideration of the effect of a Deed of Rectification – decision set aside and substituted

Veterans' Affairs

[Duff and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1405 (1 September 2017); Senior Member J Sosso

War widow's pension – whether death was war caused – salt consumption habit – ischaemic heart disease – hypertension

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Comcare v Drinkwater	[2017] AATA 1228

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Callychurn v Australian Securities and Investments Commission	[2016] AATA 114	[2017] FCAFC 137
		[2017] FCA 29
Comcare v Chambers	[2016] AATA 615	[2017] FCA 1070
		[2017] FCA 1014
Prain v Comcare	[2016] AATA 459	[2017] FCAFC 143

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