



Administrative
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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.

Citizenship

[Badar and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1509 (18 September 2017); Deputy President JW Constance

CITIZENSHIP – citizenship by conferral – whether applicant of good character – whether has enduring moral qualities – whether will respect and abide by Australian laws – assault with act of indecency – traffic offences – decision affirmed

[Prasad and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1506 (15 September 2017); Deputy President JW Constance

CITIZENSHIP – citizenship by conferral – whether applicant of good character – whether has enduring moral qualities – whether will respect and abide by Australian laws – whether truthful and does not practise deception – assault – domestic violence – traffic offences – false statement in citizenship application – decision affirmed

Compensation

[Adam and Comcare](#) (Compensation) [2017] AATA 1507 (15 September 2017); Dr J Popple, Senior Member

COMPENSATION — Commonwealth employees — Applicant suffered psychological condition as result of e-mail from supervisor and discussion with second-level supervisor — whether e-mail and discussion were reasonable administrative action taken in a reasonable manner in respect of the Applicant's employment — decision under review affirmed.

[Bromham and Comcare](#) (Compensation) [2017] AATA 1515 (20 September 2017); Deputy President JW Constance, Senior Member B Stefaniak AM RFD

WORKERS COMPENSATION – hearing on remittal – entitlement to compensation for medical expenses – entitlement to incapacity payments – psychological injury – adjustment disorder with depressed mood – where there is a compensable injury – whether Applicant continued to be entitled to compensation for the cost of medical treatment obtained in relation to compensable injury – whether Applicant continued to be incapacitated from work as a result of the compensable injury – whether psychological condition had resolved – where conflicting medical evidence – decision set aside and remitted

[Perez-Bedoya and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 1518 (20 September 2017); Dr L Bygrave, Member

VETERANS' AFFAIRS – compensation – injury caused by service – whether the Commission must accept liability for service-related injury – claimed conditions were materially contributed to or aggravated by service – back injury – left wrist injury – decision affirmed

Migration

[Kwok and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1521 (21 September 2017); The Hon. Justice Stevenson

Return visa – failure to pass the character test – primary and secondary considerations – protection of the Australian community – expectations of the Australian community – impact on family members – Tribunal finds that the conduct of the applicant was serious but that there is a low to minimal risk of harm to individuals, groups or institutions in the Australian community – visa refusal would be contrary to the best interests of the young grandchildren – the expectations of the Australian community do not require a visa refusal – visa refusal would have an adverse impact on the applicant's children – decision set aside

[Markaj and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1516 (20 September 2017); Senior Member E Fice

IMMIGRATION AND BORDER PROTECTION – refusal to grant Partner (Temporary) (Class UK) visa – applicant fraudulently entered into Australia on falsified passport – character grounds – substantial criminal record – applicant convicted of various criminal offences, including offences involving drug trafficking and extortion – where serious risk to Australian community if applicant re-offended – where Australian community would expect application to be refused – decision affirmed

[Atandi](#) (Migration) [2017] AATA 1488 (21 August 2017); A B Baker, Senior Member

Migration – Visitor (Class FA) visa – Subclass 600 – Genuine temporary entrant – Review Applicant unwilling to jeopardise permanent visa application – No breach of previous visa conditions – Decision under review remitted

[Ravi](#) (Migration) [2017] AATA 1464 (21 August 2017); R Skaros, Member

Migration – Regional Employer Nomination (Permanent)(Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry scheme – Nomination application refused by Department – On review decision to not approve set aside – Nomination now approved – Decision under review remitted

[Botros](#) (Migration) [2017] AATA 1477 (28 August 2017); R Gagliardi, Member

Migration – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – No substantive visa at application – Application not made within 28 days of relevant day – Previous partner visa refusal – Separation from young family – Compassionate and humanitarian considerations – Request for Ministerial Intervention – Decision under review affirmed

[Lolohea](#) (Migration) [2017] AATA 1467 (31 August 2017); K Raif, Senior Member

Migration – Transitional (Temporary) Visa – Subclass 812 – Not in genuine and continuing marital relationship from before 15 October 1990 – Not aged parent of Australian citizen or resident – Not aged dependent relative or special need relative – No continuing compassionate grounds – Request for Ministerial Intervention – Decision under review affirmed

[Seang](#) (Migration) [2017] AATA 1493 (1 September 2017); M Cooke, Senior Member

Migration – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 – Genuine relationship – Family approval – Prolonged visitation and engagement protocol – Money transfers – Child of the relationship – Decision under review remitted

Refugee

[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

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 – Decision under review set aside

[1704304](#) (Refugee) [2017] AATA 1502 (22 August 2017); A Murphy, Member

Refugee – Protection visa – India – Borrowed money to fund studies – Unable to repay – Threats of harm by lenders – Evidence of sufficient funds – Criminal charges – Delay in application – Credibility issues – Decision under review affirmed

[1605049](#) (Refugee) [2017] AATA 1498 (25 August 2017); R Shanahan, Member

Refugee – Protection visa – Jordan – Particular social group – Male victims of honour crimes – Physical assault – Credibility issues – Decision under review affirmed

[1602378](#) (Refugee) [2017] AATA 1484 (26 August 2017); P Millar, Member

Refugee – Protection visa – Sri Lanka – Political opinion – Anti-government speech – United National Party supporter – Credibility issues – Decision under review affirmed

[1701120](#) (Refugee) [2017] AATA 1483 (31 August 2017); S Panagiotidis, Member

Refugee – Protection visa – Malaysia – Political opinion – Attended Bersih rally – Worsening employment situation – Decision under review affirmed

Practice and Procedure

[Dimitropoulos and Australian Securities and Investments Commission](#) [2017] AATA 1513 (19 September 2017); Senior Member PW Taylor SC

PRACTICE AND PROCEDURE – application for stay of decision – application for confidentiality order – ASIC banning orders – prospects of success of substantive application – apprehension of financial and reputational harm – public interest – applicant’s personal circumstances – applications for stay and confidentiality orders refused

[LMFP and Comcare](#) (Compensation) [2017] AATA 1512 (15 September 2017); Deputy President BW Rayment

PRACTICE AND PROCEDURE – application for release from implied undertaking – requirements of Tribunal’s General Practice Direction – Respondent granted leave to utilise specified documents

Social Security

[Marcos and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1510 (19 September 2017); Professor R McCallum, Member

SOCIAL SECURITY – pension bonus scheme – applicant appealed decision to reject his application to join the pension bonus scheme out of time – whether notice sent to applicant – notice sent – decision under review affirmed

[Morgan and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1511 (19 September 2017); Dr L Bygrave, Member

SOCIAL SECURITY – Disability Support Pension – portability – whether applicant meets requirements for unlimited portability – whether applicant has a severe impairment – applicant does not have a severe impairment – decision under review

[Nenadovic and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1508 (18 September 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Rees and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1517 (19 September 2017); Senior Member AC Cotter

Disability Support Pension – cancellation – requirement that the person’s impairment is of 20 points or more under the Impairment Tables not met – where lower limb condition – mental health condition – thyroid condition – spinal condition – no severe impairment – 10 impairment points – requirement that the person has a continuing inability to work met – decision under review affirmed

[Sgargetta and Secretary, Department of Social Services](#) (Social services second review) [2017] 1519 AATA (21 September 2017); Ms A Bourke, Member

FAMILY TAX BENEFIT – whether applicant entitled to family tax benefit – late lodgement of application – whether incorrect advice provided by Centrelink – decision affirmed

[Spahich and Secretary, Department of Social Services](#) (Social services second review) [2017] 1520 AATA (18 August 2017); Senior Member MJ McGrowdie

Disability support pension – spinal condition – upper limb condition – lower limb condition – pain condition – applicant has physical and psychiatric impairments – applicant’s impairments are not fully treated and stabilised – rating cannot be given under impairment tables – decision under review affirmed

[Totten and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1514 (20 September 2017); Senior Member N Isenberg

SOCIAL SECURITY – cancellation of Family Tax Benefit – Applicant does not press issue of cancellation – decision affirmed

SOCIAL SECURITY – overpayment of Family Tax Benefit – whether the Applicant was overpaid Family Tax Benefit entitlements – debt can be written off or waived – Family Tax Benefit child receiving carer payment during the debt period – whether the debt was solely attributable to an administrative error – whether there are special circumstances – decision set aside and substituted

SOCIAL SECURITY – overpayment of Schoolkids Bonus – whether Applicant was overpaid the Schoolkids bonus – Applicant does not press issue of overpayment of Schoolkids Bonus – decision affirmed

Taxation

[Icehot and Commissioner of Taxation](#) (Taxation) [2017] AATA 1505 (25 August 2017); Dr J Popple, Senior Member

TAXATION – assessment of GST net amount – objection decision wholly allowed taxation objection – whether objection decision reviewable by Tribunal – person can only apply for review if dissatisfied with objection decision – objection decision not reviewable – application dismissed

Appeals

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Appeals lodged

CASE NAME	AAT REFERENCE
Comcare v Dagleish	[2017] AATA 1325

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Starkey	[2017] AATA 200	[2017] FCAFC 151
Lewski v Commissioner of Taxation	[2016] AATA 1010	[2017] FCAFC 145
Zappia v Comptroller General of Customs	[2017] AATA 202	[2017] FCAFC 147

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