



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.

Child Support

[VGYL and Child Support Registrar](#) (Child support second review) [2017] AATA 1551 (22 September 2017); Miss EA Shanahan, Member

Family Court Orders – father actual care 100 per cent for a period of 50 days – mother being investigated for child assault – charges dropped – Special Circumstances found – Federal Circuit Court percentage care orders reinstated – decision in relation to percentage of care thereafter set aside

[ZJSZ and Child Support Registrar](#) (Child support second review) [2017] AATA 1565 (25 September 2017); Senior Member E Fice

Second review of SSCSD decision – care percentage determination – revocation of existing determination – jurisdiction to review decision of SSCSD

Compensation

[Blauw and Comcare](#) (Compensation) [2017] AATA 1549 (27 September 2017); Deputy President Dr P McDermott RFD

Accepted panic disorder condition – definition of injury – whether injury suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment – action to recall applicant to her substantive position is administrative – action taken in a reasonable manner – decision under review affirmed

[Eleftheriou and Australian Postal Corporation](#) (Compensation) [2017] AATA 1558 (15 September 2017); Miss EA Shanahan, Member

Claim for low back injury and pain – lumbar spinal spondylosis – pre-employment history of back pathology confirmed radiologically – failure to lodge initial incident report – issues as to credibility – decisions affirmed

[Pharaoh and Comcare](#) (Compensation) [2017] AATA 1556 (27 September 2017); Senior Member Dr J Popple

Commonwealth employees – Applicant suffered heart attack while at work – because of heart attack, Applicant at increased risk of sudden death due to ventricular tachycardia or another heart attack – Applicant continues to suffer effects of injury after 21 years – treatment that reduces risk of ventricular tachycardia or heart attack is treatment obtained in relation to injury – treatment reasonable in the circumstances – decision under review set aside and substituted

[White and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 1555 (27 September 2017); Senior Member J Sosso

Naval service – where Applicant has a rare cancer – where Applicant was exposed to chromate dust during Naval service – whether Applicant’s cancer an injury – whether there is a causal link between service and Applicant’s cancer – Forst principles – where medical evidence uncertain – Applicant’s cancer is a disease – decision under review set aside and substituted

Migration

[Bartlett and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1561 (28 September 2017); Senior Member T Tavoularis

Non-revocation of mandatory cancellation of visa – visa mandatorily cancelled under s 501(3A) – Applicant did not pass character test and was serving a term of imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – Considerations in Direction No. 65 – discretion should not be exercised to revoke visa cancellation – decision under review affirmed

[Blyde and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1568 (28 September 2017); Senior Member Mr PW Taylor SC

IMMIGRATION AND CITIZENSHIP – mandatory visa cancellation – special category visa – failure to pass character test – substantial criminal record – term of imprisonment of 12 months or more – Ministerial Direction no 65 applied – protection of the Australian community – community expectations – risk of future offending and harm – other considerations – decision affirmed

[GVSW and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1543 (15 September 2017); Senior Member Britten-Jones

IMMIGRATION – mandatory cancellation of visa – s 501CA(4) Migration Act 1958 – request for revocation of cancellation – character test – substantial criminal record over long period – sentence of imprisonment of 12 months or more – protection of the Australian community – best interests of minor children – expectations of the Australian community – strong ties to Australia – warning given as to consequences of re-offending – other considerations – decision under review is affirmed

[MVLW and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1557 (28 September 2017); Senior Member T Tavoularis

Refusal to grant a Protection visa – failure to meet criterion in s 36(1C) of Migration Act – whether Applicant, having been convicted of a particularly serious crime is a danger to the Australian community – Applicant convicted of two particularly serious crimes – Applicant considered a danger to Australian community – reasons for concern – decision under review affirmed

[QGMJ and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1537 (22 September 2017); Deputy President Dr C Kendall

Mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious

conduct – best interests of minor children – expectations of the Australian community – other considerations – non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed including issues relating to mental health condition – decision under review affirmed

[Williams and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1538 (21 September 2017); Ms LM Gallagher, Member

IMMIGRATION – Class TY Subclass 444 (temporary) visa – non-revocation of mandatory cancellation of visa – applicant did not pass character test and had served term of imprisonment – visa mandatorily cancelled under subsection 501(3A) Migration Act 1958 (Cth) – whether discretion in subsection 501CA(4) to revoke mandatory visa cancellation should be exercised – Direction No. 65 – primary and other relevant considerations – protection of the Australian community from criminal or other serious conduct – nature and seriousness of the conduct – risk to the Australian community should further offences be committed – best interests of minor children – expectations of the Australian community – other relevant considerations – strength, nature and duration of ties to Australia – extent of impediments if removed from Australia – discretion should not be exercised to revoke visa cancellation – decision under review affirmed

Passports

[CMHV and Director-General of Security and Minister for Foreign Affairs](#) [2017] AATA 1547 (22 September 2017); Deputy President SA Forgie and Senior Member E Fice and Senior Member A Nikolić AM CSC

NATIONAL SECURITY – adverse security assessment – request for Minister to cancel passport and to order surrender of foreign travel documents – decisions affirmed

Privacy

[TYGJ and Information Commissioner](#) [2017] AATA 1560 (27 September 2017); Deputy President SA Forgie

PRIVACY – whether breach of Information Privacy Principles – compensation claim by serving member of Australian Defence Force – disclosures of personal information to a senior medical officer, the Head of Joint Health Command in the Department of Defence and to the Chief of Air Force – whether information of that kind usually passed on – whether disclosure necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another – whether disclosure required or authorised under law – decision set aside

Social Security

[Al-Janabi and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1541 (26 September 2017); Deputy President J Walsh and Dr L Bygrave, Member

Disability support pension – date for assessing qualification – applicant is a New Zealand citizen – International Agreement – whether applicant has impairment rating of 20 points or more under the Impairment Tables – spinal disorder – upper limb condition – osteoarthritis – mental health condition – decision affirmed

[Bowes and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1539 (22 September 2017); Deputy President Dr P McDermott RFD

Cancellation of disability support pension on reassessment of impairment conditions – application for portability – physical and psychiatric impairments – alcohol addiction – whether applicant’s conditions are permanent – whether applicant’s impairment is of 20 points or more under the Impairment Tables – decision under review affirmed

[Byron and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1536 (21 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 – whether continuing inability to work – decision under review affirmed

[Cox and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1550 (27 September 2017); Senior Member AC Cotter

Disability support pension – cancellation – lumbar fusion – lumbar spondylosis – cervical spondylosis – compression fracture of T 12 – hip condition – shoulder condition – inguinal hernia – whether impairments are of 20 points or more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

[Dauguet and Secretary, Department of Employment](#) (Social services second review) [2017] AATA 1554 (18 September 2017); Mr DJ Morris, Member

Pensions, benefits and payments – newstart allowance – participation failure – suspension of newstart allowance – automatic cancellation by operation of s 95(1) of the Social Security (Administration) Act 1999 – discretion under s 95(2) to determine that s 95(1) does not apply – whether ‘special circumstances’ – whether appropriate to exercise discretion – decision set aside

[Gardner and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1553 (12 September 2017); Mr DJ Morris, Member

Disability Support Pension – Impairment – Impairments to be assigned 20 or more impairment points – No impairment points assigned in claim period – Conjunctive nature of qualification criteria in Act – application fails – decision affirmed

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1559 (21 July 2017); Mr S Webb, Member

Claim for disability support pension – impairments – treatment of medical conditions continuing and planned – impairments do not result from ‘permanent’ medical conditions – impermissible to assign ratings under the Impairment Tables – impairments are not of 20 or more points – decision affirmed

[Lolanga and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1542 (25 September 2017); Senior Member RW Dunne

FAMILY TAX BENEFIT – second review of decision to cancel payment of family tax benefit – whether applicant is entitled to payment of family tax benefit for a child – at first review, payment of family tax benefit to applicant cancelled – decision under review set aside

[Patterson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1566 (28 September 2017); Senior Member J Sosso

Family Tax Benefit – Parenting Payment – overpayments – whether Applicant obtained benefit of Parenting Payment – meaning of obtained benefit – whether Applicant paid Family Tax Benefit – meaning of been paid – debt write off – whether sole administrative error – special circumstances – matters of relevance in determining special circumstances

[Patterson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1567 (28 September 2017); Senior Member J Sosso

Family Tax Benefit – percentage of care – care period – pattern of care – change in pattern of care – Other Party provided vast bulk of care – decision under review affirmed

[Vunisa and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1552 (31 August 2017); Senior Member A Poljak

Newstart allowance – liquid assets waiting period – ordinary waiting period – term deposit – partner's assets – waiver and exemption – severe financial hardship – decision affirmed

Taxation

[HHWT and Commissioner of Taxation](#) (Taxation) [2017] AATA 1540 (25 September 2017); Senior Member E Fice

TAXATION – appeal against objection decision – income tax assessment – whether assessment excessive or otherwise incorrect – claimed input tax credits disallowed – accountancy practice conducted under partnership – partnership dissolved – whether goods and services acquired for a creditable purpose in winding up partnership – applicant claimed loss of records – lack of invoices for claimed input tax credits – partnership found not to be conducting an enterprise following dissolution

TAXATION – estimation of income based on billable hours – ATO refunds for clients placed into general bank account – deposits from clients of accounting practice not matched with tax invoices – claimed significant gambling winnings unable to be substantiated – claimed loan moneys unable to be substantiated – lack of evidence to provide reasonable estimation of income – applicant unable to prove deductions – applicant unable to prove assessment excessive or otherwise incorrect

TAXATION – penalties – administrative penalties – where applicant's taxation shortfall arose due to failure of applicant to take reasonable care – failure to take reasonable care when lodging BAS returns in quarterly periods – finding that applicant was reckless in lodgement of BASs and income for income years – penalties correctly imposed – 20% uplift penalty remitted for returns following initial return – no basis for remission of other penalties

Veterans' Affairs

[Clayton and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1546 (4 September 2017); Deputy President K Bean

Whether veteran aged over 65 entitled to pension at special rate – Preliminary issue – Whether veteran had been working on his own account for a continuous period of 10 years when veteran stopped undertaking his last paid work – Decision under review affirmed

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
Perese v Minister for Immigration and Border Protection	[2017] AATA 1135
Veliu v Minister for Immigration and Border Protection	[2017] AATA 1247

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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