



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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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

[Oldfield and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1619 (4 October 2017); Deputy President SA Forgie

CITIZENSHIP – applicant arrived in Australia to play soccer professionally – limited number of Visa Players – general residence requirement – applicant not permanent resident 12 months immediately preceding application – Ministerial discretion – whether significant hardship or disadvantage – decision set aside

Compensation

[LYHH and Comcare](#) (Compensation) [2017] AATA 1586 (28 September 2017); Dr C Kendall, Deputy President

Aggravation of applicant's Major Depressive Disorder – whether applicant continues to suffer an aggravation compensable by respondent – material contribution – novus actus interveniens – decision under review affirmed

Health

[Mayne Pharma International Pty Ltd and Minister for Health](#) [2017] AATA 1622 (4 October 2017); The Hon. D Cowdroy OAM QC, Deputy President and Senior Member A Poljak

HEALTH – therapeutic goods – refusal to register products for treatment – requirement not to refer to new information – meaning of “new information” – meaning of “lodges” – whether new information can be excised and not relied upon – statutory interpretation – application remitted to original decision-maker for further consideration

Migration

[Johnstone and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1589 (2 October 2017); 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

[Petelo and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1621 (28 September 2017); Senior Member Bill Stefaniak AM RFD

MIGRATION – mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – primary and other considerations – prospect of rehabilitation – unacceptable risk of harm – decision under review affirmed

[RWXF and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1614 (3 October 2017); Mrs J C Kelly, Senior Member

MIGRATION – visa refusal – character test – substantial criminal record - past and present criminal conduct – whether risk of Applicant engaging in criminal conduct in Australia – protection of the Australian community from criminal or other serious conduct - the best interests of minor children – expectations of the Australian community – other considerations – decision affirmed

Practice and Procedure

[Bazzo and Commissioner of Taxation](#) [2017] AATA 1592 (29 September 2017); Deputy President S Boyle

PRACTICE AND PROCEDURE – application for adjournment of substantive application hearing – application granted

[Jia and Secretary, Department of Social Services](#) [2017] AATA 1593 (23 August 2017); Dr C Kendall, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – power to review entire decision afresh – decision under review to be heard afresh

[JWTT and Commissioner of Taxation](#) [2017] AATA 1612 (3 October 2017); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – application for confidentiality orders by taxpayer – where private hearing under s14ZZE has been granted – request for further broader orders restricting or prohibiting the disclosure of evidence or the content of documents – allegations of criminal activities by witnesses – where matter has been referred to the Commonwealth Director of Public Prosecutions – privilege against self-incrimination – use immunity – earlier application for confidentiality orders was unsuccessful – request for proposed orders declined

Social Security

[Armstrong and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1545 (18 August 2017); Senior Member B Stefaniak AM RFD

Suspension of payment – whether ceased to be an Australian resident – whether payment portable in circumstances of short residence – resuming residence in Australia – incorrect advice – Scheme for Compensation for Detriment caused by Defective Administration – decision under review affirmed

[Secretary, Department of Social Services and Barrett](#) (Social services second review) [2017] AATA 1588 (29 September 2017); Ms DK Grigg, Member

Family tax benefit – late lodgement of claim – late lodgement of tax returns – whether claim effective – whether special circumstances exist – decision under review set aside

[Baxter and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1544 (11 August 2017); Senior Member B Stefaniak AM RFD

Disability support pension – whether qualified – whether impairments attract 20 points or more on Impairment Tables – whether there is a continuing inability to work – Table 1 Functions requiring Physical Exertion and Stamina – Table 2 Upper Limb Function – whether impairments fully diagnosed, fully treated and fully stabilised – decision under review affirmed

[Darcy and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1618 (5 October 2017); Senior Member N Isenberg

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – multiple impairments – whether applicant's medical conditions rated at 20 points or more under Impairment Tables – whether applicant had a continuing inability to work – active participation in a program of support – decision set aside and substituted

[KBDF and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1613 (4 October 2017); Senior Member A Poljak

SOCIAL SECURITY – disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's conditions were fully diagnosed, treated and stabilised – mental health condition – fibromyalgia – back pain – upper limb condition – lower limb condition – thyroid condition – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[Lindemann and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1585 (28 September 2017); Ms DK Grigg, Member

Disability support pension – cancellation – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Moore and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1590 (28 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 – brain injury – mental health condition – spine condition – urological condition – decision under review affirmed

[Murfett and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1620 (4 October 2017); Ms DK Grigg, Member

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

[Tanious and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1615 (3 October 2017); Senior Member A Poljak

SOCIAL SECURITY – Newstart allowance – mutual obligation requirement – Newstart Employment Pathway Plan (Job Plan) – failure to enter a Job Plan – disagreement with terms of Job Plan – connection failure – whether reasonable excuse for the failure – eight week non-payment period – decision affirmed

[Secretary, Department of Social Services and Zavrski](#) (Social services second review) [2017]
AATA 1587 (14 September 2017); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – Disability support pension – Eligibility – Whether respondent entitled to disability support pension – Where respondent is medically qualified – Whether respondent satisfies Australian residence requirements – Whether respondent satisfies qualifying residence exemption – Decision under review set aside and substituted

Veterans' Affairs

[Firth and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1591 (27 September 2017); Dr C Kendall, Deputy President and Deputy President S Boyle

VETERANS' AFFAIRS – open-angle glaucoma – whether open-angle glaucoma war caused – whether reasonable hypothesis has been raised – whether Applicant meets the Statement of Principles – decision set aside and substituted.

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
VDQS and Minister for Immigration and Border Protection	[2017] AATA 1420

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Dowker v Secretary, Department of Social Services	[2016] AATA 763	[2017] FCA 1175

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