



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

[Rafaat and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 1743 (18 October 2017); Ms A Burke, Member

CITIZENSHIP – cancellation of approval for Australian citizenship by conferral – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review set aside and remitted

Compensation

[Carter and Commonwealth Bank of Australia](#) (Compensation) [2017] AATA 1730 (13 October 2017); Senior Member E Fice

WORKERS COMPENSATION – back and leg injury – soft tissue injury – fall in lunch room at place of work – whether compensable under Safety, Rehabilitation and Compensation Act 1988 – whether aggravation of an existing degenerative condition of Applicant's lumbar spine – cessation of liability to pay compensation benefits including medical expenses – decision affirmed

[Logan Jones and Comcare](#) (Compensation) [2017] AATA 1736 (11 October 2017); Dr J Popple, Senior Member and Dr B Hughson, Member

Commonwealth employees – Applicant injured back while travelling for work – Comcare accepted liability for injury – Applicant claimed back and neck condition, and headaches, were caused by injury – Applicant no longer suffers effects of injury – medical treatment not obtained “in relation to” Applicant's injury – incapacity for work not “as a result of” Applicant's injury – Comcare not liable to pay compensation for medical expenses or incapacity – decision under review affirmed

Freedom of Information

[TYGJ and Information Commissioner](#) [2017] AATA 1689 (13 October 2017); Deputy President SA Forgie

PRIVACY – published decision – application for further redactions regarding location of work and position title consistent with existing confidentiality order – application for confidentiality order regarding names of APS employees – reputational harm – unanswered allegations – application for confidentiality order granted

Migration

[CCGW and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1731 (4 October 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 – best interests of minor children – decision under review set aside and substituted

[LRPB and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1737 (12 October 2017); Senior Member T Tavoularis

Visa Refusal – Applicant is a citizen of Iran – Applicant applied for a Bridging visa – s 501 character test applied – history of offending – Applicant does not pass character test in s 501(6) – whether discretion to refuse visa should be exercised – whether considerations in Direction No. 65 weigh in favour of refusing visa – visa should be refused – decision under review affirmed

[Paikea and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1740 (17 October 2017); Dr L Bygrave, Member

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – imprisonment for 12 months or more – whether discretion should be exercised – protection of the Australian community – the best interests of minor children in Australia affected by the decision – expectations of the Australian community – other considerations – decision affirmed

[PHNR and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1742 (10 October 2017); Senior Member A Poljak

IMMIGRATION AND CITIZENSHIP – visa refusal – application for protection visa – character test – risk of engaging in criminal conduct – decision set aside and substituted

[SNXY and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1745 (18 September 2017); The Hon. Dennis Cowdroy OAM QC, Deputy President

MIGRATION – visa refusal – character test – risk that the applicant would engage in criminal conduct in Australia – risk that the Applicant would harass, molest, intimidate or stalk another person in Australia – protection of the Australian community – best interests of minor children – expectations of the Australian community – impact of visa refusal on family members – other considerations – decision affirmed

[Vernon and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1747 (12 October 2017); Senior Member Britten-Jones

IMMIGRATION AND CITIZENSHIP – Application for review of decision to refuse to grant a Return (Residence) (Class BB) visa – refusal of visa on character grounds under section 501 – Consideration of principles under Ministerial Direction 65 - decision under review affirmed

Practice and Procedure

[Boswell and Secretary, Department of Social Services](#) [2017] AATA 1751 (6 October 2017); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – Interlocutory Application for dismissal – no reasonable prospects of success – Original claim for DSP was rejected – Applicant did not request review in time – was subsequently successful in second claim for DSP – requested review of first claim some 20 months later - no capacity for back pay beyond grant of second claim – Application dismissed

[DXBG and National Disability Insurance Agency](#) [2017] AATA 1752 (26 September 2017); Mrs JC Kelly, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – jurisdiction – whether the National Disability Insurance Agency made a decision that the Tribunal has jurisdiction to review – whether an internal review must occur before a review by the Tribunal – no jurisdiction to review

[Secretary, Department of Social Services and Flenley](#) (Social services second review) [2017] AATA 1734 (17 October 2017); Ms K Parker, Member

PRACTICE AND PROCEDURE – disability support pension – eligibility decision under review – request to stay decision – section 41 of the Administrative Appeals Tribunal Act 1975 (Cth) – merits of substantive application – prejudice to persons affected by the review – public interest considerations – whether review would be rendered nugatory if a stay were not granted – whether desirable to grant a stay

PRACTICE AND PROCEDURE – Directions – request from Respondent for direction allowing parties to lodge written closing submissions post-hearing – proposed direction opposed by Applicant – late lodgement of Applicant’s material and Statement of Facts and Contentions – no adjournment sought by either party at commencement of hearing – no ability for Applicant to recover costs – Tribunal would be assisted by written closing submissions from both parties

[Mirza and Minister for Immigration and Border Protection](#) [2017] AATA 1739 (10 October 2017); Ms A Burke, Member

PRACTICE AND PROCEDURE – Directions – request from Respondent for direction allowing parties to lodge written closing submissions post-hearing – proposed direction opposed by Applicant – late lodgement of Applicant’s material and Statement of Facts and Contentions – no adjournment sought by either party at commencement of hearing – no ability for Applicant to recover costs – Tribunal would be assisted by written closing submissions from both parties

[NZBG and Commissioner of Taxation](#) [2017] AATA 1753 (11 October 2017); Deputy President BW Rayment

PRACTICE AND PROCEDURE – application to give evidence from New Zealand – insufficient funds to appear at hearing in person – prohibitive cost of video-link – application dismissed

Social Security

[Bernasconi and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1727 (10 October 2017); Ms DK Grigg, Member

Disability support pension – DSP – whether severe impairment – whether a continuing inability to work – decision under review set aside

[Bowman and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1728 (18 October 2017); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – where no severe impairment – where Applicant has 20 impairment points accumulatively – where Applicant has not completed a program of support – decision under review is affirmed

[Brady and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1729 (17 October 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

[Djordjevic and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1732 (6 October 2017); Dr B Ng, Member

SOCIAL SECURITY – disability support pension – impairments – whether all claimed conditions fully diagnosed treated and stabilised – insufficient points under impairment tables – unnecessary to consider continuing inability to work – decision affirmed

[Erich and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1733 (17 October 2017); Senior Member AC Cotter

SOCIAL SECURITY – Age Pension – cancellation due to preclusion period – where claim for compensation settled – whether Applicant is subject to a compensation preclusion period – length of period – whether special circumstances – decision under review affirmed

[Gordon and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1735 (12 October 2017); Miss EA Shanahan, Member

Pensions benefits allowances – disability support pension claim – back work-related injury – motor vehicle accident – diabetes mellitus – chronic pain syndrome – multiple operations – multiple complications – conditions not fully diagnosed, treated and stabilised – impairment rating of 15 points – decision affirmed

[Secretary, Department of Social Services and McKeverne](#) (Social services second review) [2017]
AATA 1738 (10 October 2017); Ms K Parker, Member

Disability support pension – date of claim – whether the applicant has physical, intellectual or psychiatric impairments – polyostotic fibrous dysplasia – trochanteric bursitis – depression – whether the applicant’s conditions were fully diagnosed, treated and stabilised – whether single condition caused multiple impairments – whether the impairments attracted 20 points or more – continuing inability to work – actively participated in program of support – decision varied

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – right ankle condition – tendinitis – Major Depressive Disorder (chronic) – panic attack – asthma – cervical spine condition – lumbar spine condition – other conditions – 5 impairment points – decision under review is affirmed

[Perkins and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1741 (18 October 2017); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – right ankle condition - tendinitis – Major Depressive Disorder (chronic) – panic attack – asthma – cervical spine condition – lumbar spine condition – other conditions – 5 impairment points – decision under review is affirmed

[Reeve and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1744 (17 October 2017); Senior Member T Tavoularis

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised (“FDTs”) during relevant period – hypertension FDTs but does not have functional impact – reasonable treatments for spinal condition had not been exhausted – spinal (neck) condition considered not fully treated and stabilised – other conditions not FDTs – Applicant did not have any impairment points – decision under review is affirmed

[Turley and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 1746 (16 October 2017); Senior Member J Sosso

SOCIAL SECURITY – disability support pension – Impairment Tables – where Applicant has several conditions – whether conditions are fully diagnosed, treated and stabilised – points allocation – whether conditions attract points under the Impairment Tables – relevant period – decision under review affirmed

[Ward and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1749 (11 October 2017); Ms DK Grigg, Member

Family tax benefit – late lodgement of taxation return – “special circumstances” which prevented this occurring – decision under review set aside

[Wang and Secretary, Department of Employment](#) (Social services second review) [2017] AATA 1748 (16 October 2017); Ms N Isenberg, Senior Member

SOCIAL SECURITY – Newstart allowance – non-compliance with Newstart Employment Pathway Plan (Job Plan) – failure to enter a Job Plan – failure to attend appointments with employment services provider – connection failure – whether reasonable excuse for the failure – cancellation of newstart allowance – decision affirmed

[Warwick and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1750 (16 October 2017); Senior Member AC Cotter

SOCIAL SECURITY – disability support pension – cancellation – whether 20 points or more under the Impairment Tables as at date of cancellation – whether conditions were fully diagnosed, treated and stabilised – whether reasonable treatment available – decision under review affirmed

Taxation

[Moignard and Commissioner of Taxation](#) (Taxation) [2017] AATA 1661 (6 October 2017); Deputy President K Bean

Income tax – Leave to raise new grounds of objection under s 14ZZK of the Taxation Administration Act 1953 – Whether valid determination to distribute trust income – Application of default clause in trust deed – Whether an effective disclaimer – Whether applicant had sufficient knowledge of entitlement disclaimed – Imposition of administrative penalty – Lack of reasonable care or recklessness – Increase of base penalty – Decision under review set aside

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
SNXY and Minister for Immigration and Border Protection	[2017] AATA 1745

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugtniet v Secretary, Department of Social Services	[2017] AATA 577	[2017] FCA 1227

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