



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 44/2017

30 October 2017

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

[Bishop and Australian Postal Corporation](#) (Compensation) [2017] AATA 1807 (20 October 2017); Miss EA Shanahan, Member

COMPENSATION – bilateral shoulder injuries – cervical spine pathology – secondary psychiatric symptoms or disorder – questions of liability and compensation – left shoulder claims accepted by consent in the course of the hearing and claim for household assistance under s 29 withdrawn – claims reduced from nine to four – decision in relation to right shoulder injury set aside – decisions relating to secondary psychological disorder, cervical spine pathology and surgical treatment for the latter as denied by respondent, affirmed

[Coggan and Comcare](#) (Compensation) [2017] AATA 1905 (25 October 2017); Senior Member J Sosso

COMPENSATION – workplace injury – aggravation of osteoarthritis in left knee – whether the applicant suffered a physical injury – whether the applicant suffered an aggravation of an injury during the course of employment – whether employment contributed to a significant degree to the aggravation of an ailment – Comcare not liable to pay compensation – decision under review affirmed

[RVQZ and Comcare](#) (Compensation) [2017] AATA 1904 (24 October 2017); Senior Member Dr J Pople

COMPENSATION – Commonwealth employees – Applicant's ex-wife died from chronic liver disease related to alcohol abuse – Applicant claimed compensation on behalf of children – whether alcoholism and liver disease were aggravated by relapse and continued drinking after period of abstinence – whether aggravation was significantly contributed to by employment – relapse and continued drinking was an aggravation and acceleration of liver disease – employer's failure to take certain steps does not mean that the aggravation was significantly contributed to by employment – alleged bullying and harassment by supervisor did not significantly contribute to aggravation – aggravation not a "disease" and, therefore, not an "injury" – Respondent not liable to pay compensation to dependents or for funeral expenses – decision under review affirmed

Customs

[Pharm-A-Care Laboratories Pty Limited and Comptroller-General of Customs](#) [2017] AATA 1816 (19 October 2017); Deputy President JW Constance and Deputy President BW Rayment

CUSTOMS – identification of imported goods – correct tariff classification – classification of goods under appropriate heading – whether items in dispute constitute ‘vitamin supplements’ – duty paid under protest – decision set aside and remitted

Freedom of Information

[Mullen and Chief Executive Officer, Australian Aged Care Quality Agency](#) (Freedom of information) [2017] AATA 1805 (19 October 2017); Deputy President Dr C Kendall and Deputy President S Boyle

FREEDOM OF INFORMATION – Freedom of Information request – Aged Care Act – whether documents requested exempt – whether disclosure prohibited – ‘protected information’ – decision affirmed

Health

[KLMN and National Disability Insurance Agency](#) [2017] AATA 1814 (20 October 2017); R Perton, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – home security – air conditioning – rental property – additional travel support – whether value for money – whether likely to be effective and beneficial – economic participation – whether all criteria in s 34(1) met

[KLMN and National Disability Insurance Agency](#) [2017] AATA 1815 (20 October 2017); R Perton, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – vision issues – prism lenses – whether likely to be effective and beneficial – whether NDIA should fund purchase

Migration

[OSMAN](#) (Migration) [2017] AATA 1859 (5 October 2017); R Wilson, Member

Migration – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – Intention to marry – Intent to cohabit – Consistent and credible evidence – Genuine relationship – Decision under review remitted

[MANDANGU](#) (Migration) [2017] AATA 1865 (5 October 2017); T Eteuati, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – Exceptional circumstances – Undue hardship – Financial burden – Intention to keep studying – No evidence to support claims – Lack of exceptional circumstances – Decision under review affirmed

[1705419](#) (Migration) [2017] AATA 1900 (6 October 2017); J Redfern, Deputy President (Presiding) and J Billings, Senior Member

Migration – Cancellation – Special Category (Class TY) visa – Subclass 444 visa – New Zealand citizen – Visa granted and cancelled while applicant in immigration clearance – Criminal charges – Extradition – Bail – Whether Tribunal has jurisdiction to review decision to cancel visa – Meaning of immigration clearance – No jurisdiction

[Heon](#) (Migration) [2017] AATA 1870 (6 October 2017); D Buljan, Member

Migration – Distinguished Talent (Residence) (Class BX) visa – Subclass 858 (Distinguished Talent) – The Arts – Film and television – Production and acting – Exceptional and outstanding achievement – Internationally recognised – Existing record of achievement – Decision under review affirmed

[Sam](#) (Migration) [2017] AATA 1868 (6 October 2017); D Buljan, Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Direct Entry stream – No approved nomination – Request for adjournment – Public interest – Religious leader – Ministerial intervention – Decision under review affirmed

[Ahmed and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1908 (25 October 2017); Deputy President BW Rayment

MIGRATION – non-revocation of mandatory cancellation of visa – refugee and humanitarian 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 – non-refoulement obligations – significant medical conditions – availability and access to medical services in home country – decision under review set aside – decision to cancel visa revoked

[Dayoub and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1806 (27 September 2017); Senior Member MJ McGrowdie

MIGRATION – visa refusal – partner visa – character test – substantial criminal record – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – decision set aside and substituted

[HSKJ and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1802 (19 October 2017); Deputy President Dr C Kendall

MIGRATION – 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 – expectations of the Australian community – other considerations – non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[Sanderson and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1903 (24 October 2017); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – visa was cancelled under s 501(3A) because the Applicant did not pass character test and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – Considerations in Direction No. 65 – Expert opinion provided about risk of re-offending – dependent wife – discretion should not be exercised to revoke visa cancellation – decision under review affirmed

[Sasulu and Minister for Immigration and Border Protection](#) (Migration); [2017] AATA 1803 (19 October 2017); Miss EA Shanahan, Member

MIGRATION – mandatory cancellation of Class TY, subclass 444 Special Category (Temporary) visa – request for revocation of mandatory cancellation – substantial criminal record – convicted in County Court of two offences on 20 November 2015 – custodial sentence of 15 months – previous history of criminal damage in 2012 – bail default on two occasions – no conviction recorded in 2012 – acquisition of training and further education in prison – New Zealand citizen – protection of the Australian community – expectations of the Australian community – primary considerations outweigh secondary considerations – decision affirmed

Practice and Procedure

[Church & Dwight \(Australia\) Pty Ltd and Comptroller-General of Customs](#) [2017] AATA 1910 (25 October 2017); Deputy President JW Constance

PRACTICE AND PROCEDURE – request for stay order – customs – tariff classification of goods – baby wipes – demand for payment of duty – payment under protest – duty not paid for all shipments – jurisdiction of the Tribunal – jurisdiction to stay the demand for payment – payment of duty a precondition of an application for review – the goods not a particular class of goods – stay refused

[HSJW and Commissioner of Taxation](#) (Taxation) [2017] AATA 1906 (25 October 2017); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – application for confidentiality orders – Part IVC review application – request for private hearing under s14ZZE – request for further broader orders restricting or prohibiting the disclosure of evidence or the content of documents – retrospective claim for privilege – interests of witness primarily affected – no compulsion to give evidence in these proceedings – privilege against self-incrimination – application seeking to suppress material that may amount to criminal conduct – request for proposed orders declined

[Lewtas and Comcare](#) (Compensation) [2017] AATA 1804 (4 September 2017); Ms LM Gallagher, Member

PRACTICE & PROCEDURE – dismissal of application for failure to comply with a direction of the Tribunal within a reasonable time – reasons for decision requested by the applicant

Refugee

[1418139](#) (Refugee) [2017] AATA 1785 (4 October 2017); R Westaway, Member

Refugee – Protection visa – Pakistan – Social group – Marsia Khwa and Noha Khuan – Imputed political opinion – Imamia Student Organisation (ISO) – Race – Mohajir – Religion – Shiite Muslim – Decision under review remitted

[1601830](#) (Refugee) [2017] AATA 1788 (4 October 2017); C Smolicz, Member

Refugee – Protection visa – Burma (Myanmar) – Ethnicity – Chin – Social group – Chin Christians woman – Religion – Christian – Political opinion – National League for Democracy (NLD) – Fear of arrest – Decision under review remitted

[1704438](#) (Refugee) [2017] AATA 1688 (6 October 2017); D Dragovic, Senior Member

Refugee – Protection visa – Sudan – Ethnicity – Sudanese – Race – Nuban – Expulsion from South Sudan – Impugned political opinion – Decision under review affirmed

[1512002](#) (Refugee) [2017] AATA 1823 (9 October 2017); D Dragovic, Senior Member

Refugee – Protection visa – Palestinian Territories – Ethnicity – Palestinian – Social group – Stateless – Homosexual – United Nations Relief and Works Agency (UNRWA) – Family and general threats – Decision under review affirmed

[1620364](#) (Refugee) [2017] AATA 1820 (10 October 2017); N Burns, Member

Refugee – Protection Visa – Papua New Guinea – Particular Social Group – Intertribal Violence – Lack of state protection – Politically motivated violence – Relocation not reasonable – Decision under review remitted

Social Security

[Chaplin and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1809 (20 October 2017); Ms A Burke, Member

Disability support pension – whether applicant qualified during claim period – anxiety/depression, lumbar spine disorder, osteoarthritis (knees), restless leg syndrome, toe condition, osteoarthritis (feet), ankle tendinopathy and plantar fasciitis, osteoarthritis (hands), finger condition, carpal tunnel syndrome, shoulder condition, fibromyalgia, peripheral vascular disease and claudication, hypertension, asthma, morbid obesity, diabetes, insomnia, hypercholesterolemia and reflux oesophagitis – whether conditions fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under impairment tables – whether program of support has been completed – decision under review affirmed

[Cremona and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1817 (17 October 2017); Ms A Burke, Member

SOCIAL SECURITY – disability support pension — whether qualified – lumbar spine disorder not fully diagnosed, treated and stabilised – anxiety/depression fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under impairment tables – whether program of support has been undertaken – decision under review

[Douglas and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1811 (20 October 2017); Ms DK Grigg, Member

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

[Mekonnen and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1907 (26 October 2017); Professor R McCallum AO, Member

SOCIAL SECURITY – disability support pension – request for indefinite portability – cancellation of disability support pension as a result of review – mental health condition – spinal and back condition – whether the conditions are of 20 points or more under the Impairment Tables – whether conditions

were fully treated and stabilised – whether the Applicant has a continuing inability to work – decision affirmed

[Mubarak; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 1808 (20 October 2017); Professor R McCallum AO, Member

SOCIAL SECURITY – Disability Support Pension – whether applicant satisfies the residence requirements – applicant does not satisfy the residency requirements – decision under review set aside and substituted

[Tomlin; Secretary, Department of Social Services and](#) (Social services second review) [2017] AATA 1810 (20 October 2017); Dr L Bygrave, Member

SOCIAL SECURITY – parenting payment – overpayment – whether the Respondent has a debt – whether there are grounds for writing off or waiving all or part of the debt – whether debt should be waived by reason of sole administrative error – whether debt should be waived by reason of special circumstances – decision set aside and substituted

[Verhagen and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1812 (20 October 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether impairments permanent – whether impairments attracted 20 points or more under the impairment tables during the relevant period – decision under review set aside

Veterans' Affairs

[Bailey and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1909 (25 October 2017); Senior Member A Nikolic AM CSC

VETERANS' AFFAIRS – application for increase of pension – claim for cirrhosis of liver – no reasonable hypothesis established – decision affirmed

[Oldmeadow and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1813 (20 October 2017); Senior Member Ms N Isenberg

VETERANS AFFAIRS – disability pension – application for increase in pension – intermediate rate of pension – whether veteran's defence-caused incapacity renders the Applicant incapable of undertaking remunerative work other than on a part-time basis or intermittently – whether veteran capable of undertaking work for 20 or more hours per week – decision under review 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
NKWF and Minister for Immigration and Border Protection	[2017] AATA 813
BNVM and Minister for Immigration and Border Protection	[2017] AATA 621
HZCP and Minister for Immigration and Border Protection	[2017] AATA 775
Goodricke and Comcare	[2017] AATA 1249
NHHV and Minister for Immigration and Border Protection	[2017] AATA 995

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Shord v Commissioner of Taxation	[2015] AATA 355	[2017] FCAFC 167 [2016] FCA 761

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