



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 46/2017**

**13 November 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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

<b>AAT Recent Decisions .....</b>	<b>3</b>
Citizenship .....	3
Migration.....	3
Practice and Procedure.....	4
Refugee .....	5
Social Security .....	5
Veterans' Affairs.....	6
<b>Appeals.....</b>	<b>7</b>
Appeals lodged .....	7
Appeals finalised.....	<b>Error! Bookmark not defined.</b>
<b>Statements of Principles .....</b>	<b>8</b>
New Statements of Principles.....	8
Statements of Principles to be revoked.....	8

# 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

[CVGY and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2094 (3 November 2017); Deputy President Dr C Kendall

Citizenship – good character – whether Tribunal satisfied the Applicant is of good character – previous convictions – indecent dealing with a child under 13 – traffic offences – denial in relation to criminal record – lack of remorse – 13 years since last offence – character references – Applicant found not to be of good character – decision under review affirmed

## Migration

[Henin and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2095 (6 November 2017); Ms A Burke, Member

MIGRATION – Visa refusal – applicant is a citizen of Egypt – applicant applied for a partner visa – history of domestic violence and failure to comply with court orders – applicant does not pass character test in s 501(6)(c) – applicant not of good character on account of past criminal and general conduct – whether discretion to refuse visa should be exercised – applicant does not present unacceptable risk of reoffending – minor child in Australia – international non-refoulement obligations – applicant a Coptic Christian – decision under review set aside

[Jikoivavalagi and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2098 (7 November 2017); Senior Member Mrs JC Kelly

MIGRATION – visa cancellation – decision not to revoke cancellation – transitional visa – character test – whether the applicant passes the character test – substantial criminal record – imprisonment for 12 months or more - protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations - decision affirmed

[Mehdi and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2029 (27 October 2017); Senior Member E Fice

MIGRATION – refusal of temporary protection visa – prescribed alcohol conviction – reckless wounding conviction – aggression whilst in detention – dangerous and aggressive behaviour – character test failed – unacceptable threat – discretionary authority to refuse protection visa enlivened – risk to the Australian community established – no mitigating factors – protection owed to applicant under non-refoulement obligations – obligations disposed of by Minister – decision to refuse to grant applicant Temporary Protection (Class XD) visa affirmed

[Irani and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 1964 (27 October 2017); Deputy President BW Rayment

MIGRATION – Skilled (Residence) visa refusal – application to stay refusal of skilled (residence) visa – deemed cancellation of bridging visa – failure of character test – various convictions for driving offences – applicant taken into immigration detention – significant impact on applicant’s wife – reasonable prospects of success on review – recommendation that a determination be made under s 197AB of the Migration Act 1958 – application for stay of decision refused

[ANTONIOS SOLUTIONS PTY LTD](#) (Migration) [2017] AATA 2063 (27 October 2017); R Skaros, Member

Migration – Approval of nominated positions (employer nomination) – Direct Entry Nomination stream – Nominator meets the requirements for training – Nominator is actively and lawfully operating a business – Need for the nominator to employ a paid employee – Decision under review affirmed

[Nguyen](#) (Migration) [2017] AATA 2040 (25 October 2017); M Sripathy, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – Genuine visitor – Visa Applicant currently studying in Finland on a scholarship – Large extended family in Vietnam – Opportunity to meet new family members in Australia – Decision under review remitted

[Joy](#) (Migration) [2017] AATA 2054 (19 October 2017); A Mercer, Member

Migration – Temporary Business Entry (Class UC) visa – Subclass 457 – Standard business sponsor stream – Sponsorship for employment by standard business sponsor – Not the subject of approved nomination – Evidence provided – Decision under review affirmed

[SAPUTRA](#) (Migration) [2017] AATA 1995 (16 October 2017); A Younes, Senior Member

Migration – Cancellation – Student (Temporary) (Class TU) visa - Subclass 572 Vocational Education and Training Sector – Did not commence further studies – No response to hearing invitation and no appearance – Not genuine student – Decision under review affirmed

[JAVIER](#) (Migration) [2017] AATA 1939 (11 October 2017); J Redfern, Deputy President

Migration – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector – Genuine temporary entrant – Genuine student – Inadequate reasons for course choice – Ties to home country – Plans to establish childcare business – Relevance of courses to future employment – Decision under review affirmed

## **Practice and Procedure**

[Farah and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2097 (1 November 2017); Deputy President S Boyle

Disability support pension – extension of time application – factors that are relevant when considering an application for extension of time – little chance of success – application dismissed

## Refugee

[1513818](#) (Refugee) [2017] AATA 2006 (16 October 2017); L Symons, Member

Refugee – Protection visa – Egypt – Religion – Jehovah’s witnesses – Social group – Victim of selective harassment from religion – Decision under review remitted

[1419410](#) (Refugee) [2017] AATA 1957 (20 October 2017); R Westaway, Member

Refugee – Protection visa – Pakistan – Social group – Intelligence Organisation spy – Religion – Sunni Muslim – Imputed Shia – Third country right of entry not applicable – Fear of Persecution – Credibility issues – Decision under review affirmed

[1616365](#) (Refugee) [2017] AATA 2007 (20 October 2017); N Burns, Member

Refugee – Protection visa – Sri Lanka – Federal Circuit Court remittal – Ethnicity – Tamil – Social group – Failed asylum seekers – Imputed pro-LTTE political opinion – Credibility Issues – Decision under review set aside

[1513684](#) (Refugee) [2017] AATA 2012 (23 October 2017); G Cullen, Member

Refugee – Protection visa – Afghanistan – Property dispute with officials – No right to enter and reside in any other country – Political situation in Mazar-e-Sharif – Local government corruption – Jamiat-e Islami political party – No well-founded fear of persecution – Credibility issues – Internally inconsistent application – Decision under review affirmed

[1713192](#) (Refugee) [2017] AATA 2084 (27 October 2017); Dr Christopher Kendall, Deputy President (Presiding) and Dr Colin Huntly, Member

Refugee – Protection Visa – Kenya – Particular social group – Homosexual – Particular ethnic group – Kalenjin tribal group – Fear of persecution – Fear of political violence – Witness credibility – Previous criminal history – Decision under review affirmed

## Social Security

[Fitas and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2100 (6 November 2017); Deputy President Dr C Kendall

SOCIAL SECURITY – age pension – failure to disclose assets – whether applicant holds assets on trust – no trust – overpayment – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – no “special circumstances” – decision under review affirmed

[Hyde and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2096 (7 November 2017); Senior Member Ms AF Cunningham

SOCIAL SECURITY – job commitment bonus – claim not made within 90 days of qualification – absence of special circumstances – decision under review affirmed

[Keys and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2099 (2 November 2017); LM Gallagher, Member

SOCIAL SECURITY – compensation preclusion period – disability support pension – unfairness – straitened financial circumstances – changed circumstances – ill health - no special circumstances - evidence does not support that compensation preclusion period be shortened – decision under review affirmed

[Skipworth and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2101 (7 November 2017; A Burke, Member)

FAMILY TAX BENEFIT – overpayment – where no administrative error – discretion to waive part or whole of debt - no special circumstances found – decision under review affirmed

## **Veterans' Affairs**

[Sandford and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 2038 (1 November 2017); Senior Member T Tavoularis

VETERANS' AFFAIRS – Disability pension – whether post-traumatic stress disorder was war-caused or defence-caused – Tribunal satisfied that Applicant suffers from Post-traumatic Stress Disorder ('PTSD') – where Tribunal not reasonably satisfied PTSD was war caused – where Tribunal not satisfied on balance of probabilities PTSD was defence caused - 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
<b>Ham and Tax Practitioners Board</b>	<a href="#">[2017] AATA 1642</a>
<b>Barnes and Repatriation Commission</b>	<a href="#">[2017] AATA 1385</a>
<b>Favas and Comcare</b>	<a href="#">[2017] AATA 1317</a>
<b>Perera and Secretary, Department of Social Services</b>	<a href="#">[2017] AATA 1246</a>

# Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

## New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles, which **commence** on **4 December 2017**:

**Ulnar neuropathy at the elbow (Balance of Probabilities) – No. 66 of 2017**

<https://www.legislation.gov.au/Details/F2017L01452>

**Ulnar neuropathy at the elbow (Reasonable Hypothesis) – No. 65 of 2017**

<https://www.legislation.gov.au/Details/F2017L01451>

**Immune thrombocytopaenia (Balance of Probabilities) – No. 64 of 2017**

<https://www.legislation.gov.au/Details/F2017L01449>

**Immune thrombocytopaenia (Reasonable Hypothesis) – No. 63 of 2017**

<https://www.legislation.gov.au/Details/F2017L01448>

**Osteoarthritis (Balance of Probabilities) – No. 62 of 2017**

<https://www.legislation.gov.au/Details/F2017L01442>

**Osteoarthritis (Reasonable Hypothesis) - No. 61 of 2017**

<https://www.legislation.gov.au/Details/F2017L01443>

**Substance use disorder (Balance of Probabilities) – No. 60 of 2017**

<https://www.legislation.gov.au/Details/F2017L01445>

**Substance use disorder (Reasonable Hypothesis) – No. 59 of 2017**

<https://www.legislation.gov.au/Details/F2017L01444>

## Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be revoked** on **4 December 2017**:

**Immune thrombocytopaenic purpura – No. 73 of 2008**

<https://www.legislation.gov.au/Series/F2008L04145>



**Immune thrombocytopaenic purpura – No. 72 of 2008**

<https://www.legislation.gov.au/Series/F2008L04143>

**Osteoarthritis – No. 14 of 2010**

<https://www.legislation.gov.au/Details/F2011C00492>

**Osteoarthritis – No. 13 of 2010**

<https://www.legislation.gov.au/Details/F2011C00491>

**Substance use disorder – No. 4 of 2009**

<https://www.legislation.gov.au/Details/F2014C00400>

**Substance use disorder - No. 3 of 2009**

<https://www.legislation.gov.au/Details/F2014C00399>

© Commonwealth of Australia 2016



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).