



Administrative
Appeals Tribunal

AAT Bulletin

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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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Recent Developments

Melbourne office relocation

From **Monday 27 November 2017**, AAT services in Melbourne will be provided from our office at Level 4, 15 William Street, Melbourne. The AAT's Melbourne office at Level 10, 120 Spencer Street will close at 5.00pm on Friday 24 November 2017. The offices at Level 11, 565 Bourke Street and Level 16 HWT Tower, 40 City Road, Southbank will close 8 December 2017.

Please check the [Contact us](#) page on our website, www.aat.gov.au, for up-to-date information and contact details. Information about the co-location of our offices will be made available on our website and through [AAT Alerts](#).

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

[Rozario and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2288 (22 November 2017); Senior Member A Nikolic AM CSC

CITIZENSHIP – whether applicant is of good character at the time of decision – applicant unable to obtain overseas penal clearance – failure to report for mandatory national service – failure to obtain exit permit – applicant liable for prosecution in Singapore – verifiable information casting character doubts – decision affirmed

Health

[Nexdius Pty Ltd and Minister for Health](#) [2017] AATA 2295 (21 November 2017); Deputy President JW Constance and Senior Member A Poljak

HEALTH – Therapeutic Goods – Advertisement – approval of television advertisement – therapeutic goods advertising code – characteristics of the reasonable person – claims, statements and comparisons – whether advertisement complies with clause 4 of the advertising code – unwarranted and unrealistic expectations – product effectiveness – correct and balanced statements – claims and statements verified by sponsor – abuse of trust or exploiting the lack of knowledge of consumers – whether language used could bring about fear or distress – Comparative advertisements – must not be misleading or likely to be misleading – public health messages – sunscreens – solar UV radiation – UVB – production of vitamin D – sunburn – decision affirmed

Migration

[Nguyen and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2276 (17 November 2017); Senior Member A Nikolic AM CSC

MIGRATION – visa refusal – application for partner visa – substantial criminal record – immigration misconduct – failure to pass character test – 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 in Australia – expectations of the Australian community – other considerations for visa applicants – decision affirmed

[Randalls and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2279 (20 November 2017); Mrs JC Kelly, Senior Member

MIGRATION – visa refusal – employer nomination visa – failure to pass character test – substantial criminal record – discretion to refuse application for visa – protection of the Australian community – the best interests of minor children in Australia – expectations of the Australian community – other considerations – decision set aside and substituted

[Speers and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2287 (23 November 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 – Applicant been in Australia for 17 years, has family in Australia - considerations outweighed by protection of the Australian community and community expectations – decision under review affirmed

[Rambridge](#) (Migration) [2017] AATA 2126 (2 November 2017); L Nicholls, Senior Member

Migration – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – Remunerated in accordance with relevant legislation – Carried out work for required period – Decision under review remitted

[YALCIN](#) (Migration) [2017] AATA 2133 (3 November 2017); T Flood, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – Tourist stream – Genuine temporary entrant – Visiting a family member – Incentive to return to home country – Intention to work – Intention to study – Decision under review remitted

[Lee](#) (Migration) [2017] AATA 2129 (6 November 2017); J Cipolla, Senior Member

Migration – Distinguished Talent (Residence) (Class BX) visa – Subclass 858 (Distinguished Talent) – Bodybuilder – No record of exceptional and outstanding achievement – No international recognition – Decision under review affirmed

[Rwambiwa](#) (Migration) [2017] AATA 2136 (7 November 2017); M Brophy, Member

Migration – Child (Migrant) (Class AH) – Subclass 117 (Orphan relative) – Applicant aged over 18 years of age at time of application – Decision under review affirmed

[Lang](#) (Migration) [2017] AATA 2290 (8 November 2017); P Emmerton, Member

Migration – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – Genuine spousal relationship – Financial independence – Vietnamese social customs - Brief relationship prior to marriage – Brief cohabitation – Representation of relationship to others – Non-traditional wedding ceremony – Remarriage shortly after widowing – Decision under review remitted

Practice and Procedure

[Emery and Comcare](#) (Compensation) [2017] AATA 2281 (20 November 2017); Senior Member T Tavoularis

INTERLOCUTORY APPLICATIONS – extension of time –whether Tribunal should grant extension of time –application of the Hunter Valley Developments principles – where there is no reasonable explanation for the delay – where respondent would be unfairly prejudiced if the application were to proceed –where there are no reasonable prospects of success – extension of time refused

[MedAid Pty Ltd and Commissioner of Taxation](#) [2017] AATA 2293 (30 October 2017); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – application for dismissal of application for review – where applicant has been deregistered as a company – consideration of the impact of deregistration – whether a former director and shareholder of the applicant may be joined as a party to the proceedings – application dismissed unless application for joinder is made within 28 days

[Wong and Minister for Health](#) [2017] AATA 2296 (21 November 2017); Deputy President SA Forgie

PROCEDURE – whether application for review within time – prescribed time for lodgement ended on a State public holiday – lodged electronically to national email address on following day – time of receipt – taken to have been lodged at place of business (Registry) which has the closest relationship with underlying transaction – prescribed time calculated by reference to the time where the Melbourne Registry is located – lodgement permitted on day following public holiday – application within time

Refugee

[1714613](#) (Refugee) [2017] AATA 2202 (30 October 2017); C Packer, Member

Refugee – Protection visa – Cancellation – Italy – Federal Court and Full Federal Court Dismissal – Ethnicity – Calabrian – Social group – Target of Ndrangheta retribution for unpaid debt – Vulnerable person with cognitive impairment – Family ties with Calabria – Credibility Issues – Decision under review affirmed

[1723755](#) (Refugee) [2017] AATA 2147 (31 October 2017); D McCulloch

Refugee – Protection visa – Nepal – Social group – Divorcee – Social Stigma – Drug user – Mental health issues – Gang attacks – Credibility issues – Inconsistent claims – Delay in applying for a protection visa – Failed to attend an Immigration interview – Applicant detained – No well-founded fear of persecution – Decision under review affirmed

[1514038](#) (Refugee) [2017] AATA 2199 (1 November 2017); D McCulloch, Member

Refugee – Protection visa – Papua New Guinea – Social group – Accused of Witchcraft – Burn injuries – Chairman of a Village Land Owners Association – Political rivalry in the applicant's village – Vulnerable person – Inconsistent evidence – Credibility issues – Decision under review affirmed

[1703154](#) (Refugee) [2017] AATA 2144 (1 November 2017); M Hawkins, Member

Refugee – Protection visa – India – Religion – Catholic – Social group – Homosexual – Mental Health issues – Sex Discrimination – Delays in lodging protection visa application – Fears physically and psychologically harm – No real chance of persecution – Right to enter and reside in a third country – Decision under review affirmed

[1619253](#) (Refugee) [2017] AATA 2200 (7 November 2017); M McAdam, Member

Refugee – Protection visa – Thailand – Social group – Former member of Thai military – Fear arrest as a military deserter – Decision under review affirmed

Professions and Trades

[Mowle and Commissioner of Police \(NSW\)](#) [2017] AATA 2294 (17 November 2017); Deputy President JW Constance

PROFESSIONS AND TRADES – mutual recognition – security licence – current Northern Territory licence – applied for licence in New South Wales – application refused – grounds of refusal – licence had previously been revoked – materially false or misleading statements in application – whether a licence had been cancelled or revoked – whether cancelled or revoked as a result of disciplinary action – whether can rely on Northern Territory licence – decision set aside and remitted for reconsideration

Social Security

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2277 (17 November 2017); Miss EA Shanahan, Member

SOCIAL SECURITY – cancellation of disability support pension – applicant seeking unlimited portability – qualified for disability support pension December 2008 – no longer qualified under functional tables of 2011 – disability support pension cancelled – decision affirmed

[Davis and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2284 (21 November 2017); Ms AF Cunningham, Senior Member

SOCIAL SECURITY – cancellation of disability support pension – qualification requirements – impairment rating – decision under review affirmed

[Hirst and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2278 (13 October 2017); Senior Member RW Dunne

SOCIAL SECURITY – pensions, benefits and allowances – age pension – whether the applicant is a member of a couple – payment of age pension to applicant at single rate – exercise of discretion to treat applicant as a single person – whether there is a special reason for applicant not to be treated as a member of a couple – for special reason to apply, applicant should not be treated as a member of a couple – decision under review set aside

[Karaali and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2280 (20 November 2017); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – cancellation – Impairment Tables – whether the applicant's condition is fully diagnosed, treated and stabilised – whether the applicant had an impairment rating of 20 points or more under the Impairment Tables – mental health function – spinal condition – epilepsy, migraines and blackouts – other conditions – decision affirmed

[Li and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2289 (11 October 2017); Senior Member T Tavoularis

DISMISSAL APPLICATION – disability support pension – prospects of success – whether application had no reasonable prospects of success – where Applicant successfully applied for DSP in September 2015 – where Applicant sought disability support pension back-pay from September 2014 – Social Security (Administration) Act 1999 (Cth) section 147 – date of effect – back-pay cannot be granted – application has no prospects of success – application for review dismissed

[McDonald and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2282 (20 November 2017); Ms A Burke, Member

DISABILITY SUPPORT PENSION — whether qualified – if gross lymphoedema disorder fully diagnosed, treated and stabilised – if neurocognitive disorder fully diagnosed, treated and stabilised – whether impact of treatment regime impacts ability to function – whether impairment attracts rating of 20 points or more under impairment tables – whether program of support had been undertaken

[Meeldijk and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2285 (22 November 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 – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[O'Halloran and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2283 (16 October 2017); Senior Member Britten-Jones and G Hallwood, Member

SOCIAL SECURITY - disability support pension - whether conditions fully diagnosed, treated and stabilised in the relevant period - whether there is an impairment rating of at least 20 points - decision under review affirmed

[Richards and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2297 (9 November 2017); DK Grigg, Member

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

Veterans' Affairs

[Brownlie and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 2292 (17 November 2017); Deputy President J Sosso

VETERANS' AFFAIRS – Veterans' Entitlements – disability pension – whether veteran is entitled to payment of disability pension at the Special Rate – where veteran's degree of incapacity from war-caused injury or war-caused disease has been accepted to be 70% or more – alone test – whether veteran's incapacity is of such a nature as, of itself alone, renders the veteran incapable of undertaking remunerative work – decision under review affirmed

[Murphy and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 2286 (22 November 2017); Mrs JC Kelly, Senior Member

VETERANS' AFFAIRS – benefits and entitlements – rate of service pension – Applicants are legally married - whether Applicants are living separately and apart on a permanent basis - decision 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
Pharm-A-Care Laboratories Pty Limited and Comptroller-General of Customs	[2017] AATA 1816

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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