



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.

Compensation

[Galicia and Comcare](#) (Compensation) [2017] AATA 2380 (24 November 2017); Ms A Burke, Member

WORKERS' COMPENSATION – Medibank Private employee – left shoulder injury - claim for compensation under the Safety Rehabilitation and Compensation Act 1988 - whether ongoing incapacity or entitlement to medical expenses – condition no longer attributing to current pain – no ongoing entitlement to compensation for incapacity payments - decisions affirmed

[Howard and Comcare](#) (Compensation) [2017] AATA 2381 (28 November 2017); Dr J Popple, Senior Member

COMPENSATION – Commonwealth employees – Applicant suffered injuries in motor vehicle accident while travelling to work – Comcare accepted liability for injuries – Applicant suffering pain since accident – 11 years later, Comcare denied continuing liability for injuries – effects of injuries resolved within a few months of accident – Applicant no longer suffers effects of injuries – medical treatment no longer obtained “in relation to” Applicant’s injuries – incapacity for work no longer “as a result of” Applicant’s injuries – Comcare no longer liable to pay compensation for medical expenses or incapacity – decision under review affirmed

[Rahman and Comcare](#) (Compensation) [2017] AATA 2382 (24 November 2017); Deputy President BW Rayment

COMPENSATION – psychological condition – major depressive disorder with prominent anxiety – numerous possible causes – forced transfer to different office – workplace bullying – employer’s refusal to meet applicant’s requests for work-station modifications – demeaning nature of work – whether injury is the result of reasonable administrative action taken in a reasonable manner – decision affirmed

[Small and Comcare](#) (Compensation) [2017] AATA 2383 (24 November 2017); Mr S Webb, Member

COMPENSATION – accepted low back and other injuries – soft tissue injury – X-ray not sufficient to reveal precise nature of injury – clinical judgement – divergent expert opinions – episodic flaring of symptoms – continuation of injury – incident occasioning increased symptoms consistent with pathological change – new injury claim rejected – meaning of ‘aggravation’ – no jurisdiction to determine liability for ‘aggravation’ under new injury claim – original injury continuing as an operative and effective cause of incapacity – revocation of multiple compensation determinations over a long period – revocation set aside – incident in the course of a compensation meeting held in Applicant’s work place – fresh injury claim – frank injuries arising out of or in the course of the employment – inconclusive evidence low back and lower limb symptoms arise from pathological change – symptoms attributable to pre-existing low back condition – continuing effect of frank injuries not established – related decisions affirmed

Migration

[Zhou and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2386 (27 November 2017); Mrs JC Kelly, Senior Member

MIGRATION – mandatory cancellation – spouse visa – Applicant failed to pass the character test due to a substantial criminal record – whether there is another reason why the original decision should be revoked – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – decision affirmed

[XFKR and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2385 (29 November 2017); Dr C Kendall, Deputy President

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 – best interests of minor children – expectations of the Australian community – other considerations – non-refoulement obligations – concerns regarding risk of mandatory detention – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

Social Security

[Davies and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2379 (28 November 2017); Ms A Poljak, Senior Member

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

Veterans' Affairs

[Cockram and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 2378 (24 November 2017); Senior Member A Nikolic AM CSC

VETERANS' AFFAIRS – war widow's pension – whether veteran's death was war-caused – Statement of Principles No. 37 of 2013 concerning Malignant Neoplasm of the Colorectum – factor 6(c), drinking at least 250 kilograms of alcohol before clinical onset – whether reasonable hypothesis connecting death of veteran with service – reasonable hypothesis not raised – 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
HSKJ and Minister for Immigration and Border Protection	[2017] AATA 1802
Mullen and Chief Executive Officer, Australian Aged Care Quality Agency	[2017] AATA 1805

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Miley	[2016] AATA 73	[2017] FCA 1396
O'Loughlin v Linfox Australia Pty Ltd	[2016] AATA 606	[2017] FCA 1394

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