



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

2017 end of year arrangements

The Administrative Appeals Tribunal will be operating at limited capacity over the Christmas and New Year period.

Some of our offices, including all corporate areas, will close from 5.00pm, Friday 22 December 2017 and will reopen at 8.30am on Tuesday 2 January 2018.

All registries (except Canberra) will be open from 8.30am to 5.00pm from Wednesday 27 December 2017 to Friday 29 December 2017.

We will respond to telephone enquiries and accept applications, fee payments, and submissions over the counter on the days that we are open.

We recommend that you consider lodging applications or documents using our [online lodgement facilities](#) or [by email](#) to ensure that you lodge within statutory timeframes.

The Melbourne AAT office has moved

The AAT's Melbourne office is now located at Level 4, 15 William Street, Melbourne.

Our former offices at Level 10 120 Spencer Street, Level 11 565 Bourke Street and Level 16 HWT Tower, 40 City Road, Southbank have permanently closed.

The AAT's Melbourne post, phone and fax details are available on the [Contact us](#) page.

Mailing address: GPO Box 9955, Melbourne, Vic 3001

Telephone: 1800 228 333

Fax: (03) 9454 6998 (for Centrelink, child support and all other cases)

(03) 9454 6999 (for migration and refugee cases)

Our email addresses have not changed.

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.

Child Support

[WLPV and Child Support Registrar](#) (Child support second review) [2017] AATA 2425 (1 November 2017); Dr D Cremean, Senior Member

Whether there was change of care in relation to a child – care percentage for new care determination – children residing with Applicant – decision set aside

Citizenship

[Ngaboyisonga and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2417 (1 December 2017); Mr DJ Morris, Senior Member

CITIZENSHIP – Citizenship by conferral. Permanent resident – whether of good character – series of offences after arrival in Australia – domestic violence – suspended sentence – no recent offences – factors to take into account – decision affirmed

Compensation

[Blackney and Svitzer Offshore Pty Ltd](#) (Compensation) [2017] AATA 2416 (30 November 2017); Dr C Kendall, Deputy President

Seafarers – compensation – claim for compensation accepted – reconsideration determination – decision set aside and remitted

[Saunders and Comcare](#) (Compensation) [2017] AATA 2411 (30 November 2017); Senior Member MJ McGrowdie

Workers Compensation – Reduction by Comcare of normal weekly earnings – calculation of normal weekly earnings – where worker partially incapacitated for work – where change in work role and loss of shift allowance – whether compensation payable for the loss – employer's mobility process – decision set aside and remitted

[Smythe and Comcare](#) (Compensation) [2017] AATA 2413 (30 November 2017); Dr C Kendall, Deputy President

COMPENSATION – Commonwealth employee – injury sustained to shoulder – whether applicant continues to suffer from the effects of of compensable injury – decision under review set aside

Customs

[Laerdal Medical Pty Ltd and Comptroller-General of Customs](#) [2017] AATA 2427 (1 December 2017); Deputy President SA Forgie

CUSTOMS – whether subject goods accessory – whether furniture of plastics – subject goods hold automated external defibrillator – whether accessory to defibrillator- authorities – principles – decision affirmed

Migration

[JSDW and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2420 (1 November 2017); Dr C Kendall, Deputy President and Deputy President S Boyle

IMMIGRATION – whether applicant is a person to whom Australia has protection obligations – applicant found guilty of people smuggling and sentenced to term of imprisonment in Australia – credibility finding -- serious reasons for considering applicant has committed a serious non-political crime -- decision under review affirmed

[MBQX and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2410 (30 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 – 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

[Winikerei and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2407 (9 November 2017); Deputy President S Boyle

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 the child – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[Danieli](#) (Migration) [2017] AATA 2334 (9 November 2017); R Skaros, Member

Migration – Employer Nomination (Permanent) (Class EN) – Subclass 186 (Employer Nomination Scheme) visa – Temporary Residence Transition stream – Electrician – Licencing requirements not standardised – Tasks of occupation – No electrical wiring work – Electrical licence not required in NSW – Decision under review remitted

[Ha](#) (Migration) [2017] AATA 2348 (9 November 2017); M Urquhart, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – Sponsored Family stream – Credibility of the applicants – Previous compliance by family members – Employment and business interests – Sufficient funds to cover travel costs – Decision under review remitted

[NGUYEN](#) (Migration) [2017] AATA 2350 (15 November 2017); M Cooke, Senior Member

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary) – No appearance at the Tribunal hearing – Federal court remittal – No evidence of a spousal relationship – Decision under review affirmed

[Nahas](#) (Migration) [2017] AATA 2353 (16 November 2017); K Raif, Senior Member

Migration – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – Son in Australia on a temporary skilled visa – Near relative is not an Australian permanent resident – Requested Ministerial intervention – Decision under review affirmed

[Ramasamy](#) (Migration) [2017] AATA 2352 (16 November 2017); D Buljan, Member

Migration – Employer Nomination (Permanent) (Class EN) visas – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition – Occupation – Cook – Language test scores – Did not pass the English language requirements – Decision under review affirmed

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

[1620593](#) (Refugee) [2017] AATA 2143 (31 October 2017); C Smolicz, Member

Refugee – Protection Visa – Liberia – Federal Circuit Court dismissal – Federal Court remittal – Imputed political opinion – Liberian Civil War – Justice against war criminals – Torture – Fear of persecution – Fear of violence – Bogus documents – Economic Community of West African States – Decision under review remitted

[1712139](#) (Refugee) [2017] AATA 2145 (31 October 2017); R Shanahan, Member

Refugee – Protection visa – Iraq – Ethnicity – Faili Kurdish – Religion – Muslim (Shi'a) – Dual Iraq-Iranian citizen – Societal discrimination in Iran – Illegal Boat arrival – Detained – Memory lapses – Inconsistencies in applicant's evidence – Able to reside in another country – Failed asylum seeker – Decision under review affirmed

[1610890](#) (Refugee) [2017] AATA 2356 (27 October 2017); S Rice, Member

Refugee – Protection Visa – Solomon Islands – Particular social group – Women in the Solomon Islands – Domestic Violence – Lack of state protection – Witness credibility – Decision under review affirmed

[1617952](#) (Refugee) [2017] AATA 2389 (1 November 2017); A Murphy, Member

Refugee – Protection Visa – Sri Lanka – Political opinion – Supporter of United National Party – Particular social group – Driver – Failed asylum seeker – Fear of violence – Extortion – Decision under review affirmed

Practice and Procedure

[Babbington and Comcare](#) (Compensation) [2017] AATA 2421 (5 December 2017); Senior Member A Poljak

PRACTICE AND PROCEDURE – extension of time application – whether it is reasonable in all the circumstances to grant the extension – explanation for delay – whether prejudice to respondent because of prior agreement between the parties – whether substantive matter has merit – extension of time application granted

[Berwick and Secretary, Department of Education and Training](#) [2017] AATA 2428 (9 November 2017); Dr James Pople, Senior Member

PRACTICE AND PROCEDURE – whether decision reviewable by Tribunal – no enactment provides that an application may be made to the Tribunal for review of decision – application dismissed

Privacy

[Freelancer International Pty Ltd and Australian Information Commissioner](#) [2017] AATA 2426 (30 November 2017); Mr PW Taylor SC, Senior Member

PRIVACY – whether there was a breach of the National Privacy Principles – breach of National Privacy Principle 2.1 in August 2012 – no other breaches occurred – determination set aside

Social Security

[Chandler and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2423 (4 December 2017); Ms DK Grigg, Member

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

[McGrath and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2422 (1 December 2017); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – payment of Family Tax Benefit – claim made outside of claim period – special circumstances – appeal dismissed – AAT1 decision not one which sets aside, varies, affirms the reviewable decision – powers of the Tribunal – intention of legislation – no jurisdiction – application dismissed

[Richwood and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2409 (30 November 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – whether impairments permanent – whether impairments attracted 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

[Trembath and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2429 (24 November 2017); Ms D K Grigg, Member

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

[TTVN and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2414 (1 December 2017); Mr S Webb, Member

SOCIAL SECURITY – claim for disability support pension – impairments – treatment of medical conditions continuing and planned – no legislative requirement for specialist medical assessment or review – requirement for treatment to be considered in context of medical history – inappropriate to speculate about treatment options – requirement for evidence - meaning of ‘reasonable treatment’ – assessment of impairments resulting from ‘permanent’ medical condition – need for corroborating evidence - ratings under the Impairment Tables – impairments are of 20 or more points – no severe impairment – participation in a program of support – 18 month minimum participation threshold - poor quality of evidence from third party – suspensions and exemptions – participating in program of support immediately before claim – assessable impairments prevented improvement in capacity through ‘the program’ – actively participated in a program of support – unable to undertake any work ‘independently of a program of support’ within two years – continuing inability to work – decision set aside

Taxation

[Decleah Investments Pty Ltd and Anor as Trustee for the PRS Unit Trust and Commissioner of Taxation](#) (Taxation) [2017] AATA 2418 (1 December 2017); Senior Member E Fice

TAXATION – appeal against objection decision – calculation of GST payable under margin scheme – valuation on an as is basis – not an approved valuation for the purposes of GST Act – taxation shortfall – administrative penalties – finding that applicant was reckless in providing valuation to Commissioner – 50% shortfall penalty for recklessness – decision set aside and substituted

[Ferozkohei and Commissioner of Taxation](#) (Taxation) [2017] AATA 2405 (29 November 2017); Dr T Nicoletti, Senior Member

TAXATION AND REVENUE – income tax – deductions – entitlement to rental property interest expenses – entitlement to deductions for rental property capital works expenses – entitlement to deductions for other rental deductions – administrative penalty – whether administrative penalty for recklessness was correctly imposed – discretion to remit all or part of administrative penalty – objection decision is affirmed

[Ferozkohei and Commissioner of Taxation](#) (Taxation) [2017] AATA 2406 (29 November 2017); Dr T Nicoletti, Senior Member

TAXATION AND REVENUE – income tax – deductions – entitlement to rental property interest expenses – entitlement to deductions for rental property capital works expenses – entitlement to deductions for other rental deductions – administrative penalty – whether administrative penalty for recklessness was correctly imposed – discretion to remit all or part of administrative penalty – objection decision is affirmed

Waubra Foundation and Commissioner of Australian Charities and Not-for-profits

Commission [2017] AATA 2424 (4 December 2017); The Honourable Justice White, Deputy President and Deputy President K Bean

CHARITIES – Revocation of registration as a charity – Whether Tribunal should determine what was the correct or preferable decision when the Assistant Commissioner made his decision or whether Tribunal should determine the correct or preferable decision as at the time of its own decision – Whether applicant is an institution whose principal activity is to promote the prevention or the control of diseases in human beings – Whether there is evidence that wind farm emissions cause or are associated with diseases – Whether there is a plausible basis for thinking that wind farm emissions could lead to disease – Whether applicant is an entity which has a purpose of promoting or protecting human rights – Whether applicant has a purpose of promoting or protecting the Right to Health – Decision under review affirmed

Veterans' Affairs

Stevens and Repatriation Commission (Veterans' entitlements) [2017] AATA 2419 (4 December 2017); Senior Member T Tavoularis

VETERANS' AFFAIRS – Disability Pension – whether aggravation of Post-traumatic Stress Disorder was service related, specifically war-caused – Tribunal satisfied that the Applicant suffers from Post-traumatic stress disorder ('PTSD') – whether reasonable hypothesis raised linking aggravation of PTSD to Applicant's operational service – consideration of template in Statement of Principles – Tribunal not satisfied hypothesis reasonable – satisfied beyond reasonable doubt that aggravation of PTSD was not war-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
Jikoivavalagi and Minister for Immigration and Border Protection	[2017] AATA 2098
JSDW and Minister for Immigration and Border Protection	[2017] AATA 2420
Kohli and Minister for Immigration and Border Protection	[2017] AATA 1326
Sandford v Repatriation Commission	[2017] AATA 2038

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Bolton v Commissioner of Taxation & Ors	[2013] AATA 847	[2017] FCA 1462
Carr v Commissioner of Taxation	[2016] AATA 638	[2017] FCA 1486

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