



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](mailto:aatweb@aat.gov.au).

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# Bulletin – Last edition for 2017 and first edition for 2018

This edition of the Bulletin will be the last edition for 2017.

The first edition of the Bulletin for 2018 will be on **15 January 2018**.

We wish you all a safe and happy Christmas season.

## 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.

# 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.

## Aviation

[Collins and Civil Aviation Safety Authority](#) [2017] AATA 2564 (6 December 2017); Deputy President BJ McCabe and Ms DK Grigg, Member

CIVIL AVIATION – conditional class 2 medical certificate – medical standards – examination of medical evidence – imposition of safety pilot condition for public safety – likelihood that applicant would become incapacitated during flight – held applicant does not meet the medical standard relevant at the time – decision of the respondent affirmed

## Citizenship

[Kaur and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2661 (14 December 2017); Senior Member E Fice

CITIZENSHIP – application for Australia citizenship by conferral – where Applicant does not meet the general or special residence requirements – exercise of Ministerial discretion under s. 22(9) – periods of absence treated as periods when the person was present in Australia as a resident – likely to reside in or maintain a close and continuing association with Australia – set aside, substituted and remitted

[Malik and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2559 (10 November 2017); Dr D Cremean, Senior Member

CITIZENSHIP – refusal for application for Australian citizenship by conferral – Applicant failed to successfully complete an approved test under the Australian Citizenship Act 2007 (Cth) – Applicant failed to attend four scheduled appointments to complete the test – reasonable explanation for non-attendances – decision set aside and remitted

[Martindale and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2554 (5 December 2017); Ms DK Grigg, Member

CITIZENSHIP – general residency requirements – whether discretion in section 22(6) of the Australian Citizenship Act applies – decision under review affirmed

## Compensation

[Arumugam and TNT Australia Pty Ltd](#) (Compensation) [2017] AATA 2660 (14 December 2017); Deputy President IR Molloy

COMPENSATION – Compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – claims for lower back injuries - whether the effects of the accepted lumbar injury ceased by 4 September 2014 – where accepted injury was on-going – decision under review set aside and substituted

[Sutherland and Comcare](#) (Compensation) [2017] AATA 2596 (11 December 2017); Senior Member A Nikolic AM CSC

WORKERS COMPENSATION – whether applicant entitled to compensation under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether applicant an employee at time of injury – whether injury arose out of, or in the course of, employment – decision under review set aside

## Corporations

[Davidof and Australian Securities and Investments Commission](#) [2017] AATA 2594 (7 December 2017); Deputy President BW Rayment and Senior Member JC Kelly

CORPORATIONS – financial services – banning order – applicant prohibited from providing any financial services – financial products – MINI warrants – financial market – market manipulation – setting of artificial price for purpose of transferring profit/loss – whether market reflects forces of genuine supply and demand – decision affirmed

[McLean and Australian Securities and Investments Commission](#) [2017] AATA 2566 (7 December 2017); Deputy President BW Rayment

CORPORATIONS – financial services – banning order – applicant prohibited from providing any financial services – financial products – MINI warrants – financial market – market manipulation – setting of artificial price for purpose of transferring profit/loss – whether market reflects forces of genuine supply and demand – decision affirmed

[SEYMOUR and Australian Securities and Investments Commission](#) [2017] AATA 2581 (24 November 2017); Mr PW Taylor SC, Senior Member

CORPORATIONS – ASIC – banning order – disqualification order – conduct as a director – irregularities in financial reporting and disclosures – residential property development – misleading or deceptive conduct – failure to comply with benchmarks 5 and 7 in Regulatory Guide 69 – number and value of loans in arrears – valuation basis of development and construction loans – auditors' reports not relevant to objective materiality of loan and applicant's knowledge and understanding of that materiality – no breach of Corporations Act s 728 – applicant knowingly involved in contraventions of Corporations Act s 1041H – applicant not involved in contraventions relating to policy and disclosure compliance – discretion to exercise banning and disqualification powers – applicant's personal circumstances – banning order decision affirmed – disqualification order decision set aside and substituted

## Freedom of Information

[Mullen and Aged Care Complaints Commissioner](#) (Freedom of information) [2017] AATA 2556 (1 December 2017); 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

[Hughes and Secretary, Department of Health](#) [2017] AATA 2590 (13 December 2017); Senior Member D Davies

AGED CARE ASSESSMENT – entitlement to assistance – whether refundable accommodation deposit is an asset – whether a loan can be used to reduce the value of the assessable asset – decision affirmed

## Migration

[BPJK and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2560 (7 December 2017); Senior Member T Tavoularis

MIGRATION – review of decision not to revoke mandatory visa cancellation – Applicant had a Refugee and Humanitarian (Class XB) (Subclass 202) (Global Special Humanitarian) visa – Applicant committed a number of offences – Applicant’s visa cancelled under s 501(3A) – he was sentenced to more than 12 months prison and was serving full-time term of imprisonment – Applicant failed character test – whether there is another reason to exercise discretion to revoke cancellation of visa – Primary Considerations A and C weigh heavily in favour of non-revocation – Other Considerations: non-refoulement, strength of ties, and extent of impediments if removed, weigh moderately in favour of revocation – no reason to exercise discretion – decision under review affirmed

[Moore and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2589 (23 October 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 – 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

[Qalovaki and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2582 (13 December 2017); Senior Member A Poljak

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – multiple terms of imprisonment – Direction 65 – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – expectations of Australian community – decision affirmed

[Vaofusi and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2585 (7 December 2017); Ms A Burke, Member

MIGRATION – non-revocation of mandatory cancellation of visa – 12 month term of imprisonment – applicant does not pass character test in s 501(6)(a) – applicant an unacceptable risk to the Australian community – minor children in Australia – strong ties to Australia – impediments if applicant removed – decision under review affirmed

[YDJJ and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2591 (14 November 2017); K Parker, Member

MIGRATION – non-revocation of cancellation of visa due to substantial criminal record – applicant received prior written warning that his visa would be cancelled if his offending continued - nature and seriousness of conduct - risk of engaging in criminal conduct if allowed to remain in Australia - where applicant convicted of multiple offences - need to protect Australian community from conduct - expectations of Australian community not met - applicant suffered poverty during his childhood - strength, nature and duration of ties to Australia – applicant has resided in Australia since he was 11 years old - impact on applicant and family if visa refused - impact on victims – Minister produced evidence at the conclusion of the hearing which revealed that the application had been made out of time – hearing before the Tribunal had taken place in the absence of jurisdiction – finding of no jurisdiction – if the application was made in time, the Tribunal would have affirmed the reviewable decision

## **Practice and Procedure**

[Ehrenfeld and Australian Securities and Investments Commission](#) [2017] AATA 2595 (6 December 2017); Deputy President BW Rayment

PRACTICE AND PROCEDURE – summons – summons to produce bank records – objection to issue of summons – objection to inspection of summons material – whether summons documents capable of throwing light on issues these proceedings – summons not a fishing expedition – objection to inspection dismissed – access to inspect summons material granted

[Lord Howe Island First Peoples Association and Australian Pesticides and Veterinary Medicines Authority](#) [2017] AATA 2565 (6 December 2017); Mrs JC Kelly, Senior Member

PRACTICE AND PROCEDURE – dismissal application – surrender of permit that is the subject of application – whether Respondent prevented from making the application – whether the permit was surrendered by written notification by the holder of the permit – whether the proceedings are frivolous, vexatious, misconceived or lacking in substance – whether costs should be awarded – application dismissed

[Tiatia and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2593 (14 December 2017); Deputy President BW Rayment

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 – whether substantive matter has merit – extension of time application granted



## Social Security

[Ashton and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 2555 (5 December 2017); Ms DK Grigg, Member

SOCIAL SECURITY – Youth Allowance – overpayment – where applicant did not notify of change of circumstances – where no administrative error – where no special circumstances – decision under review affirmed

[Beattie and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 2377 (26 September 2017); Brigadier AG Warner, Member

SOCIAL SECURITY – disability support pension – whether applicant had any physical, intellectual or psychiatric impairments – whether applicant's impairments attract impairment rating of at least 20 points under the Impairment Tables – whether applicant has continuing inability to work – decision under review affirmed

[Cameron and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 2586 (13 December 2017); Senior Member D Davies

SOCIAL SECURITY – family tax benefit – whether the Applicant lodged an effective FTB past period claim – whether there are special circumstances that prevented the Applicant from making the claim – decision under review affirmed

[Goodsall and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 2587 (11 December 2017); Senior Member T Tavoularis

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the Relevant Period – various conditions affecting physical exertion and stamina and mental health - whether the Applicant's conditions had an impairment rating of 20 or more points – conditions not fully diagnosed, treated and stabilised during Relevant Period – no impairment points could be assigned – decision under review is affirmed

[Grogan and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 2561 (7 December 2017); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – lower limb Condition – L5 innervated dermatome – spinal condition – mental health conditions – PTSD – depression – Applicant has 5 points under the Tables – decision under review is affirmed

[Kafarela and Secretary, Department of Social Services](#) (Social services second review) [2017]  
AATA 2558 (6 December 2017); Ms LM Gallagher, Member

SOCIAL SECURITY – claim for age pension – whether assets exceed allowable limit at date of claim – applicant's assets correctly assessed – whether decision to reject claim correct – land held on separate titles – whether exception in subsection 11A(2)(b) applies such that land can be treated as held under same title of other land – land not protected by law from separate sale because of its natural, historic or indigenous heritage – private land use test – extended land use test – decision under review affirmed

[Mitchell and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2562 (7 December 2017); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – application of Social Security (International Agreements) Act 1999 – whether severely disabled – decision under review affirmed

[Saba and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2592 (8 December 2017); Dr I Alexander, Member

SOCIAL SECURITY – newstart allowance – residence requirements – whether applicant resided in Australia during the qualification period – applicant does not meet residence requirements – decision under review is affirmed

[Tongue and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2584 (20 November 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

[Whitehead and Secretary, Department of Social Services](#) (Social service second review) [2017] AATA 2557 (6 December 2017); Ms DK Grigg, Member

SOCIAL SECURITY – age pension – date of effect of favourable determination – whether section 43(6) of the Administrative Appeals Tribunal Act 1975 applies – decision under review affirmed

[Woods and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 2384 (19 September 2017); Brigadier G Warner, Member

SOCIAL SECURITY – disability support pension – whether applicant's impairments were fully diagnosed, fully treated and fully stabilised – whether applicant's impairments attract 20 points under the Impairment Tables – continuing inability to work – decision under review affirmed

## **Veterans' Affairs**

[Kalman and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 2563 (30 November 2017); Dr P McDermott RFD, Deputy President

VETERAN'S AFFAIRS – Applicant commenced army service in 1955 and was medically discharged in 1959 – Applicant had a fall during military tattoo practice in 1955 – Whether the applicant can claim permanent impairment compensation under SRC Act, 1971 Act or 1930 Act for previously accepted injuries – Whether applicant's condition of cervical spondylosis service related – Applicant's permanent impairment claims must be assessed under the 1930 Act and no permanent impairment payable under the 1930 Act – Cervical spondylosis not service related – Decision under review affirmed

[May and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 2588 (24 November 2017); Mr DJ Morris, Member

VETERANS' ENTITLEMENTS – application for increase in pension – special rate of pension – whether veteran prevented from war-caused conditions alone from continuing to undertake remunerative work – decision affirmed

[Stark and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 2583 (11 December 2017); Senior Member AC Cotter

VETERANS' AFFAIRS – Veterans' Entitlements – disability pension – PTSD – alcohol dependence – tinea - application for increase in pension – whether Applicant is entitled to payment of disability pension at the Special or Intermediate rate – whether satisfies the “alone test” – decision under review set aside

# 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

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CASE NAME	AAT REFERENCE
<b>Portors and Comcare</b>	<a href="#">[2017] AATA 2166</a>
<b>YJMD and Minister for Immigration and Border Protection</b>	<a href="#">[2017] AATA 1022</a>

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