



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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Contents

AAT Recent Decisions	3
Bankruptcy	3
Citizenship	3
Compensation	3
Migration	4
Practice and Procedure	5
Social Security	6
Taxation	7
Veterans' Affairs	7
Appeals	8
Appeals lodged	8
Appeals finalised	Error! Bookmark not defined.
Statements of Principles	9
New Statements of Principles	9
Statements of Principles to be revoked	9

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.

Bankruptcy

[Estate of Nicholas Saad and Inspector-General in Bankruptcy](#) [2018] AATA 487 (15 March 2018); Deputy President BW Rayment

BANKRUPTCY – notice of objection to discharge lodged by trustee – request by applicant for review of notice – whether applicant intentionally failed to disclose beneficial interest in property – decision set aside and remitted

Citizenship

[CHU and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 462 (12 March 2018); Deputy President BW Rayment

CITIZENSHIP – citizenship by conferral – eligibility – whether applicant of good character – significant criminal offences – consideration of applicant's character, circumstances and conduct – insufficient time has passed for Tribunal to be satisfied applicant of good character – decision affirmed

[Martin and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 468 (13 March 2018); Dr Damien Cremean, Senior Member

CITIZENSHIP—application for citizenship by descent—whether Applicant of good character—lengthy criminal record—risk of repeat offending—community concern—decision under review affirmed

[Nambiraj and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 463 (9 March 2018); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship by conferral - refusal of citizenship – various traffic offences - whether applicant is of good character – whether applicant has enduring moral qualities – application of Citizenship Policy – decision set aside and remitted

Compensation

[Bartlett and Comcare](#) (Compensation) [2018] AATA 480 (14 March 2018); Senior Member A Poljak

COMPENSATION – medical treatment – therapeutic treatments – previously accepted injury – where Applicant has received treatments for long period of time – whether physiotherapy treatment is medical treatment – whether physiotherapy was obtained in relation to the injury – whether Applicant still suffered from injury – decision under review affirmed

[DMDV and Comcare](#) (Compensation) [2018] AATA 473 (20 February 2018); Member LM Gallagher

COMPENSATION - compensable injury under section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – Commonwealth employee – involuntarily redundancy – pension under a superannuation scheme - statutory construction of subsection 20(1) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – interpretation of expression ‘retirement from his or her employment’ – ‘double dipping’ - whether retirement from employment must result from compensable injury for the purposes of subsection 20(1) – temporal connection only between retirement and employment – reviewable decisions affirmed

[Galanis and Comcare](#) (Compensation) [2018] AATA 486 (14 March 2018); Member K Parker

COMPENSATION – adjustment disorder with predominate features of anxiety – ailment – whether contributed to, to a significant degree, by the employee’s employment – disease - whether certain action taken by the employer was “administrative action” – action taken in context of an organisational restructure – “spill and fill” process - subsequent selection process for specific substantive positions at level – delay in confirmation about whether employee would be paid relocation costs and delay in decision about whether employee would be allocated meaningful duties at the end of temporary transfer – whether the disease was “suffered as a result of” administrative action – characterisation of administrative action – whether each of the administrative actions were reasonable and taken in a reasonable manner

[Pethes and Comcare](#) (Compensation) [2018] AATA 483 (13 March 2018); Deputy President G Humphries and Member M Hyman

COMPENSATION – whether massage reasonable treatment – factors to be considered in determining this issue – treatment more likely to be considered reasonable where its benefits are substantial and its cost is low; it is effective; it is active and promotes self-management of the compensable condition; it is consistent with the principles in the Framework; and it is of limited duration – whether massage is medical treatment – role of purely palliative treatment – whether massage obtained in relation to the accepted condition – reviewable decision affirmed

[Wilson and K & S Freighters Pty Ltd](#) (Compensation) [2018] AATA 464 (9 February 2018); Deputy President S Boyle

COMPENSATION – reviewable decision – deny liability – serious and wilful misconduct – wilful and false representation – voluntarily and unreasonably submitted to an abnormal risk – decision set aside

Migration

[DGPZ and Minister for Home Affairs](#) (Migration) [2018] AATA 469 (13 March 2018); Mr A Maryniak QC, Member

MIGRATION – request for revocation of mandatory cancellation of Applicant’s visa – Applicant has substantial criminal record and does not pass character test – discretion to revoke mandatory cancellation – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of Australian community – other considerations – decision under review affirmed

[NVDC and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 457 (26 February 2018); Senior Member R Pintos-Lopez

MIGRATION – application for revocation of cancellation – character test failed – serious criminal record – multiple opportunities to rehabilitate – strong family ties – no non-refoulement obligations – decision affirmed

Practice and Procedure

[Akbas and Victorian Building Authority](#) [2018] AATA 479 (23 February 2018); Senior Member R Pintos-Lopez

CONFIDENTIALITY ORDERS – registration to be certified as a domestic builder – sex offences – hearings to be public – sex offenders register – public policy – matters made public in the past – application refused – order granted for other parties

[Anastasis and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 467 (13 March 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – extension of time application – application for review out of time – social security debt – overpayment of disability support pension – whether an extension of time is reasonable in all the circumstances – whether acceptable explanation of delay – merits of the substantial application – considerations of fairness – extension of time application granted

[Box and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 482 (14 March 2018); Senior Member NA Manetta

PRACTICE AND PROCEDURE - extension of time – applicant with limited cash – applicant wanting to avoid seven-day waiting period for Newstart allowance - applicant disputes finding he is not in severe financial hardship – applicant disputes common sense but not applicability of statutory definition in s 19C of the Social Security Act -- extension of time refused as application for review has no chances of success

[Shoppr Network Pty Ltd and Australian Trade and Investment Commission](#) [2018] AATA 475 (15 February 2018); Mr PW Taylor SC, Senior Member

PRACTICE AND PROCEDURE – noncompliance with directions - export market development grants – significant change of review emphasis – remitted under s 42D of the Administrative Appeals Tribunal Act

[Steele and Comcare](#) (Compensation) [2018] AATA 481 (14 March 2018); Deputy President S Boyle

Summonses – circumstances in which the request to issue may be refused – real possibility that it will assist in the resolution of issues in the proceedings – abuse of process – fishing expedition – refused

[Woodhall and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 485 (14 March 2018); Senior Member NA Manetta

PRACTICE AND PROCEDURE - extension of time - applicant seeking payment of disability support pension to a date earlier than the deemed date of the making of the application - no reasonable prospects of success - application for an extension of time refused

Social Security

[Atie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 484 (15 March 2018); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – application for disability support pension – whether conditions fully diagnosed, treated and stabilised – whether conditions 20 points or more under the Impairment Tables – whether continuing inability to work – kidney condition – mental health condition – incontinence – other conditions – decision affirmed

[Beard and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 471 (13 March 2018); Professor R McCallum AO, Member

SOCIAL SECURITY – pensions – disability support pension – whether the applicant's conditions are fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – spinal condition – excessive weight condition – anxiety – other conditions – decision affirmed.

[Findlay and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 460 (7 February 2018); Senior Member T Tavoularis

SOCIAL SECURITY – Lump Sum Preclusion Period – lump sum compensation payment – whether the lump sum preclusion period applies – Applicant received disability support pension during the preclusion period – Respondent claimed debt for DSP paid during the preclusion period – whether Applicant had special circumstances supporting waiver or reduction of preclusion period - meaning of special circumstances – special circumstances not present – decision under review affirmed

[Finlayson and Secretary, Department of Health](#) (Social services) [2018] AATA 477 (14 March 2018); Dr Damien Cremean, Senior Member

AGED CARE – intention to pay moneys into a Trust established for disabled grandson – entry by grandmother into aged care assessment of assets – sum to be paid into trust not paid before that time – whether nonetheless transfer of assets – whether binding gift or not – whether in equity if not under provisions of Trust deed – decision affirmed

[Shaikh and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 458 (6 February 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – Job Commitment Bonus – whether applicant made claim for payment of bonus within 90 days of becoming eligible – whether there are any special circumstances preventing the applicant from making the claim within 90 days – special circumstances – failure to receive electronic or SMS notification – decision set aside and substituted

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 459 (28 February 2018); Senior Member T Tavoularis

SOCIAL SECURITY – disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised – relevant period – whether Applicant had 20 or more impairment points – diabetes – hypertension – chronic kidney disease – high cholesterol and obesity – obstructive sleep apnoea – gout – where Applicant's conditions only attract 10 impairment points – decision under review affirmed

[Ward and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 470 (13 March 2017); Dr L Bygrave, Member

SOCIAL SECURITY – age pension – suspension of age pension – failure to meet requirement of notice to provide information – whether the Respondent validly issued a notice to provide information – whether the requirement was reasonable – whether the Applicant had a reasonable excuse for not complying with the notice – whether age pension correctly suspended – decision affirmed

Taxation

[Bosanac and Commissioner of Taxation](#) (Taxation) [2018] AATA 472 (16 February 2018); Deputy President S Boyle

TAXATION – capital gain tax – amended assessment notice – tax return – incidental cost – investment property – agency – base penalty – shortfall penalty – liability – expert opinion – false or misleading statement – took steps to prevent or obstruct

[PZTL and Commissioner of Taxation](#) (Taxation) [2018] AATA 461 (23 February 2018); Senior Member T Tavoularis

TAXATION – whether Applicant’s employment outside Australia was ‘by’ the Commonwealth or a Commonwealth agency – where Applicant was employed by an external government contractor – whether circumstances of deployment were sufficient to say it was ‘by the Commonwealth’ – decision under review affirmed

Veterans' Affairs

[JQVC and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 478 (13 March 2018); Deputy President J Sosso

VETERANS' AFFAIRS – pension – malignant neoplasm of the prostate – erectile dysfunction – increase in animal fat consumption – hazardous service – hypothesis not fanciful, incredible or too remote – SoP 53 of 2014 – clause 6(c) – essential elements of hypothesis not related to hazardous service

[SPYM and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 476 (13 March 2018); Deputy President J Sosso

VETERANS' ENTITLEMENTS – where the veteran is in receipt of the pension at 90% of the general rate – where the veteran has suffered from a number of defence-caused and non-defence caused conditions in the past – intermediate rate pension – where the veteran does not seek the pension at the special rate – “alone” test – whether the veteran was prevented from undertaking part-time work due to accepted conditions alone – whether other factors apply – Flentjar principles – decision under review varied and remitted

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
May and Repatriation Commission	[2017] AATA 2588
Sharpcan Pty Ltd and Commissioner of Taxation	[2017] AATA 2948
Zhou and Minister for Immigration and Border Protection	[2017] AATA 2386
Decleah Investments Pty Ltd and Anor as Trustee for the PRS Unit Trust and Commissioner of Taxation	[2017] AATA 2418
ACN 154 520 199 Pty Ltd and Commissioner of Taxation	[2018] AATA 33

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. They **take effect** from **2 April 2018**:

Guillain-Barre syndrome (Reasonable Hypothesis) – No. 23 of 2018

<https://www.legislation.gov.au/Details/F2018L00187>

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 **2 April 2018**:

Guillain-Barre syndrome – No. 59 of 2013

<https://www.legislation.gov.au/Details/F2013L01647>

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