



Administrative  
Appeals Tribunal

# AAT Bulletin

**Issue No. 9/2018**

**12 March 2018**

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

|   |           |
|---|-----------|
| <b>AAT Recent Decisions .....</b>           | <b>3</b>  |
| Child Support .....                         | 3         |
| Citizenship .....                           | 3         |
| Compensation.....                           | 4         |
| Migration.....                              | 4         |
| National Disability Insurance Scheme.....   | 5         |
| Practice and Procedure.....                 | 6         |
| Refugee .....                               | 6         |
| Social Security .....                       | 7         |
| <br>  |           |
| <b>Appeals.....</b>                         | <b>9</b>  |
| Appeals lodged .....                        | 9         |
| Appeals finalised.....                      | 9         |
| <br>  |           |
| <b>Statements of Principles .....</b>       | <b>10</b> |
| New Statements of Principles.....           | 10        |
| Amended Statements of Principles.....       | 11        |
| Statements of Principles to be revoked..... | 11        |

# 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

[Abaid and Madia](#) (Child support) [2018] AATA 334 (10 January 2018); J Cuthbert, Member

Child Support – Non-agency payments – Payments for children's expenses – Intention of both parents – Payment credited against child support liability – Decision under review set aside and substituted

[Polson and Byrnes](#) (Child support) [2018] AATA 336 (16 January 2018); W Kennedy, Member

Child support – Particulars of the administrative assessment – Estimate election – Decision under review affirmed

[Billing and Tillick](#) (Child support) [2018] AATA 220 (5 January 2018); P Noonan, Member

Child Support – Departure determination – Income and financial resources of parents – Business income – Costs of education of children – Period of departure - Decision under review set aside and substituted – Decision under review set aside

[Mr Mansour and Mrs Chen](#) (Child support) [2018] AATA 219 (2 January 2018); P Noonan, Member

Child Support – Departure determination – Income and financial resources of parents – Business income – Decision under review set aside and substituted

[Williams and Child Support Registrar](#) (Child support) [2018] AATA 221 (4 January 2018); J Lenoard, Member

Child Support – Percentage of care – Determination of the likely pattern of care – Date of change in pattern of care – Decision under review set aside and substituted

## Citizenship

[LIAN and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 428 (9 March 2018); Dr Damien Cremean, Senior Member

CITIZENSHIP – whether applicant is of good character in accordance with Citizenship Act 2007 – whether applicant is able to satisfy Tribunal of his identity – obtaining of Indian passports by fraudulent means — deception in travelling, working and studying in various countries — opportunity to seek protection in various countries not taken – Tribunal satisfied of identity of applicant but not of good character requirement – decision affirmed

## Compensation

[Wilson and K&S Freighters Pty Ltd](#) (Compensation) [2018] AATA 429 (8 March 2018); Deputy President S Boyle

Compensation – applicant suffered workplace injuries – applicant consequently suffered psychiatric injuries – degenerative changes – reasonable excuse not to undertake a rehabilitation program – applicant unable to return to pre-injury work duties – whether cost of medical treatment is reasonable

## Migration

[GNZQ and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 426 (8 March 2018); Deputy President K Bean

IMMIGRATION – Cancellation of visa on character grounds under s 501 – Consideration of principles under Ministerial Direction 65.

CONSTITUTION – Whether unconstitutional or unlawful for Minister to detain the application prior to removal.

PRACTICE AND PROCEDURE – Whether appropriate to set aside the decision under review and remit the matter to the Minister with directions – Whether direction should be made that the Minister not exercise the discretion until the applicant has served his sentence of home detention – Decision under review affirmed.

[Jayba and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 385 (6 March 2018); Deputy President B W Rayment

MIGRATION – non-revocation of mandatory cancellation of visa – refugee and humanitarian visa – character test – substantial criminal record – primary and other considerations under Ministerial Direction No. 65 – protection of the Australian community – interests of minor children – particularly serious crime’, meaning of – non-refoulement obligations not owed – low to moderate risk of reoffending – decision under review set aside and remitted

[MAH and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 416 (7 March 2018); Mr PW Taylor SC, Senior Member

IMMIGRATION AND CITIZENSHIP – mandatory visa cancellation – resolution of status visa – failure to pass character test – substantial criminal record – multiple terms of imprisonment of 12 months or more – Ministerial Direction no 65 applied – protection of the Australian community – community expectations – risk of future offending – other considerations – physical and mental health issues – drug use – need for ongoing treatment and monitoring – possibility of indefinite detention – decision set aside and substituted

[Singh and Minister for Home Affairs](#) (Migration) [2018] AATA 430 (9 March 2018); Mr PW Taylor SC, Senior Member

Practice and Procedure – migration - application for review – whether decision reviewable by the Tribunal –cancellation of visa - decision made by Minister for Home Affairs – decision not made by a delegate of the Minister – decision not reviewable by the Tribunal

[Choi](#) (Migration) [2018] AATA 266 (14 February 2018); D Buljan, Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 Employer Nomination Scheme – Non-migrating family member – Completed health assessments – RMOC opinion – Statutory interpretation – New policy guidelines – Ministerial intervention requested – Decision under review affirmed

[Wen](#) (Migration) [2018] AATA 264 (15 February 2018); K Malyon, Member

Migration – Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – Net value of assets – Active operation – Value of property plant and equipment – Share issue – Financial documentation – Decision under review affirmed

[CHO](#) (Migration) [2018] AATA 265 (15 February 2018); K Timbs, Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 Employer Nomination Scheme – Federal Circuit Court Remit – Vocational English requirement – Tax assessment notice – Future earnings – Triple increase in salary – Not a credible witness – Decision under review affirmed

[Dolatkhahnejad](#) (Migration) [2018] AATA 324 (19 February 2018); M Bourke, Member

Migration – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – Combined application – Membership of the same family unit – Biological son of the review and primary applicant – Parents divorced so son would be exempt from national service – Applicant unemployed – Dependent on mother – Decision under review remitted

[Weerasinghe Silva](#) (Migration) [2018] AATA 370 (19 February 2018); A McMurrin, Member

Migration – Temporary Activity (Class GG) visa – Subclass 408 (Temporary Activity) – Whether applicants genuinely intend to stay in Australia temporarily – Professional athlete – Required to travel internationally for work – Previous holder of multiple short stay visas – Extended stay in Australia – Purpose for which visa was originally sought – Original purpose no longer operative – Decision under review affirmed

## **National Disability Insurance Scheme**

[BBMC and National Disability Insurance Agency](#) [2018] AATA 386 (6 March 2018); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – anxiety disorder – irritable bowel syndrome – sicca syndrome – cluster migraine – whether applicant satisfies the early intervention requirements – whether early intervention support most appropriately funded through the NDIS or through other systems – decision under review affirmed

[Pomeroy and National Disability Insurance Agency](#) [2018] AATA 387 (6 March 2018); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – whether applicant meets access criteria – whether applicant meets the disability requirements – whether applicant meets the early intervention requirements – whether applicant meets the alternative access criteria – morbid obesity – osteoarthritis – whether applicant’s condition is an impairment for the purposes of the Act – whether applicant’s impairments permanent – whether impairments result in substantially reduced functional capacity in one or more relevant activities – whether applicant’s impairments affect capacity for social or economic participation – whether applicant likely to require support under the NDIS for her lifetime – decision under review affirmed

## **Practice and Procedure**

[Mason and John Holland Pty Ltd](#) (Compensation) [2018] AATA 415 (7 March 2018); Deputy President S Boyle

Weekly incapacity entitlements – extension of time application – factors that are relevant when considering an application for extension of time – little chance of success – lack of explanation of delay - need to prevent disruption to established practices - application dismissed

[Saleque and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 414 (7 March 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – application for extension of time to make application for review – whether it is reasonable in all the circumstances to grant the extension – acceptable explanation for delay – whether applicant ‘rested on his rights’ – prejudice to the respondent and general public – merits of substantive matter – application for extension of time refused

[Sheikh Abdulahi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 412 (8 February 2018); Ms A Burke, Member

PRACTICE AND PROCEDURE – application for extension of time – delay of one year and nine months in lodging application – whether reasonable excuse for delay – no reasonable excuse for extensive delay – where prejudice would be incurred by respondent and public by allowing extension of time – where prospects of success do not weigh in favour applicant – not reasonable in all the circumstances to allow extension of time

## **Refugee**

[1703287](#) (Refugee) [2018] AATA 409 (31 January 2018); P Millar, Member

Refugee – Protection visa – Pakistan – Federal Circuit Court remit – Ethnicity – Pashtun Bangash – Religion – Shia – Social group – Former shop owner – Fear of Taliban and Sunni extremists – Internal relocation – Decision under review affirmed

[1706261](#) (Refugee) [2018] AATA 295 (1 February 2018); N Burns, Member

Refugee – Protection visa – Malaysia – Departed Australia – No response to invitation to comment – Applicant needs to be in Australia – Decision under review affirmed

[1512240](#) (Refugee) [2018] AATA 378 (2 February 2018); C Huntly, Member

Protection visa – Sri Lanka – Race – Tamil – Particular social group – Young Tamil Male – Mixed marriage – Imputed political opinion – Suspected involvement with Liberation Tigers of Tamil Eelam (LTTE) – Resistance to Karuna faction – Forced recruitment – Returnee status – Credibility issues – Decision under review affirmed

[1615360](#) (Refugee) [2018] AATA 283 (7 February 2018); C Smolicz, Member

Refugee – Protection visa – India – Religion – Rajput Sikh – Support for Ranjit Singh Dhadrianwale – Harm from ex-wife's family – Little religious-based community violence in Punjab – Freedom of political and religious views – No ill treatment of ordinary Sikhs – No previous harm – Divorced from wife – No further contact – Decision under review affirmed

[1723047](#) (Refugee) [2018] AATA 380 (15 February 2018); R Shanahan, Member

Refugee – Protection visa – Iran – Political – Participated in 2009 demonstrations – Anti-government – Wanted by authorities - Asylum in Australia – No religion – Not reliable, credible or truthful witness – Fabricated claims for protection visa – No political profile – Decision under review affirmed

## **Social Security**

[Kucalovic and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 411 (5 March 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – impairment – whether disability is fully diagnosed, treated and fully stabilised – whether applicant's impairments attract 20 points or more under the Impairment Tables – spinal condition – sciatica/chronic pain – anxiety and depression – other conditions – decision under review affirmed

[McKenzie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 396 (6 March 2018); Ms DK Grigg, Member

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

[Oates and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 410 (6 March 2018); Ms AF Cunningham, Senior Member

SOCIAL SECURITY – family tax benefit – care arrangements for three children – parties living under one roof but in separate sections of the house – no established pattern of care – decision under review affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 397 (6 March 2018); 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

[Stewart and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 413 (2 March 2018); Brigadier AG Warner, Member

SOCIAL SECURITY – disability support pension – qualification period – whether Applicant’s conditions fully diagnosed, treated and stabilised – whether Applicant’s conditions attract 20 points or more under the Impairment Tables – decision under review affirmed

[Sutcliffe and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 382 (17 January 2018); Ms A Burke, Member

SOCIAL SECURITY – Age Pension – reduction in rate – cancellation of pension – income and assets test – acquisition of property from a testamentary estate – value of asset to be determined by market value – decision affirmed

[Tsiokantas and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 398 (5 March 2018); Deputy President J Sosso

SOCIAL SECURITY – age pension – assets test – market value of property in North Hobart – valuation by qualified and independent valuers – market appraisals by real estate agents – principles of valuation – valuation by valuer preferred – decision under review affirmed

[YPKN and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 425 (9 March 2018); Deputy President S Boyle

Disability support pension – impairment tables – qualification period – is there 20 points or more under the impairment tables – continuing inability to work – participation in program of support – 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

---

**None lodged**

---

## Appeals finalised

---

CASE NAME

AAT REFERENCE

COURT REFERENCE

---

**O'Sullivan v Australian Securities and Investments Commission**

[\[2017\] AATA 644](#)

[\[2018\] FCA 228](#)

---

# 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, which **will commence** on **2 April 2018**:

**Guillain-Barre syndrome (Balance of Probabilities) – No. 24 of 2018**

<https://www.legislation.gov.au/Details/F2018L00189>

**Malignant neoplasm of the eye (Balance of Probabilities) – No. 28 of 2018**

<https://www.legislation.gov.au/Details/F2018L00197>

**Malignant neoplasm of the eye (Reasonable Hypothesis) – No. 27 of 2018**

<https://www.legislation.gov.au/Details/F2018L00196>

**Popliteal cyst (Balance of Probabilities) – No. 32 of 2018**

<https://www.legislation.gov.au/Details/F2018L00190>

**Popliteal cyst (Reasonable Hypothesis) – No. 31 of 2018**

<https://www.legislation.gov.au/Details/F2018L00188>

**Systemic sclerosis (Balance of Probabilities) – No. 26 of 2018**

<https://www.legislation.gov.au/Details/F2018L00195>

**Systemic sclerosis (Reasonable Hypothesis) – No. 25 of 2018**

<https://www.legislation.gov.au/Details/F2018L00194>

**Toxic Retinopathy (Balance of Probabilities) – No. 20 of 2018**

<https://www.legislation.gov.au/Details/F2018L00193>

**Toxic Retinopathy (Reasonable Hypothesis) – No. 19 of 2018**

<https://www.legislation.gov.au/Details/F2018L00192>

**Accidental Hypothermia (Balance of Probabilities) – No. 22 of 2018**

<https://www.legislation.gov.au/Details/F2018L00201>

**Accidental hypothermia (Reasonable Hypothesis) – No. 21 of 2018**

<https://www.legislation.gov.au/Details/F2018L00200>

Chilblains (Balance of Probabilities) – No. 30 of 2018

<https://www.legislation.gov.au/Details/F2018L00199>

Chilblains (Reasonable Hypothesis) – No. 29 of 2018

<https://www.legislation.gov.au/Details/F2018L00198>

Personality disorder (Balance of Probability) – No. 18 of 2018

<https://www.legislation.gov.au/Details/F2018L00208>

Personality disorder (Reasonable Hypothesis) – No. 17 of 2018

<https://www.legislation.gov.au/Details/F2018L00205>

### Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They **take effect** from **2 April 2018**:

**Malignant neoplasm of the ovary (Balance of Probabilities) – No. 36 of 2018**

<https://www.legislation.gov.au/Details/F2018L00184>

**Malignant neoplasm of the ovary (Reasonable Hypothesis) – No. 35 of 2018**

<https://www.legislation.gov.au/Details/F2018L00185>

**Suicide and attempted suicide (Balance of Probabilities) – No. 34 of 2018**

<https://www.legislation.gov.au/Details/F2018L00209>

**Suicide and attempted suicide (Reasonable Hypothesis) – No. 33 of 2018**

<https://www.legislation.gov.au/Details/F2018L00207>

### 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. 60 of 2013**

<https://www.legislation.gov.au/Details/F2013L01648>

**Malignant neoplasm of the eye – No. 16 of 2010**

<https://www.legislation.gov.au/Details/F2010L00560>

**Malignant neoplasm of the eye – No. 15 of 2010**

<https://www.legislation.gov.au/Details/F2010L00559>

**Systemic sclerosis – No. 65 of 2009**

<https://www.legislation.gov.au/Details/F2009L03228>

**Systemic sclerosis – No. 64 of 2009**

<https://www.legislation.gov.au/Details/F2009L03227>

**Toxic maculopathy – No. 40 of 2009**

<https://www.legislation.gov.au/Details/F2009L02402>

**Toxic maculopathy – No. 39 of 2009**

<https://www.legislation.gov.au/Details/F2009L02400>

**Accidental hypothermia – No. 18 of 2010**

<https://www.legislation.gov.au/Details/F2010L00563>

**Accidental hypothermia – No. 17 of 2010**

<https://www.legislation.gov.au/Details/F2010L00562>

**Chilblains – No. 10 of 2009**

<https://www.legislation.gov.au/Details/F2009L00004>

**Chilblains – No. 9 of 2009**

<https://www.legislation.gov.au/Details/F2009L00003>

**Personality Disorder – No. 71 of 2008**

<https://www.legislation.gov.au/Details/F2009C00525>

**Personality Disorder – No. 70 of 2008**

<https://www.legislation.gov.au/Details/F2009C00524>

© Commonwealth of Australia 2016



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).