



Administrative  
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AAT  
Bulletin

# 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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# 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

[PYYM and Child Support Registrar](#) (Child support second review) [2018] AATA 4670 (19 December 2018); Senior Member C Puplick AM

CHILD SUPPORT – percentage of care — actual care – care period – irregular care arrangement – non parent carer – delegated care – inconsistent evidence establishing nights of care – decision under review set aside and substituted

## Citizenship

[Hanna and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1 (3 January 2019); Senior Member L Kirk

EXTENSION OF TIME – citizenship - application for conferral of Australian citizenship – refusal of citizenship application on the grounds the Applicant did not satisfy s 21(3)(d) of the Australian Citizenship Act – permanent or enduring physical or mental incapacity – principles to be applied – whether the applicant rested on her rights - extension of time granted

## Compensation

[Hagan and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 4671 (21 December 2018); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Military compensation – claim for acoustic neuroma condition – whether development of condition was caused by applicant's military service – whether the applicant had an inability to obtain appropriate clinical management – inadequate investigation of exposure of applicant to ionising radiation – application remitted under s 42D of the Administrative Appeals Tribunal Act 1975

[Horvath and K&S Freighters Pty Ltd](#) (Compensation) [2018] AATA 4662 (19 December 2018); Mr R West, Member

COMPENSATION – eye injury – gas cylinder incident – whether incident occurred as alleged – psychiatric condition subsequent to eye injury – s. 14 of the Safety, Rehabilitation and Compensation Act – Decision under review affirmed

[Kowal and Comcare](#) (Compensation) [2018] AATA 4669 (21 December 2018); Mr R West, Member

COSTS – decision set aside – order that compensation be paid pursuant to section 19 of the Safety, Rehabilitation and Compensation Act – costs ordered in favour of the Applicant pursuant to section 67 of the Safety, Rehabilitation and Compensation Act 1988

[Power and Linfox Australia Pty Ltd](#) (Compensation) [2018] AATA 4660 (19 December 2018); Senior Member R Cameron

COMPENSATION – left shoulder and/or neck condition(s) – whether condition suffered an injury or disease – whether employment contributed to condition to a significant degree – decision under review set aside

[Rye and Comcare](#) (Compensation) [2018] AATA 4658 (20 December 2018); The Hon. Dennis Cowdroy OAM QC, Deputy President

COMPENSATION – whether injury occurred in the course of employment – whether the activity was associated with the employee’s employment – whether applicant was engaged in fulfilling duties for employer when injury was sustained – whether employer actively encouraged the employee to participate in the activity – netball game – injury to right knee – NAIDOC week event – ceremonial leave – decision set aside

## Corporations

[Decorative Imaging Pty Limited and Australian Securities and Investment Commission](#) [2018] AATA 4668 (21 December 2018); Deputy President I Hanger AM QC

BUSINESS NAMES REGISTRATION – Business Names Registration Act 2011 (Cth) – objection to registration of business name – availability of business names that are “identical” or “nearly identical” – whether business name available for registration – decision under review affirmed

[Leadenhall Australia and Australian Securities and Investments Commission](#) [2018] AATA 4612 (7 December 2018); Deputy President Britten-Jones

CORPORATIONS – Tracing of beneficial ownership of shares – Whether disclosure notice should be issued under s 672A(1) to require disclosure under s 672B – Whether ordering disclosure would be unreasonable in all the circumstances – Whether a person can be directed to disclose the details of another person who has a relevant interest in any shares in the company – Decision under review affirmed

[Watson and Australian Securities and Investments Commission](#) [2018] AATA 4677 (21 December 2018); Deputy President Boyle

TAXATION AND COMMERCIAL DIVISION – Application for Limited Australian Financial Services Licence s 913B(1) – Corporations Act 2001 (Cth) – was the application made in accordance with s 913A – s 913B(1)(a) – no reason to believe applicant likely to contravene obligations if the AFSL is granted – s 913B(1)(b) – financial services covered by the licence provided efficiently, honestly and fairly – conditions on the licence – financial services laws – available adequate financial resources – knowledge of the financial services covered by the licence – good fame and character – decision under review affirmed

## Freedom of Information

[VMQD and Commissioner of Taxation](#) (Freedom of information) [2018] AATA 4619 (17 December 2018); Senior Member C Puplick AM

FREEDOM OF INFORMATION – access – practical refusal reason – whether work involved in processing request would substantially and unreasonably divert the resources of the agency from its other operations – decision affirmed

## Migration

[Nguyen and Minister for Home Affairs](#) (Migration) [2018] AATA 4637 (17 December 2018); Deputy President SA Forgie

MIGRATION – mandatory cancellation of visa due to substantial criminal record – no other reason why decision should be revoked – decision affirmed

[Nguyen and Minister for Home Affairs](#) [2018] AATA 4659 (19 December 2018); Senior Member DJ Morris

MIGRATION – refusal of residence return visa – consideration of character test – drug offences – other offences – risk of applicant engaging in criminal conduct in Australia – misleading information in passport application – assessment of risk – applicant fails character test – consideration of ministerial direction – primary considerations – other considerations – any other relevant matter – decision set aside and remitted

[Nguyen and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 4664 (20 December 2018); Senior Member R Cameron

MIGRATION – mandatory cancellation of applicant's visa under s 501(3A) – whether discretion under s 501CA(4) to revoke mandatory cancellation should be exercised – single offence – trafficking in a large commercial quantity of heroin – no prior criminal convictions – imprisonment term of more than 12 months – substantial criminal record – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to Vietnam – decision affirmed

[RZMW and Minister for Home Affairs](#) (Migration) [2018] AATA 4620 (11 December 2018); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of protection visa – expedited matter – where visa was cancelled under s 501(3A) – applicant does not pass character test – 12 month imprisonment – whether discretion in s 501CA to revoke mandatory cancellation should be exercised – considerations in Direction No 65 – consideration in Direction No 75 – applicant committed violent offences – applicant committed offences against personal and property rights of others – applicant committed offences indicating refusal to submit to lawful authority – decision under review affirmed

## National Disability Insurance Scheme

[Howard and National Disability Insurance Agency](#) [2019] AATA 2 (3 January 2019); Senior Member R Cameron

NATIONAL DISABILITY INSURANCE SCHEME – whether the applicant meets the access criteria – various medical conditions - consideration of medical evidence – decision affirmed

[Pavilupillai and National Disability Insurance Agency](#) [2018] AATA 4641 (13 December 2018); Deputy President SA Forgie

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – identification of decision under review – whether funding for left and right high heel foot sections reasonable and necessary – objects of the NDIS – whether support facilitates social and economic participation – whether support is value for money – whether support effective and beneficial for participant – decision affirmed

## Practice and Procedure

[Alekit Pty Ltd \(trading as Giggling Day Care Centre\) and Secretary, Department of Education and Training](#) [2018] AATA 4639 (6 December 2018); Senior Member BJ Illingworth

PRACTICE AND PROCEDURE – CHILD CARE – family assistance law – education and care services national law – child care benefit – breach of conditions of provider approval – breach of Commonwealth or State laws – cancellation of Commonwealth provider approval under family assistance law – no jurisdiction to review cancellation of state approval – application for dismissal – s 42B(1) Administrative Appeals Tribunal Act 1975 – whether vexatious, misconceived, no reasonable prospects of success, lacking in substance or abuse of process – application dismissed

[Blandon and Comcare](#) (Compensation) [2018] AATA 4614 (18 September 2018); Deputy President G Humphries

PRACTICE AND PROCEDURE – application to reopen the hearing – inquisitorial function of the Tribunal – mistaken apprehension of the facts – hearing reopened

[Bolton and Australian Securities and Investments Commission](#) [2018] AATA 4640 (29 November 2018); Deputy President SA Forgie

PRACTICE AND PROCEDURE – communications between ASIC and liquidator – documents relied upon for opinion expressed in report under s 533 of Corporations Act 2001 – whether legal professional privilege applies to ongoing obligation under s 38AA of the Administrative Appeals Tribunal Act 1975 – whether liquidator of company an expert – whether documents subject to legal professional privilege – rulings made

[C & K Components Plus Pty Ltd and Commissioner of Taxation](#) (Taxation) [2018] AATA 4666 (20 December 2018); Deputy President SA Forgie

PRACTICE AND PROCEDURE – JURISDICTION – decision by commissioner declining to make a private ruling – no valid objection decision – no jurisdiction to review decision for which review sought – application dismissed

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4672 (20 December 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – cancellation of disability support pension – application for a stay of decision – principles governing a stay – prospects of success – prejudice to the respondent – recovery of overpayments – financial hardship – public interest – whether the appeal might be rendered nugatory – stay granted in respect of arrears – stay granted in respect of ongoing payments.

[Complete Training Institute Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4638 (18 September 2018); Senior Member DJ Morris

PRACTICE AND PROCEDURE – application for review of rejection of registration as a registered training organisation – applicant alleges improper conduct by respondent – applicant admits flaws in original application – factors to be considered in terms of no reasonable prospect of success – what is threshold – fabricated document submitted – Tribunal satisfied application will not succeed on substantive review – substantive review being futile, Tribunal dismisses application without proceeding to review substantive decision

[Galaxy Day Care PTY LTD and Secretary, Department of Education and Training](#) [2018] AATA 4675 (20 December 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – request for stay order – decisions under review to cancel registration as a provider of day care services under A New Tax System (Family Assistance)(Administration) Act 1999 (Cth) – factors to be considered in deciding whether to grant a stay – stay refused

[Happy 'N' Friendly Day Care Pty Ltd and Secretary, Department of Education and Training](#) [2018] AATA 4676 (21 December 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – request for stay order – decisions under review to cancel registration as a provider of day care services under A New Tax System (Family Assistance)(Administration) Act 1999 (Cth) – factors to be considered in deciding whether to grant a stay – stay refused

## **Social Security**

[Currie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4617 (14 December 2018); Dr M Evans, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant has an impairment rating of 20 points or more under Impairment Tables – back pain – right shoulder and hand pain – heart disease – depression – self-reporting of symptoms – whether sufficient medical evidence of functional impact – AAT Tier 1 decision affirmed

[Hutchinson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4673 (21 December 2018); C Edwardes, Member

SOCIAL SECURITY – Disability Support Pension approved – review of approval date – backdated start days – sole or principal cause of delay in lodging claim – incapacity – work injury – post-traumatic stress disorder – major depression – decision under review affirmed

[Maddern and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4613 (17 December 2018); Dr I Alexander, Member

SOCIAL SECURITY – disability support pension – whether applicant's impairments are fully diagnosed, treated and stabilised – continuing inability to work – Applicant had not actively participated in a program of support – whether Applicant has a severe impairment – application of Impairment Tables – decision affirmed

[Pettitt and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4674 (21 December 2018); Mr C Edwardes, Member

SOCIAL SECURITY – rate of aged pension – gift as a disposed asset – payment of past loans – oral agreements between family – granny flat interest – decision set aside and substituted

[Turner and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4636 (17 December 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – relevant impairment tables - whether applicant has physical, intellectual or psychiatric impairment – applicant suffers from post surgical left adrenocortical oncocytic tumour, anxiety, depression, mood swings, right shoulder, left thumb and left hand fractures, right knee damage, spinal fractures, degenerative spondylosis and mild scoliosis, recurrent migraine – whether applicant has impairment rating of 20 points or more – decision under review affirmed

## **Taxation**

[Fortunatow and Commissioner of Taxation](#) (Taxation) [2018] AATA 4621 (14 December 2018); Deputy President Britten-Jones

TAXATION – Income tax – Part 2-42 of Income Tax Assessment Act 1997 – Personal services income – Personal services business – Results test – Unrelated clients test – Work carried out through a recruitment company or some other intermediary – Offers or invitations to the public by LinkedIn advertising – Applicant not treated as having made offers or invitations by operation of s 87-20(2) of Income Tax Assessment Act 1997 – penalties – Finding of recklessness under s 284-90(1) of the Taxation Administration Act 1953 – Decision under review affirmed

[Lochtenberg and Commissioner of Taxation](#) (Taxation) [2018] AATA 4667 (30 November 2018); Ms G Lazanas, Senior Member

TAXATION – INCOME – taxpayer participated in employee incentive profit participation plan – taxpayer worked in Australia then Switzerland – amount payable after termination of employment – amount assessable as ordinary income as it represented deferred compensation for services – taxpayer resident of Australia when income derived – whether income exempt as foreign earnings derived from foreign service – whether undissected amount – amount divided into Swiss component and Australian component for Swiss tax purposes – objection decision as to income tax affirmed

TAXATION – SHORTFALL INTEREST CHARGE – whether further remission appropriate – objection decision as to shortfall interest charge set aside and substituted with decision allowing remission to the base rate where not otherwise 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
<b>Adut and Minister for Home Affairs</b>	<a href="#">[2018] AATA 4089</a>
<b>Hutchinson and Comcare</b>	<a href="#">[2018] AATA 4357</a>
<b>Ransley and Commissioner of Taxation</b>	<a href="#">[2018] AATA 4359</a>
<b>Singh and Minister for Home Affairs</b>	<a href="#">[2018] AATA 4302</a>
<b>Vaokakala and Minister for Home Affairs</b>	<a href="#">[2018] AATA 4452</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comcare v Dalglish</b>	<a href="#">[2017] AATA 1325</a>	<a href="#">[2018] FCA 2092</a>
<b>Comptroller-General of Customs v Pharm-A-Care Laboratories Pty Ltd</b>	<a href="#">[2017] AATA 1816</a>	<a href="#">[2018] FCAFC 237</a>
<b>DCD18 v Minister for Home Affairs</b>	<a href="#">[2018] AATA 1278</a>	<a href="#">[2018] FCA 2090</a>

# 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](#).

## 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 took effect from **23 July 2018**:

### Localised Sclerosis (Balance of Probabilities) – No. 16 of 2019

<https://www.legislation.gov.au/Details/F2019L00006>

### Localised Sclerosis (Reasonable Hypothesis) – No. 15 of 2019

<https://www.legislation.gov.au/Details/F2019L00005>



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