



Administrative
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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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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

[Playford and Inspector-General in Bankruptcy](#) [2018] AATA 19 (15 January 2018); Ms G Lazanas, Senior Member

Bankruptcy – discharge — trustee's objection – bankrupt failed to disclose bank account monies – decision affirmed

Citizenship

[Corrigan and Minister for Immigration and Border Protection](#) (Citizenship) [2017] AATA 2880 (21 December 2017); Mrs JC Kelly, Senior Member

HOME AFFAIRS – citizenship by conferral – refusal of citizenship application – Applicant currently residing outside Australia – whether Applicant is likely to reside, or continue to reside in Australia – whether Applicant is likely to maintain a close and continuing association with Australia – Tribunal not satisfied that the Applicant is likely to reside in Australia or maintain a close and continuing association – decision affirmed

Compensation

[Burns and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 35 (17 January 2018); Senior Member T Tavoularis

COMPENSATION – claim for compensation and rehabilitation for injuries – iliotibal band syndrome and osteoarthritis of both left and right knee – whether conditions are service-related – whether the Applicant is entitled to compensation for injuries – whether Applicant is entitled to compensation for permanent impairment – whether Applicant entitled to compensation for non-economic loss – consideration of section 14 of the Safety, Rehabilitation and Compensation (Defence-Related Claims) Act 1988 – applicability of the Compensation (Commonwealth Government Employees) Act 1971 – which legislative provisions applied – whether the Applicant was entitled to a lump sum payment under the 1971 Act – whether Applicant was permanently impaired – osteoarthritis conditions were not service-related – no liability under section 14 – Applicant was not permanently impaired – Applicant is not entitled to a lump sum payment under the 1971 Act – decisions under review affirmed

[Davitt and Telstra Corporation Limited](#) (Compensation) [2018] AATA 10 (12 January 2018); DK Grigg, Member

COMPENSATION – employees – whether applicant entitled to compensation – whether permanent impairment – whether entitled to non-economic loss – decision under review affirmed

[Rope and Comcare](#) (Compensation) [2018] AATA 42 (16 January 2018); Deputy President G Humphries

COMPENSATION – jurisdictional scope of reviewable decision – mechanism of consideration and re-consideration set out in Part VI of the Safety, Rehabilitation and Compensation Act 1988 – claim which has not been assessed by Comcare cannot be the subject of review by the Tribunal – where decisions at the consideration and reconsideration stages are different in scope, Comcare’s decision at the latter stage defines the Tribunal’s jurisdiction – no agreement by the parties can operate so as to limit the ambit of the Tribunal’s jurisdiction – whether massage treatment is reasonable for Mrs Rope to obtain – test is whether the massage treatment was reasonable in all the circumstances – 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 – role of purely palliative treatment – reviewable decision set aside

[Scaramuzzino and Australian Air Express Pty Ltd](#) (Compensation) [2018] AATA 45 (16 January 2018); Senior Member A Nikolic AM CSC

COMPENSATION – right shoulder injury – entitlement to compensation for medical treatment or incapacity for work – liability for psychological condition secondary to right shoulder injury – entitlement to compensation for permanent impairment and non-economic loss in respect of right shoulder injury – applicant suffering from pre-existing degenerative changes in right shoulder – no entitlement to compensation for incapacity, permanent impairment or non-economic loss – psychological condition not contributed to, to a significant degree, by employment with respondent – decisions under review affirmed

Customs and Excise

[Jalco Powders Pty Ltd and Comptroller-General of Customs](#) [2017] AATA 2910 (20 November 2017); Senior Member Dr T Nicoletti

CUSTOMS – tariff classification – whether goods should be classified under heading 2836 or 3824 – goods to be classified under heading 3824 – decision under review affirmed

Health

[Hospira Pty Ltd and Minister for Health](#) [2017] AATA 2719 (18 December 2017); Miss EA Shanahan, Member

HEALTH – registration of therapeutic goods – biological medicines – adopted international guidelines – assessment of biosimilar criteria of internationally approved biologicals – question as to whether approval of registration is inseparable from approval of the product information – review of product information sought – product information amended by authorised review officer – statutory interpretation in relation to the power to amend product information in accordance with ss 25 and 25AA – object of the Act to ensure quality, safety and efficacy of therapeutic goods – decision set aside and remitted for reconsideration

Migration

[CZQL and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2715 (19 December 2017); Deputy President JW Constance

MIGRATION – visa – non-revocation of cancellation – substantial criminal record – driving offences – causing harm to a Commonwealth public official – armed robbery – protection of the Australian community – numerous and serious offences – risk of re-offending – best interests of minor children in Australia – five minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – impact on family in Australia – decision affirmed

[FTYC and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 20 (16 January 2018); Deputy President BW Rayment

MIGRATION – visa refusal – application for protection visa – applicant does not pass the character test – whether the discretion under section 501(1) should be exercised – risk of engaging in criminal conduct – non-refoulement obligations considered – decision set aside and remitted

[Gordon and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 39 (8 January 2018); 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 set aside and substituted

[GXNY and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 17 (16 January 2018); Deputy President BW Rayment

MIGRATION – visa refusal – application for protection visa – character test – applicant convicted of possessing a traffickable quantity of cannabis leaf – risk of engaging in criminal conduct – decision set aside and substituted

[Maikantis and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 40 (19 January 2018); Deputy President SA Forgie and Mr A Maryniak QC, Member

MIGRATION – refusal of visa on character grounds – identification of question to be answered on review – decision set aside and remitted

[WXDX and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 2851 (21 December 2017); Senior Member T Tavoularis

MIGRATION – visa refusal – Applicant failed character test under s 501(6)(d)(ii) – alleged risk that he would harass, molest, intimidate or stalk another person in Australia – evidence of risk unproven – no criminal history or other reason why Applicant did not pass character test – Tribunal found Applicant did pass character test – Visa should not have been refused on character grounds - Decision set aside and substituted.

Practice and Procedure

[ACN 154 520 199 Pty Ltd and Commissioner of Taxation](#) (Taxation) [2018] AATA 33 (17 January 2018); Mrs JC Kelly, Senior Member

PRACTICE AND PROCEDURE – application for the Respondent to produce certain documents – internal legal advice in relation to the application of s 38-385 of the A New Tax System (Goods and Services Tax) Act 1999 and the general power to remit a penalty – documents to be produced pursuant to s 37(2) of the Administrative Appeals Tribunal Act 1975 as modified by s 14ZZF of the Taxation Administration Act 1963 – whether documents in question may be relevant to the review of the decision – direction for Respondent to produce certain documents

[Arbon and Comcare](#) (Compensation) [2017] AATA 2870 (14 November 2017); Senior Member Britten-Jones

PRACTICE AND PROCEDURE – Extension of time to lodge application for review – Whether acceptable explanation for delay – Whether applicant rested on rights – Merits of substantive application – Extension of time granted

[Australian Institutes of Trades Pty Ltd as trustee for the Institute of Hotel Management Australia and Australian Skills Quality Authority](#) [2017] AATA 2912 (1 August 2017); Senior Member E Fice

PRACTICE AND PROCEDURE – review of stay order – decisions to cancel applicant's registration under NVR Act and ESOS Act – consequences for application if stay refused – public interest – stay revoked

[Haberl and Comcare](#) (Compensation) [2017] AATA 2909 (23 November 2017); Senior Member A Poljak

PRACTICE AND PROCEDURE – Reinstatement – original application withdrawn by applicant – new application filed – whether new application should be treated as application for reinstatement of original application – narrow power to reinstate – application dismissed

[Hasan and Inco Ships Pty Ltd](#) (Compensation) [2018] AATA 15 (12 January 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – jurisdiction – Seafarers Rehabilitation and Compensation Act 1992 – decision to refuse to extend the period in which the Applicant may request a reconsideration of the decision to deny liability – whether the Tribunal has jurisdiction to review the decision to refuse to extend the period – similar provision in the Safety, Rehabilitation and Compensation Act 1988 – jurisdiction found

[Leoncini and Migration Agents Registration Authority](#) (Migration) [2018] AATA 16 (12 January 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – application to set aside summons – summons addressed to the Applicant – Applicant’s migration agent registration suspended – summons relates to files of Applicant’s clients – whether Australian Privacy Principles apply – whether provisions in the Migration Act 1958 apply – application to set aside summons refused

[Makings and K & S Freighters Pty Ltd](#) (Compensation) [2018] AATA 9 (11 January 2018); Senior Member T Tavoularis

EXTENSION OF TIME – where application for review was some 19 months out of time – Hunter Valley factors – where delay was lengthy – where Applicant failed to provide convincing explanation for the delay – where there are some prospects of success – where there are alternate avenues of relief – where there is a significant prejudice to the Respondent – frank injury claim – scope of application to extend time – scope of discretion to extend time – whether additional factors should be considered – extension of time refused

[Saffioti and Comcare](#) (Compensation) [2018] AATA 43 (17 January 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – extension of time application – compensation claim – explanation for the delay – former solicitor of applicant did not make application to Tribunal within time – whether prejudice to respondent – whether fair to other applicants – whether substantive application has merit – extension of time granted

[Saleeba and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 44 (12 January 2018); Dr C Kendall, Deputy President

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review of decision – applicant lodged application for review four weeks after required date – applicant did not give satisfactory explanation for delay – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Sher-E-Punjab Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 46 (15 January 2018); K Parker, Member

PRACTICE AND PROCEDURE – request for revocation of stay orders – stay orders made by consent – decisions under review were decisions by the regulator to cancel and not to renew a training organisation’s registration under the National Vocational Education and Training Regulator Act 2011 (Cth) and under the Education Services for Overseas Students Act 2000 (Cth) – section 41 of the Administrative Appeals Tribunal Act 1975 (Cth) – factors to be considered in deciding whether to revoke stay orders under subsection 41(3) – whether it is appropriate to consider prospects of success of the substantive applications

[WLQC and Commissioner of Taxation](#) (Taxation) [2018] AATA 14 (15 January 2018); Deputy President Bernard J McCabe

TAXATION – income tax assessment – nil assessment in respect of various income years – whether a nil assessment is an assessment for the purposes of s 175A of the Income Tax Assessment Act 1936 (Cth) as applicable in the 2004 income year – whether the applicant may object to a nil assessment under s 175A(2) of the Income Tax Assessment Act 1936 (Cth) in its current form – Tribunal is satisfied that the objection decisions, or purported objection decisions, which disclose a nil assessment in the years under review are not reviewable – application for review dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

Social Security

[Berry and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 34 (16 January 2018); 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 – decision under review is affirmed

[Cutts and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 36 (16 January 2018); DK Grigg, Member

SOCIAL SECURITY – disability support pension – whether conditions permanent - whether 20 points or more under the impairment tables – decision under review affirmed

[Giza and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 38 (18 January 2018); Senior Member DJ Morris

SOCIAL SERVICES – Disability Support Pension (DSP) – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – several medical conditions – severe functional impairment – Newstart Allowance paid while DSP claim being assessed – backdating of DSP start day – vulnerable person - backdated to commencement of Newstart Allowance – no discretion for earlier start day – decision set aside and substituted

[Kettlewell and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 8 (11 January 2018); LM Gallagher, Member

SOCIAL SECURITY – rate of age pension – whether a member of a couple – whether living separately and apart on a permanent and indefinite basis - whether separated under one roof - financial aspects of the relationship – nature of the household – social aspects of the relationship – sexual relationship between the people – nature of the people’s commitment to each other – evidence supports that applicant a member of a couple – evidence supports applicant not separated under one roof – no special reason not to treat as member of a couple - decision under review affirmed

[MTKJ and Secretary, Department of Health](#) (Social services second review) [2017] AATA 2911 (15 December 2017); Deputy President AG Melick AO SC

SOCIAL SECURITY – aged care – residential care subsidy – assets test – loans from family trust – value of assets – decision under review affirmed

[Murphy and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 21 (15 January 2018); A Burke, Member

FAMILY TAX BENEFIT – FTB – whether there has been a change in child’s care circumstances – whether Applicant had care of child – whether child was an FTB child of the Applicant or Other Party – inability to establish finding of fact in relation to plausible care of child – percentage of care decision – 35/65 percent care determined - decision under review set aside

[Nguyen and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 12 (12 January 2018); Dr B Ng, Member

SOCIAL SECURITY – disability support pension – impairment tables – insufficient points under tables – decision affirmed

[Obradovic; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 41 (17 January 2018); Deputy President BW Rayment

SOCIAL SECURITY – overpayments in respect of disability support pension, carer’s payment and parenting payments – respondent’s did not disclose ownership of property – whether respondent’s were aware of debts waived in part by Social Services and Child Support Division – whether special circumstances – debts waived in full – decision set aside and substituted

[Panetta and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 22 (16 January 2018); Senior Member DJ Morris

SOCIAL SERVICES – DSP – Debt – income and assets test – income stream product not declared – overpayment of DSP – whether special circumstances applicable – decision affirmed

[Pavilupillai and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 13 (12 January 2018); Mr A Cameron, Member

SOCIAL SECURITY – Newstart Allowance – Assets Value Limit – Financial Hardship Rules – Decision Affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 18 (11 January 2018); 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 affirmed

[Stevens and Secretary, Department of Social Services](#) (Social services second review) [2017]
AATA 2713 (20 December 2017); 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

[Vollebregt and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 11 (12 January 2018); Senior Member DJ Morris

SOCIAL SERVICES – Lump Sum Preclusion Period – lump sum compensation payment – application for newstart allowance – meaning of special circumstances – waiver of lump sum preclusion period – special circumstances not present – decision set aside 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
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QSVS and Minister for Immigration and Border Protection	[2017] AATA 2708
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Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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None finalised

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