



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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# 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.

## Citizenship

[Ismail and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 165 (9 February 2018); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship – whether applicant of good character – criminal record – traffic offences – mitigating factors – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

[Kim and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 155 (2 February 2018); Deputy President S Boyle

Citizenship Application – extension of time application – factors that are relevant when considering an application for extension of time – length of delay – prospects of success – application dismissed

## Compensation

[Garnett and Comcare](#) (Compensation) [2018] AATA 160 (5 February 2018); Deputy President G Humphries and Dr B Hughson, Member

COMPENSATION – workplace injury – Chronic Pain Syndrome – whether symptoms or incapacity that the Applicant continues to experience is sufficient to entitle her to benefits under ss 16, 19, or 29 of the Safety, Rehabilitation and Compensation Act 1988 – whether medical treatment is in relation to the Applicant's accepted condition of chronic pain syndrome and is reasonable to obtain in the circumstances – whether there is a reasonable requirement for household services – whether, on the balance of probabilities, the Applicant suffers any incapacity to work – evidence obtained by covert surveillance – credit of Applicant – inconsistent evidence regarding level of incapacity – reviewable decision set aside

## Freedom of Information

[Kung Fu Wushu Australia Limited and Australian Sports Commission](#) (Freedom of information) [2018] AATA 157 (7 February 2018); Deputy President G Humphries

Freedom of Information – request for access to documents – whether disclosure would result in a breach of confidence – whether disclosure involves the disclosure of trade secrets – whether disclosure would destroy or diminish information with commercial value – whether disclosure would involve disclosure of information concerning an organisation's business, commercial or financial affairs which would unreasonably affect that organisation – whether disclosure could reasonably be

expected to prejudice future supply of information to the Commonwealth – decision under review affirmed

[Mitchell and Secretary, Department of Defence](#) (Freedom of information) [2018] AATA 158 (7 February 2018); Deputy President JW Constance

FREEDOM OF INFORMATION – costs – discretion of Tribunal to recommend payment of applicant's costs by Commonwealth – whether applicant successful, or substantially successful, in application for review – lack of information as to the matters to which the Tribunal would have been required to have regard had the discretion been enlivened – application refused

## Migration

[Araque](#) (Migration) [2018] AATA 58 (18 January 2018); C Carney-Osborn, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Graduate Work stream – Did not submit relevant skills assessment – Intended to apply for the “Post Study Work Stream” – Applicant meets these visa conditions – Decision under review remitted

[Arbakoy](#) (Migration) [2018] AATA 77 (9 January 2018); R Gagliardi, Member

Migration – Child (Migrant) (Class AH) visas – Subclass 117 (Orphan Relative) – Review applicant – Biological uncle of the visa applicants – No parental care – Parents whereabouts unknown – Decision under review remitted

[Bowring](#) (Migration) [2018] AATA 74 (9 January 2018); W Stooke AM, Member

Migration – Cancellation – Temporary Business Entry (Class UC) – Subclass 457 (Temporary Work (Skilled)) – Previously held multiple working holiday visas – Employment terminated with original approved sponsor – Actively sought a new employer – Applicant was not notified of the Department's original decision – Discretionary factors – Must have otherwise been entitled to the visa applied for – Left Australia to attend a family funeral – Currently holding a bridging visa – New employer willing to sponsor the applicant – Skills in high demand – Letters of support from new employer – Decision under review set aside

[Buckley](#) (Migration) [2018] AATA 7 (5 January 2018); Deputy President J Redfern (Presiding) and H Sanderson, Member

Migration – Subclass 183 (Employer Nomination Scheme) visa – visa granted on basis the applicant was working as Program or Project Administrator – cancellation under s.109 – cancellation of visa following audit and sponsorship bar of the nominating employer – whether incorrect information or bogus document provided – consideration of ANZCO description of Project Administrator – non-compliance not established – power to cancel visa does not arise – cancellation set aside

[Din](#) (Migration) [2018] AATA 47 (9 January 2018); R Smidt, Member

Migration – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 visa – Genuine temporary entrant – Elderly applicant – Eye surgery required – Complied with previous visa conditions – Decision under review remitted

[Ebrahimi](#) (Migration) [2018] AATA 66 (17 January 2018); T Flood, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – Sponsored Family stream – Planning to visit brother – Plans to stay with brother in Australia – Visa applicant has travelled extensively overseas – Stable employment in Iran – No adverse family migration history – Genuine temporary entrant – Decision under review remitted

[Karagoda Pathiranage](#) (Migration) [2018] AATA 64 (8 January 2018); N Findson, Member

Migration – Cancellation – TU – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – Not enrolled in a registered course – Unexplained period of non-enrolment – Poor academic results – Degree of hardship – Parents' relationship difficulties – Australian wife is pregnant – Decision under review affirmed

[Mahu and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 161 (2 February 2018); Deputy President S Boyle

MIGRATION – decision to revoke mandatory cancellation – where applicant is New Zealand citizen – where applicant has substantial criminal record – primary considerations weigh in favour of revoking cancellation – risk of reoffending – bests interests of minor children – expectations of the Australian community – other considerations – decision under review is set aside and substituted

[PNLB and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 162 (9 February 2018); 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

[Quinn](#) (Migration) [2018] AATA 73 (5 January 2018); Deputy President J Redfern (Presiding) and H Sanderson, Member

Migration – Subclass 856 (Employer Nomination Scheme) visa – visa granted on basis the applicant was working as Program or Project Administrator – cancellation under s.109 – cancellation of visa following audit and sponsorship bar of the nominating employer – whether incorrect information or bogus document – relevance of VETASSESS interpretation – evidence supported claim the applicant worked as Project Administrator – non-compliance not established – power to cancel does not arise – cancellation set aside

[Sadiq](#) (Migration) [2018] AATA 79 (8 January 2018); H Claringbold, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – Visa applicant – Breaks in study – Civil unrest in home city – Health condition – Reasonable timeframe between finishing school and commencing further study – Full time University student – Decision under review remitted

[Yussuf](#) (Migration) [2018] AATA 60 (16 January 2018); D Barker, Member

Migration – TU - Student (Temporary) (Class TU) visa – Subclass 572 (Vocational Education and Training Sector) – Attempted multiple courses – Completed Diploma of Information Technology Networking – No sound reason for changing courses – Aspiring to do social work in Nigeria – Family ties in Australia and Nigeria – Not a genuine temporary entrant – Decision under review affirmed

## Practice and Procedure

[Carney and Comcare](#) (Compensation) [2018] AATA 164 (7 February 2018); Deputy President G Humphries

PRACTICE AND PROCEDURE – extension of time application – workers compensation – Applicant's delay attributable to advice of her former lawyers – whether prejudice is caused to Comcare – whether substantive application has merit – extension of time granted

[Hussain Hazara and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 159 (2 February 2018); Deputy President SA Forgie

PRACTICE AND PROCEDURE – scope of Tribunal's review – application for Australian citizenship by conferral refused on basis that delegate was not satisfied of applicant's identity – whether Tribunal limited to considering the issue of the applicant's identity in the application for review – all eligibility criteria and grounds of refusal are in issue for the Tribunal in considering the application for review

[Poidevin and Australian Securities and Investments Commission](#) [2018] AATA 124 (25 January 2018); Deputy President J Redfern

PRACTICE AND PROCEDURE – prohibition on providing financial services for five years – application for stay of operation of banning order in relation to director – whether stay order appropriate – scope of power to make order staying or otherwise affecting operation or implementation of decisions – whether power extends to affecting the entry into the ASIC register and publication in the Government Gazette – where desirable to make stay order – whether confidentiality order appropriate – where inappropriate to make confidentiality order

## Social Security

[Battaia and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 163 (7 February 2018); Ms D K Grigg, Member

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

[Lord and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 118 (6 February 2018); Dr I Alexander, Member

SOCIAL SECURITY – disability support pension – impairment tables – whether impairment is rated 20 points or more under the Impairment Tables – upper limb condition – lower limb condition – complex regional pain syndrome – decision affirmed

[Lyons and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 119 (5 February 2018); Ms 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 set aside

[Merrett and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 156 (7 February 2018); Ms DK Grigg, Member

SOCIAL SECURITY – age pension – pension bonus scheme – whether applicant met the work test – late lodgement of valid claim – whether any discretion available under section 21(2) of the Social Security (Administration Act) 1999 – no special circumstances — decision under review affirmed

[Twentyman and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 110 (5 February 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – suspension and cancellation of DSP – whether the cancellation decision was the correct or preferable decision – notice to a recipient of social security payment to advise Centrelink if planning to travel outside Australia – periods of overseas travel – whether the Applicant complied with the requirement to advise Centrelink about his travel overseas – decision affirmed

## **Taxation**

[Nguyen and Commissioner of Taxation](#) (Taxation) [2018] AATA 117 (5 February 2018); Deputy President B McCabe

TAXATION - amended assessments - administrative penalties - whether reckless disregard for the law - onus of proof - taxpayer gambling - employer funded gambling trips - income and expenses - bank account churn - absence of contemporaneous records

# 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
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<b>LDGL and Commissioner of Taxation</b>	<a href="#">[2017] AATA 2779</a>
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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
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**None finalised**

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