



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 7/2018

26 February 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.

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Enquiries regarding this publication may be directed to 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.

Compensation

[Monk and Comcare](#) (Compensation) [2017] AATA 224 (16 February 2018); Senior Member N A Manetta

COMPENSATION - purchase of new modified van - whether an aid or appliance - whether purchase reasonable - held - van was an aid or appliance but purchase of new van not reasonable in the circumstances - decision under review is varied.

Migration

[PATOLIYA](#) (Migration) [2018] AATA 111 (12 January 2018); K Malyon, Member

Migration – Employer Nomination (Permanent) – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – Nominated position – Customer Service Manager – Nomination review application was withdrawn – Ministerial intervention sought – Exceptional circumstances – Vulnerable worker – Underpaid by 7-Elven – Fair Work Australia proceedings – Decision under review affirmed

[Pyjama Drama Pty Ltd ATF Plumridge Family Trust](#) (Migration) [2018] AATA 186 (30 January 2018); A Dronjic, Member

Migration – Nomination – Nominating business operated by husband – Nominee is spouse – Financial capacity – Employment of full-time staff – No regular monthly wages – Decision under review affirmed

[Tang](#) (Migration) [2018] AATA 135 (30 January 2018); M Bishop, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 572 (Vocational Education and Training Sector) – Holder of multiple work and student visas – Poor academic progress – Ceased study of multiple courses – Using the student visa program as a means of maintaining residence in Australia – Personal circumstances – Australian wife pregnant – Decision under review affirmed

[Dalla](#) (Migration) [2018] AATA 128 (30 January 2018); Deputy President J Redfern (Presiding) and R Skaros, Member

MIGRATION – Subclass 457 (Temporary Work (Skilled)) visa – cancellation of visa under [s 109](#) of the [Migration Act 1958](#) (Cth) – whether incorrect information provided – incorrect answer in outgoing passenger card – information related to the amount of money being taken out of Australia – consideration of the definition of 'passenger card' for the purposes of [s 102\(b\)](#) – non-compliance established – whether to exercise the discretion to cancel applicant's visa – consideration of

prescribed circumstances including correct information, circumstances in which non-compliance occurred and applicant's present circumstances – where applicant is on parole for serious offences – where applicant has uncertain employment prospects due to approved sponsor entering administration and temporary nature of work visa – where applicant faces financial and other difficulties on return to country of origin – decision under review affirmed

PRACTICE AND PROCEDURE – certain information subject to [s 357A](#) certificate – disclosure of the nature of the information to the Applicant – information subject to the [s 375A](#) certificate held not to be the reason or part of the reason for affirming the decision

[Manash](#) (Migration) [2018] AATA 180 (1 February 2018); K Millar, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – Visa applicant's mother is permanently incapacitated – DNA testing carried out – Half siblings – Decision under review remitted

[KIM](#) (Migration) [2018] AATA 126 (1 February 2018); S Georgiadis, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 (Skilled Graduate) – Satisfied the 'Australian study' requirement – Skills requirements – Qualifications 'closely related' to the nominated occupation – Decision under review remitted

[Stefanakou](#) (Migration) [2018] AATA 197 (2 February 2018); J Owen, Senior Member

Migration – Partner (Temporary) (Class UF) visa – Subclass 820 (Partner (Temporary)) – Medical Treatment – Emotional state – Finances for lodgement – Misunderstanding of information – Attempts to hold a substantive visa – Decision under review remitted

[Radici](#) (Migration) [2018] AATA 201 (7 February 2018); T Eteuati, Member

Migration – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – Evidence of proposed or upcoming medical treatment – Adjournment requests – Inconsistent reason for adjournment – Immigration legal assistance – Decision under review affirmed

Practice and Procedure

[Horizons \(Asia\) Pty Ltd and Registrar of Trade Marks](#) [2018] AATA 239 (15 February 2018); Deputy President B W Rayment

PRACTICE AND PROCEDURE – jurisdiction – whether tribunal has jurisdiction to review – opposition to registration of trade mark – application for extension of time refused – no jurisdiction – application dismissed

Refugee

[1514054](#) (Refugee) [2018] AATA 121 (16 January 2018); L Symons, Member

Refugee – Protection visa – China – Business loan from government – Fears harm from debt recovery gang – Confiscation of home – Failed to attend hearing – Insufficient evidence – Decision under review affirmed

[1706221](#) (Refugee) [2018] AATA 212 (22 January 2018); J Meyer, Member

Refugee – Protection Visa – Malaysia – Requirement for applicant to be in Australia – Applicant not in Australia – Decision under review affirmed

Social Security

[Du Rhone and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 223 (16 February 2018); Ms A Poljak, Senior Member

SOCIAL SECURITY – age pension – change to rate of age pension – whether adequate notice given – notice requirements – whether applicant entitled to arrears for underpayment – decision set aside and remitted

[Hicks and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 238 (19 February 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 – kidney disorder – heart disorder – visual function – functions of the skin – decision affirmed

[MacArthur and Secretary, Department of Jobs and Small Business](#) (Social services second review) [2018] AATA 236 (19 February 2018); Senior Member DR Davies

SOCIAL SECURITY – newstart allowance – where decision made not to pay applicant newstart allowance for 26 weeks - whether applicant reduced employment prospects by moving to a new place of residence – decision under review set aside

[Sedkaoui and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 227 (19 February 2018); Senior Member A Poljak

SOCIAL SECURITY – Disability Support Pension – cancellation – whether applicant qualified at date of cancellation – whether fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – continuing inability to work – decision under review affirmed

Taxation

[Walsh and Commissioner of Taxation](#) (Taxation) [2018] AATA 235 (19 February 2018); Deputy President I R Molloy

TAXATION AND BANKRUPTCY – tax liabilities – departure prohibition order – revocation – effect of bankruptcy – legality of order - purpose of the order – personal circumstances

Veterans' Affairs

[Hall and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 225 (16 February 2018); Deputy President B J McCabe

VETERANS' AFFAIRS – cervical spondylosis – applicant in receipt of partial disability pension – onset of condition – RAAF explosive ordnance specialist – whether condition caused by manual handling requirements of role – imaging evidence

[Nguyen and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 226 (29 January 2018); Senior Member A. Nikolic AM CSC

VETERANS' AFFAIRS – member of the Armed Forces of the Republic of Vietnam - whether incurred danger from hostile forces of the enemy – whether during the period of Australia's involvement in Vietnam War – decision affirmed

[Thiselton and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 237 (16 February 2018); Deputy President J Sosso

VETERANS' AFFAIRS – Veterans' Entitlements – whether the veteran's conditions were defence caused – alcohol drinking habit developed during periods of service in closed camp – hypertension – ischaemic heart disease – adjustment disorder

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
Australian Style Investments Pty Ltd as Trustee for the Australian Style Investments Unit Trust and Commissioner of Taxation	[2013] AATA 847

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BNVM v Minister for Immigration and Border Protection and Anor	[2017] AATA 621	[2018] FCA 131

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