



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 11/2018

26 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.

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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.

Citizenship

[TGFY and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 523 (16 March 2018); LM Gallagher, Member and C Edwardes, Member

CITIZENSHIP – criminal offences – whether applicant of good character – meaning of good character – lack of culpability at relevant time – applicant found not to be of good character at time of application for citizenship – decision under review affirmed

[Trujillo Mesa and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 557 (20 March 2018); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship – whether applicant of good character – serious criminal offence – mitigating factors – lack of remorse and insight – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

Freedom of Information

[Thomas; Secretary, Department of Defence and](#) (Freedom of information) [2018] AATA 604 (21 March 2018); The Honourable Justice JA Logan RFD, Deputy President, Deputy President RI Hanger AM QC and Senior Member A Nikolic AM CSC

FREEDOM OF INFORMATION – Exemptions – deliberative processes – text message exchange between Chief and Vice Chief of the Australian Defence Force – whether, on balance, access would be contrary to the public interest – decision under review set aside on the basis that, on balance, access would be contrary to the public interest such that the documents are exempt.

COURTS AND TRIBUNALS – Whether reasonable apprehension of bias of a tribunal member on the basis of prior professional association – possession of this same prior professional experience relevant to the appointment of the member both to the tribunal and to that member’s assignment to a particular Division of the Tribunal – prior professional association with authors of documents to which access sought ceased years before date of authorship of those documents or other relevant events – authors of documents not called as witnesses and no question as to their credibility – HELD: no reasonable apprehension of bias.

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal – allegation of apprehension of bias by one member of multi-member panel constituted for the purpose of reviewing a decision – consideration as to whether merits of allegation should be ruled on by member concerned or by panel and whether the question needed to be dealt with as a preliminary issue or but one to be determined after hearing of evidence and submissions on the merits of the substantive issue on the review – HELD: practice to adopt dependent on circumstances of a particular case – in circumstances of case to hand issue determined by panel collectively as part of deciding merits of substantive issue on the review.

Migration

[DTFQ and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 465 (5 March 2018); Senior Member A Nikolic AM CSC

MIGRATION – bridging visa refusal – failure to pass the character test – convictions for family violence offences – risk of engaging in criminal conduct if allowed to remain in Australia – primary considerations – protection of the Australian community – expectations of the Australian community – impact on family members – protection of the Australian community and the expectations of the Australian community outweigh all other considerations – decision affirmed

[Nikolovski and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 558 (20 March 2018); Deputy President SA Forgie

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke cancellation – applicant failed to lodge application for review in nine days of receipt of notice – nine day time limit only applied if applicant notified of decision in accordance with s 501G(1) – whether notice complied with s 501G(1) and whether given in prescribed manner Tribunal – notified of decision in accordance with s 501G – Tribunal does not have jurisdiction to review decision as lodged outside nine day time limit

Practice and Procedure

[Kristoffersen and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 524 (15 March 2018); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – dismissal application – s 42B Administrative Appeals Tribunal Act 1975 (Cth) – whether application has any reasonable prospect of success – family tax benefit – school kids bonus – where Applicant received less than the full rate of FTB Part B – whether Applicant’s wife’s income should be considered for the purposes of calculating FTB Part B – application does not have any reasonable prospect of success – substantive application dismissed pursuant to s 42B Administrative Appeals Tribunal Act 1975 (Cth)

Social Security

[Crossley and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 525 (19 March 2018); Senior Member C Puplick AM

SOCIAL SECURITY – age pension – eligibility – whether applicant an Australian resident – frequency and duration of overseas travel – nature and extent of ties to Australia – Tribunal satisfied applicant was an Australian resident – decision set aside and remitted

[Massie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 521 (16 March 2018); Mr C Edwardes, Member

Social Security – disability support pension – impairment tables – did applicant have 20 impairment points – continuing inability to work rating – participation in program of support - decision under review affirmed

[Rooney and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 522 (29 January 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY - disability support pension – impairment – whether disability is fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – mental health – upper and lower limb function – other conditions – decision under review affirmed

Veterans' Affairs

[Sweeney and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 560 (20 March 2018); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – veterans' entitlements – claim for pension for PTSD and erectile dysfunction conditions – PTSD diagnosis not accepted – erectile dysfunction not accepted as service-related – hypothesis connecting several traumatic incidents during service with PTSD – relevant Statement of Principles' support the hypothesis connecting service with conditions – decision varied to provide that PTSD and erectile conditions are service-related conditions – application remitted for assessment of pension

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
Kirwan and Secretary, Department of Health	[2018] AATA 109
Kristoffersen and Secretary, Department of Social Services	[2018] AATA 524
Monk and Comcare	[2018] AATA 224
Tran and Secretary, Department of Social Services	[2016] AATA 550

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Guo v Minister for Immigration and Border Protection	[2017] AATA 778	[2018] FCAFC 34
Malek Fahd Islamic School Limited v Minister for Education and Training	[2016] AATA 1087	[2018] FCAFC 37
Steve v Minister for Immigration and Border Protection and Anor	[2016] AATA 1054	[2018] FCA 311

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