



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.

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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

[El Gharniti and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 668 (26 March 2018); DK Grigg, Member

CITIZENSHIP – refusal of approval to grant citizenship – whether applicant of good character – failure to disclose previous offence – repeated history of offences while residing in Australia – lack of rehabilitation – decision under review affirmed

[Peskett and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 650 (23 March 2018); Deputy President S Boyle and C Edwardes, Member

CITIZENSHIP – criminal offences – whether applicant of good character – meaning of good character – enduring moral qualities – applicant found not to be of good character – decision under review affirmed

Compensation

[FORD and COMCARE](#) (Compensation) [2018] AATA 648 (21 March 2018); Deputy President SA Forgie

COMPENSATION – injury sustained by employee while ascending steps during travel to work – steps used by general public to gain access to concourse between Spencer Street Station and Etihad Stadium – injury did not arise out of, or in the course of, employment – reviewable decision affirmed

STATUTORY INTERPRETATION – Explanatory Memorandum cannot be used to contradict clear words of statute

PRACTICE AND PROCEDURE – principle of comity – no application in Tribunal proceedings

[Hill and Comcare](#) (Compensation) [2018] AATA 670 (26 March 2018); Miss EA Shanahan, Member

WORKER'S COMPENSATION – left knee meniscal tear arising from playing netball – in the course of employment - arising out of employment – s 6(1)(c) temporary absence from place of work – at the direction or request of the Commonwealth or a licensee – injury occurring at interval between discrete periods of work – decision affirmed

[Stathopoulos and Comcare](#) (Compensation) [2018] AATA 651 (21 March 2018); Deputy President SA Forgie

COMPENSATION – injury sustained by employee while walking through car park to work – car park used by employees of Department of Human Services – injury arises out of, or in the course of, employment – reviewable decision set aside and substituted

Migration

[Azizi and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 669 (20 February 2018); Senior Member MJ McGrowdie

MIGRATION – visa refusal – whether applicant passes the character test – whether Tribunal should exercise discretion to affirm decision – drug addiction – consideration of past and present general conduct – applicant passes character test – decision set aside and remitted.

[FYVY and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 671 (27 March 2018); Senior Member Mrs JC Kelly

MIGRATION – mandatory cancellation – global special humanitarian visa – failure to pass character test – substantial criminal record – applicant sentenced to term of imprisonment of 12 months or more – whether there is another reason to revoke the mandatory cancellation – Ministerial Direction no 65 applied – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community – best interests of minor children – expectations of the Australian community – other considerations – decision affirmed

Practice and Procedure

[SHGH and National Disability Insurance Agency](#) [2018] AATA 674 (27 March 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – jurisdiction – review of participant supports – participant plan due to end before application for review can be determined – alteration of reviewable decision by consent of the parties – manner of recording agreement to alter reviewable decision – Tribunal retains jurisdiction to determine application for review

[YZYJ and Commissioner of Taxation](#) (Taxation) [2018] AATA 672 (22 March 2018); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – power to reinstate an application for review – notice of withdrawal filed by applicant – application taken to be dismissed pursuant to section 42A(1B) – withdrawal due to perceived member bias – whether application dismissed in error – power to reinstate where if error identified – reinstatement application prospects of success – reinstatement application dismissed

Social Security

[Chaplyn and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 673 (22 March 2018); DK Grigg, Member

SOCIAL SECURITY – age pension – whether certain asset to be disregarded in calculating rate of age pension – decision under review set aside and remitted

[Krol and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA (23 March 2018); Mr A. Maryniak QC, Member

SOCIAL SECURITY – claim for disability support pension – assessment of impairments – minimum threshold of 20 points not made out – 5 points assigned for impairment from cervical and lumbar spine condition – decision affirmed

[Philippou and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 649 (23 March 2018); LM Gallagher, Member and C Edwardes, Member

SOCIAL SECURITY – age pension – eligibility for age pension – rate of age pension - International Agreement – Cyprus Agreement – whether residence requirements for age pension satisfied – definition of resident – relevant factors – nature of accommodation – nature and extent of family relationships – nature and extent of person’s employment, business or financial ties - nature and extent of person’s assets – frequency and duration of person’s travel – any other matter - decision set aside and substituted

[XQLW; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 647 (23 March 2018); Dr L Bygrave, Member

SOCIAL SECURITY – family tax benefit – whether respondent entitled to family tax benefit supplement payments – failure to lodge income tax return by statutory date – whether respondent lodged income tax return by the statutory date – whether special circumstances prevented lodgment by statutory date – decision set aside and substituted

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
Singh and Minister for Home Affairs	[2018] AATA 430

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugniet v Tax Practitioners Board	[2017] AATA 1393	[2018] FCA 387
NKWF v Minister for Immigration and Border Protection	[2017] AATA 813	[2018] FCA 409
Tuimaseve v Minister for Immigration and Border Protection and Anor	[2017] AATA 413	[2018] FCA 396
Towle v Secretary, Department of Social Services	[2017] AATA 565	[2018] FCA 407

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