



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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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

[Gampaha Damma Sumithra and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 744 (3 April 2018); Miss EA Shanahan, Member

CITIZENSHIP – citizenship by conferral – failure to take the pledge – applicant repeatedly advised of possible dates for citizenship pledge conferral – failure to respond to written and email correspondence – prolonged absence from Australia – citizenship approval cancelled – application for extension of time received more than two years after cancellation of citizenship – extension of time denied

[Mendoza and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 686 (27 March 2018); Senior Member C Puplick AM

CITIZENSHIP – criminal offence – domestic violence – whether applicant of good character – meaning of good character – misleading Tribunal – lack of acceptance of personal responsibility for offence – applicant found not to be of good character at time of decision – decision under review affirmed

[Mohamad and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 687 (29 March 2018); Senior Member DJ Morris

CITIZENSHIP – application for citizenship by conferral – good character requirement – driving offences disclosed – other driving offences not disclosed – false declaration – factors to take into account – decision affirmed

[Nassif and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 677 (29 March 2018); Dr L Bygrave, Member

CITIZENSHIP – citizenship by conferral – residence requirement – Ministerial discretion – whether there was a close and continuing association with Australia – property interests in Australia – extremely limited physical presence in Australia in relevant period prior to application – application of Citizenship Policy – decision affirmed

[Prapysatok and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 693 (20 March 2018); Senior Member DJ Morris

CITIZENSHIP – citizenship by conferral – whether applicant of good character – series of drink driving offences – misleading answers and false declaration on application form – no recent offences – factors to take into account – decision affirmed.

[Wijewardhanage and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 746 (4 April 2018); Mr M Hyman, Member

CITIZENSHIP – whether the applicant meets the general residence requirements – whether applicant at any time an unlawful non-citizen – whether an unlawful non-citizen because of administrative error – whether applicant’s two children meet the criteria for grant of citizenship – application of the Citizenship Policy – treatment of applications by children where parents’ application refused – application of the Convention on the Rights of the Child – reviewable decision affirmed

Compensation

[Dekker and Australian Postal Corporation](#) (Compensation) [2018] AATA 682 (28 March 2018); Senior Member A Poljak

COMPENSATION – workers compensation – section 14 claim – physical injuries – aggravation of an ailment – whether employment contributed to a significant degree – changes degenerative in nature – decision affirmed

Freedom of Information

[Australian Associated Press Pty Limited and Secretary, Department of Home Affairs](#) (Freedom of information) [2018] AATA 741 (3 April 2018); Senior Member C Puplick AM

FREEDOM OF INFORMATION – request for access to documents – personal information exemption – whether disclosure would involve the unreasonable disclosure of personal information – whether disclosure would be contrary to the public interest – decision affirmed

Migration

[Campbell and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 383 (5 March 2018); Senior Member A Poljak

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – whether there is another reason why the original decision should be revoked – Direction 65 – protection of the Australian community – nature and seriousness of the relevant conduct – the risk conduct may be repeated – evidence of rehabilitation – expectations of Australian community – decision under review set aside – decision in substitution that cancellation decision revoked

[KQHR and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 684 (28 March 2018); Deputy President SA Forgie

MIGRATION – mandatory visa cancellation due to substantial criminal record - refusal to revoke mandatory cancellation – applicant led to believe he had made a ‘valid’ application for a protection visa – review on the papers – no other reason why original decision should be revoked – decision affirmed

PRACTICE AND PROCEDURE – withdrawal of application – dismissed by operation of section 42A(1B) of Administrative Appeals Tribunal Act 1975 – withdrawal and subsequent dismissal induced by error – application for reinstatement granted

[Oluwafemi and Minister for Home Affairs](#) (Migration) [2018] AATA 690 (29 March 2018); Senior Member M Griffin QC

MIGRATION – visa refusal – partner visa – failure to pass character test – Ministerial Direction 65 applied – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community – best interests of child – expectations of Australian community – other considerations – decision affirmed

[Pasziewicz and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 691 (27 March 2018); Senior Member DJ Morris

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass 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 minor children in Australia – expectations of Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

[Ronaki and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 427 (8 March 2018); Senior Member R Cameron

MIGRATION - application for revocation of mandatory cancellation of visa – where applicant fails character test - where applicant warned visa may be cancelled - serious criminal offending – offences involving violence – risk of harm if applicant re-offends - unacceptable risk of applicant reoffending - where Australian community would expect non-revocation - decision affirmed

[XZJP and Minister for Immigration and Border Protection](#) (Migration) [2017] AATA 3060 (30 October 2017); Senior Member MJ McGrowdie

IMMIGRATION – Class BB Subclass 155 Five-year Resident Return visa – whether the delegate’s decision to cancel the applicant’s visa should be revoked under section 501CA(4) of the Migration Act 1958 – the applicant does not pass the character test – substantial criminal record – drug offence – protection of the Australian community – expectations of the Australian community – other considerations – decision affirmed

[BM SYDNEY BUILDING MATERIALS PTY LTD](#) (Migration) [2018] AATA 502 (7 March 2018); Member D Connolly

Migration – Sponsor – Nomination of an occupation for a Subclass 457 visa – Nominee currently working with the Sponsor – in the nominated position – Sales and Marketing Manager – Genuine position – Lower skill level – Mix of the duties of a Retail Buyer and a Retail Manager – Decision under review affirmed

[SHRESTHA](#) (Migration) [2018] AATA 660 (13 March 2018); Member C Carney-Orsborn

Migration – Skilled (Provisional) (Class VC) visa – Subclass 487 (Skilled – Regional Sponsored) – Owner of business supported applicant – Close personal ties – Bogus documents – False work references – Conflicting work and study patterns – Inconsistent evidence – Decision under review affirmed

[Hean](#) (Migration) [2018] AATA 730 (14 March 2018); Member H Sanderson

Migration – Contributory Parent (Temporary) (Class UT) visa – Subclass 173 (Contributory Parent (Temporary)) – Whether visa applicants are parents of the review applicant – Where visa applicants previously adopted out the review applicant – Visa applicants are biological parents of review applicant - Adoption arrangement still in place at time of decision – Decision under review affirmed

[Choudhary](#) (Migration) [2018] AATA 656 (15 March 2018); Member K Chapman

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 – Registered de facto relationship – Extensive financial records provided – Financial position is significantly intertwined – Photographic evidence of the sponsor and the applicant – Committed relationship – Intend to marry and have children together – Consistent oral evidence – Decision under review remitted

[UPADHYAY](#) (Migration) [2018] AATA 659 (16 March 2018); Member K Malyon

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary graduate) – Nominated occupation – Developer Programmer – Satisfies the ‘Australian study requirement’ – Advanced Diploma in Marketing and his Advanced Diploma in Management qualifications – Not closely related to the nominated occupation – Decision under review affirmed

National Disability Insurance Scheme

[LNMT and National Disability Insurance Agency](#) [2018] AATA 431 (6 March 2018); Deputy President K Bean

NATIONAL DISABILITY INSURANCE SCHEME – Applicant a child with blindness, epilepsy and cognitive impairments – Reasonable and necessary supports – Support coordination – Support workers, pool program and aquatic therapy – Respite care – Whether participant plan should be extended - Decision under review varied

[PNFK and National Disability Insurance Agency](#) [2018] AATA 692 (28 March 2018); Professor R McCallum AO, Member

NATIONAL DISABILITY INSURANCE SCHEME – applicant a child with multiple impairments – severe hypoxic ischaemic encephalopathy – profound global developmental delay with cerebral palsy – seizures - cerebral irritability – bulbar palsy – feed intolerance and poor weight gain – mild to moderate hearing impairment - cortical visual impairment – support coordination – core supports – whether supports reasonable and necessary – hours of care for applicant – respite – decision under review varied

Practice and Procedure

[Boxall and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 676 (28 March 2018); Dr M Evans, Senior Member

Extension of time – factors that are relevant when considering an extension of time – length of delay – applicant has arguable case but Tribunal not satisfied extension of time reasonable in all the circumstances - application for extension of time refused

[Guillemain and Comcare](#) (Compensation) [2018] AATA 683 (21 March 2018); Senior Member E Fice

Procedure - extension of time to lodge application for review – the giving of a notice of injury to employer in writing – requirement to make a claim in writing – significant delay – reasons for delay – merits of the application – prejudice to the respondent – extension of time granted

[Sesalim and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 384 (2 March 2018); Deputy President SA Forgie

PRACTICE AND PROCEDURE – administrative case management decision – request for reasons – explanation given but no obligation to give reasons for a decision made on a procedural step in the proceedings that does not resolve an issue.

[Veras Batista and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 679 (2 March 2018); Deputy President S Boyle

CITIZENSHIP – jurisdiction – decision refusing grant of citizenship – whether the Tribunal's jurisdiction excluded by requirement that the applicant be a permanent resident – no jurisdiction

Refugee

[1516465](#) (Refugee) [2018] AATA 718 (27 February 2018); Member N Goetz

Refugee – Protection visa – China – Religion – Falun Gong – Christian – Conversion to Christianity in Australia – Proselytising – Fear of detention – Decision under review remitted

[1606590](#) (Refugee) [2018] AATA 719 (27 February 2018); Member S Baker

Refugee – Protection visa – Malaysia – Political opinion – Blogger – Independence of Sabah – Police investigation – Fear of imprisonment – Death threats – Sedition charges – Crackdown on dissent – Intimidation of political opponents – Decision under review remitted

[1621699](#) (Refugee) [2018] AATA 726 (1 March 2018); Senior Member D Dragovic

Refugee – Cancellation – Protection visa – Iran – Claimed to be an undocumented Faili Kurd – Incorrect information – Held a genuinely issued Iranian passport – No mitigating factors – Acknowledges that the applicant will face hardship upon return – Social group – Returnee from a western country – May reapply for a visa offshore – Decision under review affirmed

[1506370](#) (Refugee) [2018] AATA 720 (6 March 2018); Member C Packer

Refugee – Protection visa – Pakistan – Unsuccessful RRT protection visa appeal – Complementary protection criterion considered – Moderate Sunni – Political opinion against Islamic extremism – Fear of harm from Sunni extremists – westernized returnee – Australian wife and children – Western habits – Ministerial intervention sought – Decision under review affirmed

[1801792](#) (Refugee) [2018] AATA 665 (8 March 2018); Member A Murphy

Refugee – Protection Visa – India – Religion – Follower of Dera Sacha Sauda – Fear of persecution from authorities – Perceived support for criminal activities – Country information does not support applicant’s claims – Witness credibility – Inconsistent evidence – Fear of persecution not mentioned in previous migration matters – Decision under review affirmed

Social Security

[Bertucci and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA (4 April 2018); Ms A Burke, Member

SOCIAL SECURITY – disability support pension – whether qualified – anxiety/depression, obesity and osteoarthritis, disorders are fully diagnosed, treated and stabilised – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision affirmed

[Boussi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 680 (27 March 2018); Senior Member A Poljak

SOCIAL SECURITY – carer allowance – overpayment – whether it is appropriate to write off the debt – whether debt arose solely from administrative error – Waiver – special circumstances – decision varied

[Brinkley and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 743 (21 March 2018); Senior Member RW Dunne

SOCIAL SECURITY – lump sum compensation payment – preclusion period – whether special circumstances exist to justify the exercise of the discretion to disregard all or part of the compensation payment made – ill-health – unwise financial decisions and gambling – decision under review set aside

[Drum and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 742 (3 April 2018); Ms A Burke, Member

SOCIAL SECURITY – youth allowance – whether need to live away from home to get secondary education – whether need to bypass local school to attend private school for great educational opportunities – whether special circumstance exists because of intellectual ability based on offer of scholarship to attend private boarding school

[GFHF and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 675 (28 March 2018); Miss EA Shanahan, Member

SOCIAL SECURITY – claim for disability support pension – lumbar spine and bilateral knee injuries – work related – compensated including impairment lump sum payment – ongoing pain and secondary psychiatric disorder – 25 points impairment rating assigned by Administrative Appeals Tribunal, Social Security and Child Support Division – no Program of Support completed – no vocational training or assistance in job placement – rehabilitation program undertaken for many years under WorkCover provisions – decision affirmed

[Manikantan and Secretary, Department of Jobs and Small Business](#) (Social services second review) [2018] AATA 685 (29 March 2018); Senior Member A Poljak

SOCIAL SECURITY – Newstart allowance – mutual obligation requirement – Newstart Employment Pathway Plan (EPP) – failure to enter a EPP – disagreement with terms of EPP – suspension – failure to report – cancellation – decision affirmed

[Munro and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 688 (20 March 2018); Ms AF Cunningham, Senior Member

SOCIAL SECURITY – age pension – whether person may be treated as not being a member of a couple – no special reason to justify exercise of discretion – decision under review set aside

[Obst and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 689 (9 March 2018); Member Brigadier AG Warner

SOCIAL SECURITY – Pension Bonus Scheme – whether Applicant lodged a valid claim under the prescribed period – concept of deprivation - special circumstances – whether there are special circumstances to allow a longer period for lodging a claim - decision under review affirmed

[Petrovic and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 748 (4 April 2018); Ms K Parker, Member

SOCIAL SECURITY – disability support pension – cancellation decision – whether the applicant has physical, intellectual or psychiatric impairments – back and neck condition – adjustment disorder with mixed anxiety and depressed mood – bilateral hip condition – right heel and foot condition – head injury – chronic pain – oesophageal condition – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised – Tables 3, 4, 5, 7 and 10 of the Impairment Tables – meaning of “assistance” as appearing in the descriptors in the Impairment Tables – meaning of “to stand” and whether it permits a person to alter their weight, standing position or posture – whether the impairments attracted 20 points or more – multiple conditions causing single impairment under any one table – decision affirmed

[Shehata and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 747 (4 April 2018); Ms K Parker, Member

SOCIAL SECURITY – disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – ischaemic heart disease – hypothyroidism – back, neck, shoulder and knee conditions – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised – whether the impairments attracted 20 points or more – decision affirmed

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 749 (28 March 2018); Senior Member C Puplick AM

SOCIAL SECURITY – age pension – assets test – property valuation - decision to reduce social security benefits – decision based on assessment of property value – whether valuation obtained by Centrelink to be preferred to applicant retained private valuer – purpose of valuation – decision affirmed

Superannuation

[Clark and Commonwealth Superannuation Corporation](#) [2018] AATA 681 (22 March 2018);

Deputy President J Sosso

SUPERANNUATION – Defence Force Retirement and Death Benefits Scheme – member resumed continuous full time service – member required to elect whether or not to become member of the Military Superannuation Scheme - whether member made a valid election to remain in DFRDB scheme prior to re-commencing service – requirements to make election – where member completed and sent D 100 form after re-commencing service – decision under review varied (2017/1199) - decision under review affirmed (2017/5110)

Taxation

[PSJF and Commissioner of Taxation](#) (Taxation) [2018] AATA 678 (20 March 2018); Senior

Member T Tavoularis

TAXATION – income tax deductions – where Applicant claimed a number of expenses as work-related deductions – whether Applicant’s travel expenses were work-related – whether Applicant’s other expenses were work-related – burden of proof – where insufficient evidence was brought to show expenses to be work-related – whether administrative penalties were properly imposed – decision under review affirmed

Veterans' Affairs

[Stuart and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 694 (29 March 2018);

Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – veteran deceased – cause of death lung cancer – claim for pension by widow – standard of proof ss 120(1), 120(3) and 120A of the Act – relevant Statement of Principles – whether operational service rendered – whether death related to operational service – whether there is a reasonable hypothesis supported by the relevant SoP – Deledio steps – factors of the SoP are satisfied – reasonable hypothesis raised connecting the death of veteran with his service – decision under review set aside and substituted – applicant entitled to widow’s 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Comcare v Starkey

[\[2017\] AATA 200](#)

[\[2018\] HCATrans 057](#)

[\[2017\] FCAFC 151](#)

Freeman v Military Rehabilitation and Compensation Commission

[\[2016\] AATA 741](#)

[\[2018\] FCA 394](#)

CPJ16 v Minister for Immigration and Border Protection

[\[2017\] AATA 1614](#)

[\[2018\] FCA 450](#)

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