



Administrative
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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.

Child Support

[TTJF and Child Support Registrar](#) (Child support second review) [2018] AATA 875 (10 April 2018); Brigadier AG Warner, Member

CHILD SUPPORT – applicant seeks review of decision to issue a new care determination – assessment of actual care – pattern of care – regular care - decision under review set aside and substituted

[XJGH and Child Support Registrar](#) (Child support second review) [2018] AATA 753 (5 April 2018); Senior Member RW Dunne

CHILD SUPPORT – percentages of care – Federal Circuit Court orders – meaning of care – meaning of pattern of care for the child – "actual care" – determination of extent of actual care – discretion to consider alternative methods of calculating actual care – relevant factors – decision under review set aside

Citizenship

[Choi and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 879 (12 April 2018); Senior Member A Poljak

CITIZENSHIP – eligibility – whether applicant of good character – significant period of unlawfulness in Australia – failure to pay tax – traffic offences – mitigating factors – character references – consideration of applicant's character, circumstances and conduct – decision under review affirmed

[CDNB and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 757 (4 April 2018); Mr M Kennedy, Member

CITIZENSHIP – applications for citizenship – satisfaction as to identity – no primary or secondary documentation produced – inconsistency in evidence – decision under review affirmed

[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

[HLLL and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 771 (29 March 2018); Senior Member DJ Morris

CITIZENSHIP – application for citizenship by conferral – applicant unable to satisfy general residence requirement – whether special residence requirements met – scope of delegate’s decision – requirements not met – decision affirmed

[Ismail and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 852 (10 April 2018); Senior Member A Poljak

CITIZENSHIP – citizenship by conferral – general residence requirement – consideration of discretion in section 22(9) – whether the Applicant had a close and continuing association with Australia during periods of absence – whether the Applicant is likely to, or will continue to, reside in Australia or maintain a close and continuing association – decision set aside and substituted

[Shen and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 766 (9 April 2018); Dr L Bygrave, Member

CITIZENSHIP – citizenship by conferral – permanent resident status requirement – general residence requirement – earlier Australian citizenship approval cancelled – residency status not re-enlivened – administrative error – application of Citizenship Policy – 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

[Kelly and Comcare](#) (Compensation) [2018] AATA 761 (6 April 2018); Miss EA Shanahan, Member

WORKERS’ COMPENSATION – claimed back injury in 2005 – liability accepted for thoracic sprain but not thoracic vertebral fracture – failed return to work programs – permanent impairment lump sum payment – formally ceased work in 2013 – no work performed since December 2010 – applications under s 29 for domestic cleaning and gardening – s 16 for medical costs to be continued – denial of s 16 payment for physiotherapy and osteopathy – decisions affirmed

[Ryan and Comcare](#) (Compensation) [2018] AATA 765 (9 April 2018); Senior Member B Stefaniak AM RFD

WORKER’S COMPENSATION – bilateral carpal tunnel syndrome – whether Respondent is liable to pay compensation to the Applicant – whether Applicant’s injury was contributed to, to a significant degree, by her employment – balance of probabilities – decision affirmed

[Sims and Hayes](#) (Compensation) [2018] AATA 869 (11 April 2018); Deputy President K Bean

WORKERS' COMPENSATION – Seafarers – Jurisdiction – Where applicant injured while working as a deckhand on a ship that is registered in Australia – Where on the relevant voyage the vessel departed from Robe and returned there – Where the catch from the relevant voyage was sold to purchasers that included interstate purchasers – Where respondent does not make a decision within the statutory timeframe – Where the respondent does not comply with the relevant Act in making a reviewable decision – Whether there was a reviewable decision – Whether the vessel was a prescribed ship – Whether the vessel was engaged in trade or commerce among the States

[Want and Comcare](#) (Compensation) [2018] AATA 877 (12 April 2018); Deputy President G Humphries

COMPENSATION – whether disease is clinically significant i.e. abnormal behaviour in the circumstances of the Applicant – whether psychological ailment contributed to, to a significant degree, by employment – whether reasonable administrative action taken in a reasonable manner in respect of the Applicant's employment – where there is a multiplicity of work related and non-work related factors – date on which the psychological ailment was suffered – reviewable decision set aside and substituted.

[Walker Kaye and Comcare](#) (Compensation) [2017] AATA 2998 (13 December 2017); Deputy President G Melick AO RFD SC

COMPENSATION – Commonwealth employees – whether the actions taken by the employer or a continuum of them were reasonable administrative actions carried out in a reasonable manner – whether the administrative action was taken in a reasonable manner by the employer will depend upon the administrative action, the facts and circumstances giving rise to the requirement for the administrative action – what is relevant is an objective assessment of the reasonableness of the action, and the way in which it was carried out – work-related injury – refusal to participate in a salary review was an unreasonable action – adjustment disorder with anxiety and mixed emotional features

[Wissing and Comcare](#) (Compensation) [2018] AATA 768 (9 April 2018); Senior Member E Fice

WORKERS COMPENSATION – 1976 workplace accident – low back pain – settlement reached in 1990 – application of the Compensation (Commonwealth Government Employees) Act 1971 – transition provisions of the Safety, Rehabilitation and Compensation Act 1988 – aggravation or exacerbation of injury – psychological injury

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

[JL and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 754 (6 April 2018); Deputy President BW Rayment

MIGRATION – visa cancellation – applicant does not pass character test – substantial criminal record – Ministerial Direction no. 65 applied – protection of the Australian community – evidence of rehabilitation – long passage of time since last offending – expectations of the Australian community – best interests of minor children – other considerations – ill-health of applicant’s wife – decision set aside and remitted

[Hona and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 773 (9 April 2018); Mr PW Taylor SC, Senior Member

MIGRATION – mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk of reoffending – best interests of minor children – expectations of the Australian community – other considerations – prospect of rehabilitation – decision under review affirmed

[Turanga and Minister for Home Affairs](#) (Migration) [2018] AATA 871 (12 April 2018); Dr L Bygrave, Member

IMMIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – whether delegate’s decision to cancel the applicant’s visa should be revoked under section 501CA(4) of the Migration Act 1958 – applicant does not pass character test – substantial criminal record – progressively serious and violent offending – no other reason why original decision should be revoked – decision affirmed

[ZJYR and Minister for Home Affairs](#) (Migration) [2018] AATA 856 (11 April 2018); Ms A Burke, Member

MIGRATION – visa refusal – applicant is a citizen of the Philippines – applicant applied for a Bridging Visa – applicant does not pass character test in s 501(6) of the Migration Act 1958 – applicant not of good character on account of criminal conduct – whether discretion to refuse visa should be exercised – applicant presents unacceptable risk of re-offending – decision under review affirmed

Practice and Procedure

[The Estate of the Late Ashley Pauling; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 870 (12 April 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – Jurisdiction – whether Tribunal has jurisdiction to review matter – death of party while proceedings on foot – application should be made under section 30(1A) of the Administrative Appeals Tribunal Act 1975 to be made a party to the proceedings – no jurisdiction unless and until application made

[Hutchison and Australian Securities and Investments Commission](#) [2018] AATA 760 (4 April 2018); Deputy President S Boyle

Financial services – banning order – freedom of information request for further documents – request for leave to re-open hearing – whether the Respondent is required to identify all documents to admit in to evidence at the outset of the hearing – request refused

[Mecca and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 752 (15 March 2018); Deputy President G Humphries

PRACTICE AND PROCEDURE – extension of time application – disability support pension – whether reasonable in all the circumstances – explanation of the delay – whether any prejudice to the Respondent – whether applicant has an arguable case – extension of time granted

[Milde and Commonwealth Superannuation Corporation](#) [2018] AATA 763 (29 March 2018); Senior Member P Britten-Jones

PRACTICE AND PROCEEDURE – extension of time – application for review is discontinued under s 42A(1A) – deemed dismissal under s 42A(1B) – second application for review brought – is Tribunal functus officio – effect of a notice of discontinuance – Tribunal has jurisdiction to hear second application for review – extension of time granted

[Szmekura-Moor; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 868 (11 April 2018); Dr M Evans, Senior Member

Practice and procedure – stay application with respect to AAT Tier 1 decision - Disability Support Pension – relevant factors – financial hardship - respondent difficulty in repaying debt – whether stay order would secure effectiveness of hearing – stay order granted for arrears but refused for ongoing payments

Professions and Trades

[Smithson & Baye Pty Ltd and Australian Securities and Investments Commission](#) [2018] AATA 857 (29 March 2018); Deputy President IR Molloy

ASIC – Contravention of National Consumer Credit Protection Act 2009 – Australian Securities and Investments Commission – purchase of properties – asset buying activities – top up loans – regulation of loans – loan agreements – breaches – suspension and cancelling of licence – not a fit and proper person – cancellation of Australian credit licence

Social Security

[Bertucci and Secretary, Department of Social Services](#) (Social services second review) [2018] 745 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

[Blackford and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 755 (6 April 2018); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – mental health condition – spinal condition – right wrist condition – decision affirmed

[Brown and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 769 (22 March 2018); Senior Member RW Dunne

SOCIAL SECURITY – pensions, benefits and allowances – Family Tax Benefit – apportionment of shared care of children – correct percentage of care – decision under review affirmed

[Brown and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 770 (23 March 2018); Senior Member RW Dunne

SOCIAL SECURITY – pensions, benefits and allowances – overpayment – correct entitlement to Family Tax Benefit and Parenting Payment Single – whether excess payments are debts that are recoverable in part or in full – waiver – whether special circumstances exist – decision under review set aside

[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

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 855 (11 April 2018); Ms DK Grigg, Member

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

[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

[Lai and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 854 (11 April 2018); Ms DK Grigg, Member

FAMILY ASSISTANCE – family tax benefit – overpayment – where no administrative error – where no special circumstances – decision under review affirmed

[Lau and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 762 (10 April 2018); Senior Member DR Davies

SOCIAL SECURITY – Youth Allowance – Successive claims with last claim being successful - Whether payments may be backdated to date of first claim – Provisions governing the date from which payments may be made – No discretion to pay entitlement from earlier date – Decision under review affirmed

[McDougall and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 756 (6 April 2018); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – upper limb conditions – carpal tunnel syndrome – tennis elbow – shoulder condition – trigger thumb – osteoarthritis of thumb and the hands – lower limb condition – spinal condition – lower limb condition – other conditions – decision affirmed

[Nutt and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 764 (6 April 2018); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the relevant period – whether Applicant had 20 impairment points – lower limb condition – upper limb condition – crush injury – Applicant has 0 impairment points – decision under review is 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

[Teuati and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 853 (11 April 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 is affirmed

[Watts and Secretary, Department of Social Services](#) (Social services) [2018] AATA 876 (12 April 2018); Ms L M Gallagher, Member and Mr C Edwardes, Member

SOCIAL SECURITY – disability support pension – whether applicant had conditions that were fully diagnosed, treated and stabilised – spinal condition fully diagnosed but not fully treated and fully stabilised – pain management program - mental health condition not fully diagnosed – decision under review affirmed

[White and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 767 (6 April 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – whether impairments attract 20 points or more on Impairment Tables – decision under review affirmed

[Williams; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 858 (11 April 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 affirmed

Taxation

[MMFT and Commissioner of Taxation](#) (Taxation) [2018] AATA 772 (5 April 2018); Senior Member E Fice

TAXATION – income tax – overdue income tax returns – contractor – rental income – rental deductions - default assessment – objection disallowed – onus of proof – whether or defaults assessment excessive - work-related travel expense deductions – liability to administrative penalties – remission of penalties under Taxation Administration Act 1953 – discretion to remit

Veterans' Affairs

[Forrest and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 759 (4 April 2018); Miss EA Shanahan, Member

VETERANS' AFFAIRS – claim for increase in disability pension – dispute as to lifestyle rating – seeking extreme disablement adjustment – not eligible for special or intermediate rate – earlier hearing discontinued on the basis of an entry mistake in the current entitlements – reliance on transcript – issue as to whether incapacity related to accepted disabilities – decision affirmed

[O'Malley and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 878 (12 April 2018);
Senior Member T Tavoularis

VETERANS' ENTITLEMENTS – where Applicant is in receipt of the pension at 80% of the General Rate – where Applicant seeks to claim new conditions – adjustment disorder – where Applicant seeks an increase in the rate of pension – where Applicant seeks the pension at the Special Rate or the Intermediate Rate – whether Applicant's adjustment disorder is related to service – where Statement of Principles in force at time of claim has been replaced – which Statement of Principles should be applied – where adjustment disorder is not related to service – “alone” test – whether Applicant prevented from undertaking work due to accepted conditions alone – whether ameliorating provisions apply – decision under review affirmed

PRACTICE AND PROCEDURE – where Applicant seeks to claim new conditions without lodging a formal claim first – post-traumatic stress disorder – major depressive disorder – whether Tribunal has jurisdiction to hear the newly claimed conditions – where original claim limited in scope – the Tribunal lacks jurisdiction to determine liability for newly claimed conditions

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
Adamthwaite and Comcare	[2018] AATA 5
QFFD and Minister for Immigration and Border Protection	[2017] AATA 2179

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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