



Administrative
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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.

Child Support

[Vanwell and Heatley](#) (Child support) [2018] AATA 535 (19 January 2018); Member P Glass

Child Support – Percentage of care – Determination of the likely pattern of care – Decision under review set aside and substituted – Date of effect of the Tribunal's decision – Whether special circumstances prevented the application being lodged on time – Refusal to make a determination under subsection 95N(2) – Decision under review set aside

[Bright and Roden](#) (Child support) [2018] AATA 528 (18 January 2018); Senior Member R Ellis

Child Support – Departure determination – Income and financial resources of parents – Business income – Decision under review set aside and substituted

[Forsyth and Ellingham](#) (Child support) [2018] AATA 533 (22 January 2018); Member S Brakespeare

Child support – Departure determination – High cost of child care – Cost of education – Decision under review affirmed

[Levin and Luxton](#) (Child support) [2018] AATA 534 (30 January 2018); Member A Grant

Child Support – Income estimate – Date of election – Decision under review affirmed

[Harwood and Harwood](#) (Child support) [2018] AATA 532 (25 January 2018); Member J Cuthbert

Child Support – Non-agency payments – Whether payments for child care are prescribed – Decision under review set aside and substituted

Citizenship

[Hussein and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 965 (20 April 2018); Ms A Burke, Member

CITIZENSHIP – cancellation of approval for Australian citizenship by conferral – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review affirmed

Compensation

[Haughey and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 969 (23 April 2018); Deputy President J Sosso

COMPENSATION – claim for compensation for an injury – adjustment disorder as a result of an attack while on base – Statement of Principles concerning adjustment disorder – whether Applicant is entitled to compensation for claimed injury

Corporations

[Bolton and Australian Securities and Investments Commission](#) [2018] AATA 976 (24 April 2018); Deputy President SA Forgie

CORPORATIONS LAW – ASIC disqualification order – power to disqualify – whether any breach of s 206A a relevant consideration for the purposes of s 206F – extension of disqualification order possible during proceedings – Tribunal may have regard to whether an applicant has acted in contravention of s 206A of the Corporations Act in the period following being disqualified from managing corporations under s 206F as a step in making an administrative decision

PRACTICE AND PROCEDURE – AAT Act 1975 allows Tribunal to take into account conduct and material up to date of decision – *Shi v Migration Agents' Registration Authority* applicable – s 206F of Corporations Act 2001 does not limit conduct to which decision maker may have regard

EVIDENCE – admissibility of evidence given in proceedings in the Tribunal in relation to disqualification admissible in criminal proceedings – protection against self-incrimination – contempt of court only possible where there would be interference with due administration of law

Education and Research

[Killen and Secretary, Department of Education and Training](#) [2018] AATA 774 (8 February 2018); Senior Member B Stefaniak

HIGHER EDUCATION SUPPORT – refund of student fees – special circumstances – whether the Applicant's circumstances were beyond her control – medical evidence – Tribunal does not find special circumstances – decision affirmed

Migration

[Healy and Minister for Home Affairs](#) (Migration) [2018] AATA 1051 (13 April 2018); Mr C Edwardes, Member

MIGRATION – decision to refuse a visa – failure to pass character test – where applicant has substantial criminal record – South Africa -- culpable homicide (motor vehicle accident) – primary considerations weigh in favour of granting visa – risk of reoffending low – best interests of minor children – expectations of the Australian community – other considerations – decision under review is set aside

[JNMK and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 971 (24 April 2018); Deputy President S Boyle

Migration – visa refusal – character test – substantial criminal record – driving without a licence – driving under the influence – dangerous driving occasioning death – protection of the Australian community – expectations of the Australian community – best interests of the child – rights of an unborn child – decision under review affirmed

[WDCH and Minister for Home Affairs](#) (Migration) [2018] AATA 1052 (26 April 2018); Dr L Bygrave, Member

MIGRATION – mandatory visa cancellation – employer nomination scheme visa – failure to pass character test – substantial criminal record – sentenced to a term of imprisonment of 12 months or more – whether there is another reason to revoke the cancellation decision – Direction 65 applied – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – decision affirmed

[YKZZ and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 970 (23 April 2018); Senior Member MJ McGrowdie

IMMIGRATION AND CITIZENSHIP – visa cancellation – failure to pass character test – substantial criminal record – whether discretion be exercised to revoke the mandatory cancellation of the applicant's visa – Ministerial Direction no 65 applied – protection of the Australian community – seriousness and nature of the relevant conduct – the risk that conduct may be repeated – expectations of Australian community – impact on victims of applicant's criminal conduct – impact on applicant's family

[APEX Protection Group Pty Ltd](#) (Migration) [2018] AATA 1020 (21 March 2018); Member H Sanderson

Migration – Business sponsorship approval – Did not provide any further information to support sponsorship – Nomination of an occupation for a Subclass 457 visa – Dog handler – Business claims to have a security services contract – No evidence of the work contract – No current financial documents have been provided application – Did not meet the criteria in r.2.72 – No genuine position – Decision under review affirmed

[Elmasoglu](#) (Migration) [2018] AATA 989 (21 March 2018); Member H Claringbold

Migration – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – Spent her formative years in Australia – Visited Australia several times – Estranged father lived in Australia – No assets in Australia – De facto family in Australia – No substantial ties – Unable to meet Subclass 157 criteria – Decision under review affirmed

[Farah](#) (Migration) [2018] AATA 847 (26 March 2018); Member M Bourke

Migration – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – Sponsor – Applicant's brother – New Zealand citizen – Not an 'eligible New Zealand citizen' – Tribunal unable to redefine the status of the sponsor – Decision under review affirmed

[Chan](#) (Migration) [2018] AATA 845 (28 March 2018); Senior Member K Raif

Migration – Other Family (Residence) (Class BU) visa – Subclass 838 (Aged Dependent Relative) – Sponsored by niece – Joint bank account with niece and nephew – Close relationship with niece and nephew – Whether reliant on sponsor for basic needs – Whether reliance on sponsor greater than reliance on any other source – No evidence of applicant being incapacitated for work – Decision under review affirmed

[GILL](#) (Migration) [2018] AATA 874 (28 March 2018); Member I Berry

Migration – Visitor (Class FA) visa – Tourist stream – First visits to Australia to visit sister – Tribunal sought further information – Applicants did not comply with the timeframe – Application determined “on the papers” – Reasonable financial position – Satisfied the applicant will comply with visa conditions – Decision under review remitted

National Disability Insurance Scheme

[Perosh and National Disability Insurance Agency](#) [2018] AATA 980 (23 April 2018); Professor R McCallum AO, Member

NATIONAL DISABILITY INSURANCE SCHEME – applicant with cerebral palsy – reasonable and necessary supports – whether costs of transport to TAFE, the gym and outings is a reasonable and necessary support – whether supports should be fully funded – McGarrigle considered – decision under review varied

[Way and National Disability Insurance Agency](#) [2018] AATA 983 (11 April 2018); Professor R McCallum AO, Member

NATIONAL DISABILITY INSURANCE SCHEME – acquired brain injury – high intensity classification – Applicant cared for in group home – reasonable and necessary supports – whether further funding to take applicant on outings is a reasonable and necessary support – underspent funding – decision under review affirmed

Practice and Procedure

[Hoek and MMA Offshore PTY LTD](#) [2018] AATA 1053 (06 April 2018); Mr C Edwardes, Member

PRACTICE AND PROCEDURE – Stay Application – hardship to respondent resulting from refusal of stay considered – likely prospect of recovery of moneys by respondent’s insurer considered – prospects of success of applicant’s application for review of decision considered - Stay refused in respect of arrears – Stay granted in respect of ongoing payments

[Nugawela, Bankrupt and Commissioner of Taxation](#) [2018] AATA 979 (12 March 2018); Deputy President S Boyle

PRACTICE AND PROCEDURE – applicant bankrupt – standing to progress applications – abandonment of application – dismissal of application – power of Tribunal if a proceeding is frivolous, vexatious etc

[Sand Goanna Institute Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 981 (23 April 2018); Senior Member BJ Illingworth

PRACTICE AND PROCEDURE – Summonses – Whether summons was addressed to the correct recipient – Whether documents sought under the proposed summons are relevant to the decision under review – Whether a summons can be issued to a party to the proceedings – Summons set aside

[Stanley and Minister for Foreign Affairs](#) [2018] AATA 982 (20 April 2018); Dr M Evans, Senior Member

PRACTICE AND PROCEDURE – application for dismissal of application for review – whether Tribunal satisfied that application is frivolous, vexatious – whether no legitimate purpose can be achieved by continuing application – whether outcome of proceedings would be futile and/or have no practical effect – application for review dismissed pursuant to s 42B(1)(a) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Taylor and Comcare](#) (Compensation) [2018] AATA 972 (24 April 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – acceptable explanation of the delay – fair and equitable in the circumstances – rested on his rights – prejudice to the respondent caused by the delay – prejudice as a result of the extension – merits of the substantial application – considerations of fairness as between the applicant and other persons

Refugee

[1601454](#) (Refugee) [2018] AATA 933 (1 March 2018); Member N Burns

Refugee – Protection visa – Zimbabwe – Political opinion – Movement for Democratic Change – Opposition to ZANU-PF – ZANU-PF supporters – Youth militia – Exposing electoral fraud in 2013 – Electoral violence – Physical and sexual assault – Control over state security institutions – Decision under review remitted

[1707843](#) (Refugee) [2018] AATA 1004 (7 March 2018); Senior Member L Nicholls

Cancellation – Refugee – Protection visa – Stateless – Iran – Providing incorrect answers in visa application – Citizenship – Race – Faili Kurd ethnicity – Iranian citizenship – Civil rights – Attacks from Basij militia – Airport departure processes – Bribes – Decision under review set aside

[1514543](#) (Refugee) [2018] AATA 920 (16 March 2018); Member K Chapman

Refugee – Protection Visa – Fiji – Particular social group – Homosexual – Fear of societal discrimination and harm – Previous adverse incidents – Country information does not support applicant's claims – Witness credibility – Vague and inconsistent evidence – Decision under review affirmed

[1801329](#) (Refugee) [2018] AATA 996 (4 April 2018); Member R Smidt

Refugee – Protection Visa – Afghanistan – Particular social group – Hazara – Religion – Shia Muslim – Increasing instance of sectarian violence in home country – State protection not available – Decision under review remitted

[1512678](#) (Refugee) [2018] AATA 929 (5 April 2018); Member N Goetz

Refugee – Protection visa – China – Family members – Individual protection visa applications remitted to the Federal Court – Minor applicant – Social discrimination – Child born out of wedlock – Parents breached China’s one child policy – Unable to pay social compensation fee – Fears being taken away by authorities – Family’s Christian beliefs – Claims inconsistent with country information – Credibility concerns – Decision under review affirmed

Social Security

[Baranek and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 967 (23 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

[Chapman and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 973 (18 April 2018); Member L M Gallagher and Member C Edwardes

SOCIAL SECURITY – disability support pension – whether applicant had conditions that were fully diagnosed, fully treated and fully stabilised – whether applicant had 20 impairment points - whether applicant had severe impairment – spinal condition – lower limb condition – mental health condition - decision under review affirmed

[Hockey and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 978 (20 April 2018); Ms DK Grigg, Member

FAMILY ASSISTANCE – family tax benefit and schoolkids bonus – overpayment – where administrative error – whether payments received “in good faith” - decision under review set aside

[Perich and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 963 (19 April 2018); Deputy President S Boyle and Dr M Evans, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits - disability support pension – whether the applicant has an impairment rating of 20 points or more under Impairment Table 4 and a continuing inability to work – degenerative spinal condition – AAT Tier 1 decision affirmed

[Robinson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 966 (20 April 2018); Deputy President K Bean

SOCIAL SECURITY – Disability support pension – Lower spine fusion – Whether applicant’s conditions were fully diagnosed, treated and stabilised – Whether conditions attracted 20 points under the Impairment Tables – Decision under review affirmed

[Wells; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 974 (24 April 2018); Ms DK Grigg, Member

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

[WHYW and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1050 (24 April 2018); Senior Member RW Dunne and Senior Member BJ Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension – physical, intellectual or psychiatric impairment – whether an impairment rating of 20 points or more exists under the Impairment Tables – medical reports considered – Job Capacity Assessment report considered – whether continuing inability to work – whether applicant actively participated in a program of support – decision under review affirmed

[Xie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 968 (23 April 2018); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – whether impairments are physical, intellectual or psychiatric – whether impairments amount to 20 points or more – continuing inability to work – Table 3 – Table 5 – decision affirmed

[Zhumabekov and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 975 (24 April 2018); Dr I Alexander, Member

SOCIAL SECURITY – Disability Support Pension – 20 points or more under the Impairment Tables – autoimmune condition – rheumatoid arthritis – other conditions – decision under review is affirmed

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 |
|---|----------------------------------|
| Mason and John Holland Pty Ltd | [2018] AATA 415 |
| Nugawela, Bankrupt and Commissioner of Taxation | [2018] AATA 979 |
| Singh and Minister for Immigration and Border Protection | [2017] AATA 2031 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|--|----------------------------------|--|
| Comcare v Drinkwater | [2017] AATA 1228 | [2018] FCAFC 62 |
| Comcare v Wuth | [2015] AATA 947 | [2018] FCAFC 60 [2018] FCAFC 13 [2017] FCA 433 |
| Griffiths v Australian Postal Corporation | [2017] AATA 1025 | [2018] FCA 520 |
| Jikoivavalagi v Minister for Immigration and Border Protection | [2017] AATA 2098 | [2018] FCA 559 |
| Kohli v Minister for Immigration and Border Protection & Anor | [2017] AATA 1326 | [2018] FCA 540 |

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