



Administrative
Appeals Tribunal

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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

[Nguyen and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1082 (30 April 2018); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – whether the applicant is of good character – making false statements in citizenship applications – application of Citizenship Policy – decision affirmed

[Shah and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1085 (1 May 2018); Senior Member T Tavoularis

CITIZENSHIP – citizenship by conferral – where citizenship application took over four years to process – where Applicant resided overseas for much of that time – where Applicant meets most other requirements for citizenship – section 21(2)(g) of the Citizenship Act 2007 (Cth) – whether Applicant is likely to reside or to continue to reside in Australia – whether Applicant is likely to maintain a close and continuing relationship with Australia – whether Applicant has sufficient ties to the Australian community – decision under review affirmed

Compensation

[Snell and Commonwealth of Australia](#) (Compensation) [2018] AATA 1107 (2 May 2018); Senior Member T Tavoularis

COMPENSATION – seafarers compensation – metastatic malignant melanoma – whether the Applicant's employment contributed to in a material way his condition – where Applicant had spent more than forty years at sea – degree of permanent impairment – calculation of non-economic loss – decision under review set aside and remitted

PRACTICE AND PROCEDURE – issue estoppel – Matusko methodology – where Applicant had previously been successful before the Tribunal in a consent decision – where then-Respondent had accepted liability for broad range of solar induced skin conditions – whether issues the same – whether connection between Applicant's current and former conditions – where Applicant's current condition the same as one for which liability had been accepted – whether there is a reason to allow re-litigation – where Respondent sought to adduce new evidence – whether Respondent could have adduced the same or similar evidence in earlier proceedings – whether justice to the parties favours re-litigation – the discretion to allow re-litigation was not enlivened

Defence

[Seizovic and Commonwealth Superannuation Corporation](#) [2018] AATA 1084 (1 May 2018); Deputy President Dr P McDermott RFD

DEFENCE – Defence force retirements and death benefits – service in Royal Australian Navy – medical discharge – invalidity benefit granted – applicant classified as Class C – the kinds of civil employment that might be reasonably undertaken – the degree to which the retirement impairments diminished the applicant’s capacity to undertake the kinds of civil employment – the applicant could reasonably undertake the role of mechanical engineering technician – applicant to be classified as Class B – decision set aside

Freedom of Information

[Lever and Comcare](#) (Freedom of information) [2018] AATA 1089 (27 April 2018); Deputy President, The Hon. D Cowdroy OAM QC

FREEDOM OF INFORMATION – request access to certain documents – decision not to continue review – notice under section 71 – whether documents are documents of an agency – constructive possession – legal professional privilege – allegation of fraud and misleading conduct – decision varied

[Theophanous and Australian Criminal Intelligence Commission](#) (Freedom of information) [2018] AATA 1106 (1 May 2018); Deputy President BW Rayment

FREEDOM OF INFORMATION – scope and search – Tribunal satisfied that respondent took all reasonable steps to locate relevant documents – exemption – legal professional privilege – whether “real harm” caused if documents subject to legal professional privilege exemption claim were produced – power to release exempt document does not arise under Freedom of Information Act 1982 -whether waiver of privilege – privilege not waived – documents affecting enforcement of law – personal privacy exemption – business name exemption – certain operation of agencies exemption – decision affirmed

Migration

[GSKD and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1078 (27 April 2018); Deputy President S Boyle

Migration – refusal of a visa – visa applicant overseas – substantial criminal record – protection of the Australian community from criminal or other serious conduct – sexual crimes are to be viewed seriously – risk to the Australian community – best interests of the child – decision under review affirmed

[Kumar and Minister for Home Affairs](#) (Migration) [2018] AATA 1105 (2 May 2018); Mr A Maryniak QC, Member

MIGRATION – refusal to grant Employer Nomination (Permanent) (Class EN) visa – Applicant has conviction of sexually based offence involving 17 year old child – refuse to grant a visa – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of Australian community – other considerations – decision under review set aside and remitted

[LPGJ and Minister for Home Affairs](#) (Migration) [2018] AATA 1075 (27 April 2018); Senior Member R Cameron

MIGRATION – non-revocation of mandatory visa cancellation – applicant has had multiple terms of imprisonment exceeding 12 months – applicant fails character test by virtue of substantial criminal record – protection of Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – decision under review affirmed

MIGRATION – other considerations in deciding whether to revoke a mandatory cancellation of a visa – international relations – request by applicant that the Tribunal contact UK Government to ascertain their view on the possible return of the applicant to the United Kingdom – practical difficulties in making such an inquiry – attitude of a foreign state towards the return of a non-citizen with a history of criminal conduct is an irrelevant consideration for the Tribunal in ss 501/501CA character matters – request refused

[Siueva and Minister for Home Affairs](#) (Migration) [2018] AATA 1079 (27 April 2018); Brigadier AG Warner, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant 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 – expectations of the Australian community – other considerations -strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

Practice and Procedure

[Australian College of Vocational Studies Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 1088 (20 March 2018); K Parker, Member

PRACTICE AND PROCEDURE – request for stay orders – decisions under review were decisions to cancel a training organisation’s registration under the National Vocational Education and Training Regulator Act 2011 (Cth) and under the Education Services for Overseas Students Act 2000 (Cth) – section 41 of the Administrative Appeals Tribunal Act 1975 (Cth) – factors to be considered in deciding whether to grant a stay – stay granted subject to certain conditions

[Bradley and Secretary, Department of Education and Training](#) [2018] AATA 1074 (27 April 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – extension of time application – whether it is reasonable in all the circumstances to grant the extension – explanation for delay – whether substantive matter has merit – remission of HECS-HELP debt – units of study already completed – no jurisdiction to review decision – extension of time application refused

[Lever and Comcare](#) (Freedom of information) [2018] AATA 1090 (26 April 2018); Deputy President, The Hon. D Cowdroy OAM QC

PRACTICE AND PROCEDURE – application for recusal on grounds of actual or apprehended bias – application refused

[Lever and Comcare](#) (Freedom of information) [2018] AATA 1091 (26 April 2018); Deputy President, The Hon. D Cowdroy OAM QC

PRACTICE AND PROCEDURE – request for adjournment of second interlocutory hearing – multiple requests for adjournment – application for adjournment refused

[Moretta and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1086 (1 May 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – extension of time application – whether it is reasonable in all the circumstances to grant the extension – explanation for delay – whether substantive matter has merit – citizenship by conferral – likely to, or will continue to, reside in Australia or maintain a close and continuing association – extension of time application granted

Passports

[S and Minister for Foreign Affairs](#) [2018] AATA 1083 (27 April 2018); Deputy President BW Rayment

PASSPORTS – Australian citizen refused a passport – where applicant is a child – applicant residing in Vietnam – where arrangements for schooling of child in Australia if passport issued – where child will live with family friend in Australia – consent for child to be issued with a passport withheld by one parent – effect of passport refusal on child's welfare – Vietnamese court orders – application of Minister's Determination at the time of refusal and on review – where applicant has previously been issued a passport – consideration of Australia's obligation in relation to the [Hague] Convention on the Civil Aspects of International Child Abduction – decision under review set aside and substituted

Social Security

[Bensen and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1076 (27 April 2018); Deputy President J Sosso

SOCIAL SECURITY – newstart allowance – sickness allowance – austudy payment – overpayments – payments under income protection insurance policies - whether debts against the Commonwealth are owed – Whether income insurance payments are 'ordinary income' – whether income insurance payments are 'compensation' - debt write off – whether sole administrative error - special circumstances – matters of relevance in determining special circumstances – decision under review affirmed

[Dickson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1087 (27 April 2018); M Hyman, Member

SOCIAL SECURITY – disability support pension – whether conditions fully diagnosed, fully treated and fully stabilised – degenerative condition of both knees – hearing loss – tinnitus – construction of Table 11 of the Impairment Tables – decision affirmed

[Manjunath and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1077 (27 April 2018); Senior Member R Cameron

SOCIAL SERVICES – Disability Support Pension (DSP) – indefinite portability – maximum portability period – extended portability period – cancellation of DSP – portability of DSP – period of absence – temporary absence – whether a person is residing in Australia – whether travel was for humanitarian purpose or acute family crisis – eligible medical treatment – severely impaired – advance payment of Social Security benefits – deduction from DSP – whether advance payment is refundable – decision under review affirmed

[McMahon and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1081 (30 April 2018); Ms A Burke, Member

SOCIAL SECURITY – disability support pension – whether qualified – small fibre polyneuropathy and a mental health disorder 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 under review affirmed

[Nunn and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1080 (27 April 2018); Senior Member Ms AF Cunningham

SOCIAL SECURITY – disability support pension – severe impairment – hearing loss – continuing inability to work provision is not satisfied – decision under review affirmed

Appeals

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Appeals lodged

CASE NAME	AAT REFERENCE
Ford and Comcare	[2018] AATA 648
Forrest and Repatriation Commission	[2018] AATA 759
GJQD and Minister for Immigration and Border Protection	[2018] AATA 2
Manikantan and Secretary, Department of Jobs and Small Business	[2018] AATA 685
NWLH and Minister for Immigration and Border Protection	[2017] AATA 2034
Stathopoulos and Comcare	[2018] AATA 651
Vaofusi and Minister for Immigration and Border Protection	[2017] AATA 2585

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Minister for Immigration and Border Protection v VDQS	[2017] AATA 1420	[2018] FCA 574

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