



Administrative
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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.

Child Support

[Noyce and Eales](#) (Child support) [2018] AATA 954 (27 February 2018); C Breheny, Member

Child support – Percentages of care – Revocation of existing determinations – New determination of percentages of care – Both parents have less than 35% care – Terminating event – Decision under review affirmed

[Werner and Werner](#) (Child support) [2018] AATA 947 (7 March 2018); S Letch, Member

Child support – Particulars of the administrative assessment – Taxable income assessed by the Australian Tax Office – Adjusted taxable income correctly applied – Decision under review affirmed

[Boulton and Maloney](#) (Child support) [2018] AATA 958 (6 March 2018); Y Webb, Member

Child support – Care percentage – Date of effect of objection decision under subsection 87AA(2) – Whether the objection was lodged late – Objection lodged within time – Decision under review set aside and substituted

[Carling and Child Support Registrar](#) (Child support) [2018] AATA 959 (8 March 2018); P Jensen, Member

Child support – Particulars of the administrative assessment – Adjusted taxable income applied for past period – Refusal to grant extension of time to object – Incorrect determination of adjusted taxable income – Potential merit – Decision under review set aside and substituted that extension of time be granted

Child support – Particulars of the administrative assessment – Adjusted taxable incomes applied for past periods – Refusal to grant extension of time to object – Poor prospects of success – Decisions under review affirmed

Compensation

[Chu Yu Chee and Comcare](#) (Compensation) [2018] AATA 1241 (3 May 2018); Deputy President S Boyle and Dr M Evans, Senior Member

COMPENSATION – Commonwealth employee – sprain of shoulder and upper arm – accepted conditions – whether applicant continues to suffer from the effects of the injury – whether applicant presently entitled to medical expenses or incapacity payments – decision under review affirmed

[MacGinnes and Residual Assco Group Limited](#) (Compensation) [2018] AATA 1248 (7 May 2018); Deputy President K Bean

WORKERS' COMPENSATION – Seafarers – Jurisdiction – Respirable asbestos fibres – Whether there has been a default event – Whether reviewable decisions are deemed to have been made – Whether there can be proper service of a claim on a deregistered company – Whether re registration of company can retrospectively validate service of a claim – Whether time limit to apply for reconsideration applies with respect to deemed decisions – Where Minister has made a declaration under the Act – Where the Seacare Authority is acting as the Seacare Fund – Whether time limits to make determinations and issue reconsiderations apply to the Seacare Authority

[Mackay and Comcare](#) (Compensation) [2018] AATA 1244 (3 May 2018); Deputy President J Sosso

COMPENSATION – whether medical treatment in relation to the Applicant's compensable injury – whether medical treatment reasonable for the Applicant to obtain in the circumstances – whether the Applicant is incapacitated for work as a result of a compensable injury – whether the Applicant continues to suffer from the effects of his compensable low back injury of 1995 or whether the Applicant's injury of 1995 had resolved itself – reviewable decision set aside and substituted

[Tucker and Comcare](#) (Compensation) [2018] AATA 1251 (10 May 2018); Senior Member E Fice

COMPENSATION – claim for permanent impairment and non-economic loss – claim for household and attendant care services – 10% whole person impairment – 28% non-economic loss – decision on permanent impairment and non-economic loss set aside and remitted with directions in accordance with Tribunal reasons – Applicant able to provide for her personal care and does not reasonably require assistance with household or attendant care services – decision on household and attendant care services affirmed

PRACTICE AND PROCEDURE – evidence – no evidence from any witness who has observed the Applicant's degree of incapacity arising from psychological injury – medical practitioners who have treated Applicant relied exclusively on her self-reporting of what she can and cannot do – Tribunal asked to form a view on credibility of applicant's evidence – demeanour in the witness box not necessarily indicative of the truthfulness of a witness – objective evidence against which an applicant's evidence can be compared is preferable

Migration

[Usaalii and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1112 (3 May 2018); Deputy President JW Constance

MIGRATION – mandatory visa cancellation – character test – discretion to revoke mandatory visa cancellation – protection of the Australian community – nature and seriousness of conduct – robbery in company – assault – risk to community should conduct be repeated – best interests of minor children – expectations of Australian community – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

[Badoola](#) (Migration) [2018] AATA 1167 (4 April 2018); N McGowan, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – MOC assessment – Visa applicant has a moderate functional impairment – Condition is stable – New MOC is unnecessary – Granting of the visa would be unlikely to result in undue cost to the Australia community – Decision under review remitted

[SINGH](#) (Migration) [2018] AATA 1146 (5 April 2018); W Banfield, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – Last enrolment had been cancelled – Not currently enrolled in a registered course of study – Criteria for the grant of a Subclass 500 (Student) visa are not met – Decision under review affirmed

[Zhang](#) (Migration) [2018] AATA 1203 (6 April 2018); S Trotter, Member

Migration – Parent (Migrant) (Class AX) – Subclass 103 (Parent) visa – Whether the review applicant is a settled Australian citizen – Extended time away from Australia – Cared for parents in China – Continued with his business in Australia – Review applicant elected for his children to be Australian citizens – Family has moved back to Australia – Child at school in Australia – Decision under review remitted

Practice and Procedure

[ZHRM and Child Support Registrar](#) (Child support second review) [2018] AATA 1246 (4 May 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – Jurisdiction – whether Tribunal has jurisdiction to review matter – child support – first review application dismissed under section 42B – second tier Tribunal review only available for certain decisions – no jurisdiction

Refugee

[1712839](#) (Refugee) [2018] AATA 1216 (12 March 2018); M Hawkins, Member

Refugee – Protection visa – Solomon Islands – Threats – Expired Visa – Credibility – Decision under review affirmed

[1723913](#) (Refugee) [2018] AATA 1210 (14 March 2018); C Smolicz, Member

Refugee – Protection visa – Vietnam – Economic reasons – Unpaid debt – Poor government system – Credibility – Decision under review affirmed

[1509008](#) (Refugee) [2018] AATA 1218 (16 March 2018); L Mojsin, Member

Refugee – Protection visa – Georgia – Imputed political opinion – United National Movement branch coordinator – Fear of Harm – Threatened by Georgian Dream party members – Family went into hiding – Divorced wife on papers – Enable the applicants wife to depart on a different name – 1 year delay in leaving Georgia – Credibility concerns – Inconsistent evidence – Created his claims in order to obtain the visa – No adverse political profile – Decision under review affirmed

[1517869](#) (Refugee) [2018] AATA 1061 (21 March 2018); A B Baker, Member

Refugee – Protection visa – Sri Lanka – Ethnicity – Tamil – Political opinion – Imputed with anti-government opinion – Social group – Young Tamil woman – Extended family of LTTE member – Estranged from family – Victim of sexual assault – Harassed by CID and pro-government militia – Failed asylum seeker – Credibility concerns – Decision under review affirmed

[1720625](#) (Refugee) [2018] AATA 1064 (23 March 2018); L Hardy, Member

Refugee – Protection visa – Brazil – Complementary protection – Federal Circuit Court remittal – Original claims no longer relevant – Eldest child now Australian citizen – Best interests of children – Decision under review affirmed

Social Security

[Bai and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1247 (8 May 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – cancellation of carer payment – cancellation of carer allowance with carer supplement – debt raised for carer payment and carer allowance – whether the carer payment and carer allowance were correctly cancelled – whether the Applicant was overpaid for the relevant period – whether the overpayment is a debt owed to the Commonwealth – whether all or part of the debt should be written off or waived – decision affirmed

[Bornecrantz and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1108 (2 May 2018); Deputy President BW Rayment

SOCIAL SECURITY – age pension – assets test – the assets reduced rate – property valuation – the income reduced rate – decision to reduce social security benefits – decision based on assessment of property value – outstanding company loans – decision set aside and remitted

[Gjorsevska; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 1109 (3 May 2018); Senior Member DJ Morris

SOCIAL SERVICES – Disability Support Pension (DSP) – review of Social Services and Child Support Division decision - whether person qualified – whether impairments fully diagnosed, fully treated and fully stabilised – reasonable treatment for major diagnosed condition not undertaken in claim period – decision set aside and substituted with decision that Respondent not eligible for DSP in relation to this claim

[Innes and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1250 (9 May 2018); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – impairment – whether disability is fully diagnosed, treated and fully stabilised – whether applicant’s impairments attract 20 points or more under the Impairment Tables – mental health – substance abuse – decision under review affirmed

[Montenegro and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1252 (8 May 2018); Senior Member C Puplick AM

SOCIAL SECURITY – austudy payment – whether applicant qualified for 25% concessional study-load – interpretation of "undertaking qualifying studies" – requirements for full-time or concessional study – normal amount of full-time study – decision under review affirmed

[Pavlovic and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1245 (3 May 2018); Mr C Puplick AM, Senior Member

SOCIAL SECURITY – disability support pension – rejection of claim for disability support pension – qualification period – eligibility – whether disability is fully diagnosed, treated and stabilised – whether the Applicant’s impairment attracts 20 points or more under the impairment tables – rheumatoid arthritis – depression and anxiety – decision affirmed

[Solberg and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1242 (4 May 2018); Dr M Evans, Senior Member and Mr C Edwardes, Member

SOCIAL SECURITY – aged pension – appeal from AAT Tier 1 Review – whether the Applicant is a member of a couple – financial aspects of the relationship – pooling of resources – the nature of the household – social aspects of the relationship – sexual relationship – total picture of the relationship – whether a confidentiality order under s 35(2) or (3) should be made – decision set aside and remitted

Taxation

[Hussain and Commissioner of Taxation](#) (Taxation) [2018] AATA 1111 (3 May 2018); Mrs JC Kelly, Senior Member

TAXATION AND REVENUE – income tax – deductions – work-related expenses – whether Applicant is entitled to claim deductions for work-related expenses for the financial years of 2013 and 2014 – whether there is written evidence to substantiate deductions claimed – work-related travel expenses – work-related car expenses – other work-related expenses – objection decision varied

Veterans' Affairs

[Hunt and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 1110 (3 May 2018); Senior Member DJ Morris

VETERANS' AFFAIRS – claimed conditions – whether war caused – psychiatric condition – alcohol condition (in remission) – irritable bowel syndrome – colorectal condition – claim of bullying – claim of Category 1A, 1B and 2 Stressors for incidents on operational service – not satisfied evidence points to link to operational service – decision under review 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
Ryan v Comcare	[2018] AATA 765

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They **take effect** from **28 May 2018**:

Mesenteric panniculitis (Balance of Probabilities) – No. 50 of 2018

<https://www.legislation.gov.au/Details/F2018L00529>

Mesenteric panniculitis (Reasonable Hypothesis) – No. 49 of 2018

<https://www.legislation.gov.au/Details/F2018L00528>

Electrical injury (Balance of Probabilities) – No. 42 of 2018

<https://www.legislation.gov.au/Details/F2018L00536>

Electrical injury (Reasonable Hypothesis) – No. 41 of 2018

<https://www.legislation.gov.au/Details/F2018L00535>

Herpes simplex (Balance of Probabilities) – No. 40 of 2018

<https://www.legislation.gov.au/Details/F2018L00542>

Herpes simplex (Reasonable Hypothesis) – No. 39 of 2018

<https://www.legislation.gov.au/Details/F2018L00540>

Temporomandibular disorder (Balance of Probabilities) – No. 48 of 2018

<https://www.legislation.gov.au/Details/F2018L00541>

Temporomandibular disorder (Reasonable Hypothesis) – No. 47 of 2018

<https://www.legislation.gov.au/Details/F2018L00539>

Central serous chorioretinopathy (Balance of Probabilities) – No. 46 of 2018

<https://www.legislation.gov.au/Details/F2018L00553>

Central serous chorioretinopathy (Reasonable Hypothesis) – No. 45 of 2018

<https://www.legislation.gov.au/Details/F2018L00552>

Cushing syndrome (Balance of Probabilities) – No. 44 of 2018

<https://www.legislation.gov.au/Details/F2018L00556>

Cushing syndrome (Reasonable Hypothesis) – No. 43 of 2018

<https://www.legislation.gov.au/Details/F2018L00555>

Tension-type headache (Balance of Probabilities) – No. 38 of 2018

<https://www.legislation.gov.au/Details/F2018L00564>

Tension-type headache (Reasonable Hypothesis) – No. 37 of 2018

<https://www.legislation.gov.au/Details/F2018L00563>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. The amendments **take effect** on **28 May 2018**:

Malignant neoplasm of the pancreas - No. 51 of 2018:

<https://www.legislation.gov.au/Details/F2018L00565>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be revoked** on **28 May 2018**:

Electrical injury – No. 32 of 2009

<https://www.legislation.gov.au/Details/F2009L01599>

Electrical injury – No. 31 of 2009

<https://www.legislation.gov.au/Details/F2009L01598>

Herpes simplex – No. 4 of 2010

<https://www.legislation.gov.au/Details/F2010L00010>

Herpes simplex – No. 3 of 2010

<https://www.legislation.gov.au/Details/F2010L00006>

Cushing's syndrome – No. 34 of 2009

<https://www.legislation.gov.au/Details/F2009L01601>

Cushing's syndrome – No. 34 of 2009 – No. 33 of 2009

<https://www.legislation.gov.au/Details/F2009L01600>

Tension-type headache – No. 2 of 2010

<https://www.legislation.gov.au/Details/F2010L00005>

Tension-type headache – No. 1 of 2010

<https://www.legislation.gov.au/Details/F2010L00003>



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