



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 19/2018

21 May 2018

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

[Abdallah and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1259 (14 May 2018); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – application of Citizenship Policy – good character – domestic violence – decision set aside and remitted

[Dela Rosa and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1262 (10 May 2018); Ms S Burford, Member

Citizenship application – extension of time application – factors that are relevant when considering an application for extension of time – length of delay – prospects of success – application refused

[Khazzam and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1269 (14 May 2018); Senior Member A Younes

CITIZENSHIP – application for conferral of Australian citizenship – refusal of citizenship – applicant does not satisfy general residence requirement – consideration of discretion in section 22(9) of the Australian Citizenship Act 2007 – whether applicant has a close and continuing association with Australia – consideration of Citizenship Policy – factors weigh against the exercise of the discretion – decision under review affirmed

[Malekizad and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1271 (20 April 2018); Senior Member R Cameron

CITIZENSHIP – application for Australian citizenship by conferral – where applicant does not meet the good character test – failure to disclose existence of siblings living in Australia – making repeated false and misleading statements to the Department – failure to disclose identification documents – decision affirmed

[Prasser and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1292 (17 May 2018); Senior Member T Tavoularis

CITIZENSHIP – residency requirements – whether Applicant resided in Australia for four years prior to her application for citizenship – whether Applicant resided in Australia as a permanent resident for the 12 months prior to her application for citizenship – where Applicant did not reside in Australia for the requisite amounts of time – spousal discretion – whether Applicant had a close and continuing association with Australia – where Applicant did not have a close and continuing association with Australia – where Applicant did not meet the requirements for the spousal discretion to be enlivened – decision under review affirmed

Compensation

[Gordy and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 1265 (11 May 2018); Senior Member T Tavoularis

VETERANS' COMPENSATION – claim for compensation for cervical spondylosis – where Applicant listed a number of events to which she attributed her condition – statement of principles – where statement of principles requires trauma to the cervical spine – whether any of the events described by the Applicant match the required trauma to cervical spine – where Applicant's evidence is unsupported by medical evidence – lack of contemporaneous evidence – decision under review affirmed

[Green and Comcare](#) (Compensation) [2018] AATA 1266 (11 May 2018); Dr I Alexander, Member

COMPENSATION – injury – adjustment disorder with anxiety – reasonable administrative action – whether administrative action contributed to, to a significant degree, to the applicant's ailment

Freedom of Information

[Pascoe and Civil Aviation Safety Authority](#) (Freedom of information) [2018] AATA 1273 (4 May 2018); Deputy President B W Rayment

FREEDOM OF INFORMATION – exemption claims – categories of exemption – legal professional privilege – operations of agency exemption under s 47E(d) – personal information exemption – decision to limit stay releasing document – decision otherwise affirmed

Migration

[Cao and Minister for Home Affairs](#) (Migration) [2018] AATA 1261 (14 May 2018); Senior Member R Pintos-Lopez

MIGRATION – character test failed – drug cultivation – bridging visa refused – discretion to exercise s 501(1) – suspended sentence consideration – escape from detention – decision affirmed

[Flores and Minister for Home Affairs](#) (Migration) [2018] AATA 1264 (11 May 2018); Senior Member M Griffin QC

MIGRATION – five year resident return visa – mandatory cancellation – revocation – failure to pass the character test – Ministerial Direction 65 – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community –

best interests of minor children – expectations of the Australian community –

non-refoulement considerations – other considerations – decision affirmed

[Martin and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1289 (15 May 2018); Senior Member A Nikolic AM CSC

MIGRATION – bridging visa refusal – failure to pass the character test – numerous convictions including for violent offences – risk of engaging in criminal conduct if allowed to remain in Australia – relevant primary considerations outweigh all other considerations – decision affirmed

National Disability Insurance Scheme

[DGJJ and National Disability Insurance Agency](#) [2018] AATA 1263 (8 May 2018); Mrs JC Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – funding for personal care – applicant seeking funding for full time care – whether full time care is a reasonable and necessary support – whether care during hospitalisation is appropriately funded by the NDIA – decision varied

Practice and Procedure

[Akkari and Commissioner of Taxation](#) [2018] AATA 1260 (2 May 2018); Deputy President BW Rayment

PRACTICE AND PROCEDURE – reinstatement – original application withdrawn by applicant – application withdrawn by solicitor without consent – power to reinstate – application reinstated

[AUSTRALIAN INSTITUTE OF TECHNICAL TRAINING PTY LTD and Minister for Education and Training](#) [2018] AATA 1281 (11 May 2018); Senior Member R Cameron

PRACTICE AND PROCEDURE – stay application – Applicant’s registration cancelled under National Vocational Education and Training Regulator Act 2011 and Education Services for Overseas Students Act 2000 – consideration of factors as to whether stay should be granted – public interest – financial circumstances of Applicant – whether application rendered nugatory if stay not granted – stay granted subject to certain conditions

[BSLR and National Disability Insurance Agency](#) [2018] AATA 1282 (11 May 2018); Senior Member R Cameron

PRACTICE AND PROCEDURE – jurisdiction – characterisation of decisions under review – whether decisions under review are decisions to not review the Applicants’ plans – whether decisions under review are decisions confirming the approval of the statement of participant supports in the Applicants’ plans – reviewable decisions were decisions to approve statements of participant supports – internal review was sought of those decisions – internal review decisions purport to be decisions refusing to review plan – substance over form – decisions under review properly construed as decision confirming the reviewable decisions approving the statements of participant supports

[FJKH and National Disability Insurance Agency](#) [2018] AATA 1294 (15 May 2018); Deputy President K Bean

NATIONAL DISABILITY INSURANCE SCHEME – Jurisdiction – Where Agency experiences delay in making an internal review decision – Whether as “soon as reasonably practicable” is a “period prescribed” – Whether a decision may be deemed to have been made due to the Agency’s failure to make a decision as “soon as reasonably practicable” – Whether the Agency loses the power to make an internal review decision after a reasonably practicable period elapses and an application is made to the Tribunal – “As soon as reasonably practicable” is an ascertainable timeframe and a “period prescribed”

[Mitchell and Comcare](#) (Compensation) [2018] AATA 1293 (15 May 2018); Mr PW Taylor SC, Senior Member

EXTENSION OF TIME – compensation claim – workplace injury – physical injury – simultaneous psychological compensation claim – extension of time principles – lack of substantive response – delay in requesting reconsideration – prejudice to the respondent – general prejudice and fairness

[Penna and Australian Securities and Investments Commission](#) [2018] AATA 1274 (3 May 2018); Deputy President BW Rayment

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 – extension of time application granted

[TPRS and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1278 (11 May 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – jurisdiction – migration – whether Tribunal has jurisdiction to review decision to refuse visa application – whether application for review lodged in time – when applicant taken to have been given notice of decision to refuse visa application – notice by email to the last email address provided to the Minister – no discretion to extend time to lodge application for review – no jurisdiction to review decision

Social Security

[Ferreira and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1290 (15 May 2018); Dr M Evans, Senior Member and LM Gallagher, Member

SOCIAL SECURITY – Parenting Payment (Single) – Income Test – Income from Family Trust – when Applicant entitled to receive trust income - permissible deductions for rental property income – repairs or capital improvements – decision under review affirmed

[JZPC and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1268 (11 May 2018); R West, Member

SOCIAL SECURITY – refusal of disability pension – whether conditions rate 20 points or more under Impairment Tables – diabetes – myopia – decision affirmed

[Lipchick and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1270 (11 May 2018); Senior Member R Cameron

SOCIAL SECURITY – Age pension – commencement of payments – whether Applicant correctly applied for Age pension – whether payments can be backdated – whether special circumstances prevented Applicant from lodging application before turning 65 – special circumstances not found – decision affirmed

[Noy and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1272 (4 May 2018); Member DK Grigg

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

[Rossow and Secretary, Department of Health](#) (Social services) [2018] AATA 1275 (9 May 2018); Ms DK Grigg, Member

AGED CARE – whether applicants eligible for a financial hardship supplement – whether property an unrealisable asset – decision under review affirmed

[Stafford and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1276 (2 May 2018); Member LM Gallagher and Member C Edwardes

SOCIAL SECURITY – disability support pension – whether applicant has conditions that were fully diagnosed, fully treated and fully stabilised – whether applicant has 20 impairment points – whether applicant has severe impairment – application of multiple Impairment Tables – osteoarthritis condition – mental health condition – sleep apnoea condition – whether applicant has continuing inability to work – whether applicant has completed program of support – decision under review set aside and substituted

[Suchkova and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1277 (11 May 2018); Professor R McCallum AO, Member

SOCIAL SECURITY – disability support pension – cancellation – applicant's disability support pension cancelled because she was not qualified for the payment – whether indefinite portability provisions apply – severely impaired disability support pensioner provision – terminally ill disability support pensioner provision – decision affirmed

[Ware and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1279 (14 May 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

[Weiss and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1280 (11 May 2018); Senior Member BJ Illingworth

SOCIAL SECURITY – Family tax benefit – Claim for payment of family tax benefit for a past period – Whether special circumstances exist to extend the claim period – Special circumstances found not to exist – Decision under review affirmed

Taxation

[Hart and Commissioner of Taxation](#) (Taxation) [2018] AATA 1267 (15 May 2018); Senior Member E Fice

SUPERANNUATION – self managed superannuation fund – whether breach by trustee of Trust Deed – whether breach by trustee of covenants – whether fit and proper person – disqualification – failure to lodge annual returns – breach of in-house asset rule – condition of release not met – breach of related entity provisions – acquisition of superannuation fund assets – arm's length investments – acquisition of real property – acquisition of shares in a foreign company – failure to comply with benefit payment standards – falsifying signatures on superannuation fund documents – payment of benefits due to terminal illness – loans and financial assistance to members – sole purpose test – forfeiture of benefit of members

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 |
|---|----------------------------------|
| Banerji and Comcare | [2018] AATA 892 |
| Murphy and Minister for Immigration and Border Protection | [2018] AATA 750 |
| QSVS and Minister for Immigration and Border Protection (further appeal lodged) | [2017] AATA 2708 |
| Smithson & Baye Pty Ltd and Australian Securities and Investments Commission | [2018] AATA 857 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|-----------------------|---------------|-----------------|
| None finalised | | |



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