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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

[BHQD and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1306 (4 May 2018); Senior Member RW Dunne

CITIZENSHIP – cancellation of approval for Australian citizenship by conferral – whether the applicant is not of good character – whether the decision to cancel the approval of the applicant's citizenship should be affirmed – decision under review affirmed

[Khadka and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1327 (21 May 2018); Senior Member A Younes

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – general eligibility criteria – failed citizenship examination – knowledge of English language – ability to re-sit examination – decision affirmed

[Masikip and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1331 (22 May 2018); Senior Member A Younes

CITIZENSHIP – application for conferral of Australian citizenship – refusal of citizenship – applicant does not satisfy good character requirement – whether applicant of good character – unlawful non-citizen – lengthy period of unlawfulness – consideration of Citizenship Policy – decision under review affirmed

[Yaghoubian and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1334 (22 May 2018); Senior Member A Younes

CITIZENSHIP - application for conferral of Australian citizenship – refusal of citizenship application on grounds applicant does not satisfy the good character requirement - whether applicant of good character – criminal record – domestic violence and traffic offences – mitigating factors – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

Customs

[Sulo MGB Australia Pty Ltd and Comptroller-General of Customs](#) [2018] AATA 1324 (17 May 2018); Senior Member E Fice

CUSTOMS – remittal from Federal Court – classification of Sulo's wheelie bins – consideration of all possible classifications – use of extrinsic materials in aid of interpretation – meaning of other household articles – use of words not found in the legislation or extrinsic materials – identification of the correct descriptor of the goods – plastic wheels suitable for use solely or principally with Sulo's wheelie bins – application of Tariff Concession Order

Migration

[Bahrani and Minister for Home Affairs](#) (Migration) [2018] AATA 1332 (16 May 2018); Senior Member M Griffin QC

MIGRATION – non-revocation of decision to cancel visa – failure to pass character test – Ministerial Direction 65 applied – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community – best interests of child – expectations of Australian community – other considerations – decision set aside and substituted

[Burton and Minister for Home Affairs](#) (Migration) [2018] AATA 1313 (16 May 2018); Senior Member L Kirk

MIGRATION – five year resident return visa – mandatory cancellation – revocation – failure to pass the character test – Ministerial Direction 65 – serious criminal convictions – Applicant’s responsibility and remorse – risk of reoffending – time in prison and immigration detention – future plans – protection of the Australian community – nature and seriousness of conduct to date – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed from Australia – decision set aside and substituted

[Curran and Minister for Home Affairs](#) (Migration) [2018] AATA 1314 (16 May 2018); Senior Member L Kirk

MIGRATION – five year resident return visa – mandatory cancellation – revocation – failure to pass the character test – Ministerial Direction 65 – serious criminal convictions – Applicant’s responsibility and remorse – risk of reoffending – time in prison and immigration detention – future plans – protection of the Australian community – nature and seriousness of conduct to date – risk to the Australian community – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed from Australia – decision set aside and substituted

[Dao and Minister for Home Affairs](#) (Migration) [2018] AATA 1333 (21 May 2018); Senior Member DJ Morris

MIGRATION – request for revocation of mandatory cancellation of Applicant’s visa – Applicant has substantial criminal record and does not pass character test – discretion to revoke mandatory cancellation – Tribunal’s powers on review – assessment of risk of re-offending when sentence substantial – primary and other serious considerations under ministerial direction – decision under review affirmed

[Shalvindran and Minister for Home Affairs](#) (Migration) [2018] AATA 1336 (21 May 2018); Senior Member M Griffin QC

MIGRATION – non-revocation of decision to cancel visa – failure to pass character test – Ministerial Direction 65 applied – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community - best interests of child – expectations of Australian community – other considerations – decision set aside and substituted

[Vo and Minister for Home Affairs](#) (Migration) [2018] AATA 1305 (17 May 2018); Mr M Kennedy, 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

[Kuron and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1330 (23 May 2018); Senior Member R Cameron

PRACTICE AND PROCEDURE – application for an extension of time in which to lodge an application for review – significant delay – departmental email attaching decision arrived in Applicant's junk email folder – significant period of time between Applicant making application for citizenship and department acting on that application – acceptable explanation for delay – Applicant did not rest on his rights – no prejudice to the Respondent – application not without some prospects for success – application for extension of time granted

[Smaistrila and Optus Administration Pty Ltd](#) (Compensation) [2018] AATA 1307 (2 May 2018); Senior Member DJ Morris

PRACTICE AND PROCEDURE – extensive procedural history – hearing has commenced – self-represented applicant – medical issues affecting applicant's ability to conduct case – request for dismissal for failure to proceed – objectives of the Tribunal – obligations on the Tribunal – need for temporal progress – directions given for resumption

[WA Bright Kids Family Day Care Pty Ltd and Secretary, Department of Education and Training](#) [2018] AATA 1312 (18 May 2018); Deputy President S Boyle

JURISDICTION – application for dismissal of substantive application – whether jurisdiction to consider the decision to cancel the Applicant's approval as a child care service provider – rules of statutory interpretation – ejusdem generis – expressio unius est exclusio alterius – kinds of decision – decisions of the kind mentioned – Tribunal has jurisdiction

Social Security

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1309 (18 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

[Ilievska and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1308 (18 May 2018); Senior Member DJ Morris

SOCIAL SERVICES – disability support pension (DSP) – cancellation – 2011 Determination applies – whether qualified – whether impairments assigned 20 or more impairment points – not qualified at time DSP cancelled – decision affirmed

Taxation

[Salser and Commissioner of Taxation](#) (Taxation) [2018] AATA 1311 (17 May 2018); Senior Member E Fice

TAXATION – undisclosed cash/cheque takings – not recorded in activity statements – understated GST – claimed GST credits – whether cash/cheque payments from taxable supplies – deductions claims – tax evasion – unfranked dividends – administrative penalties – onus of proof – grounds for reduction of penalties or partial remissions – applicant non-compliance – assessment of the honesty of witnesses – conduct of counsel – application for recusal of Tribunal member – apprehension of bias – procedural unfairness – decision affirmed

Veterans' Affairs

[Elton and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 1329 (21 May 2018); Senior Member E Fice

VETERANS' APPEALS – Standard of proof – post-traumatic stress disorder – major anxiety disorder – lumbar spondylosis – whether injuries war-caused – reasonable hypothesis – whether factual foundation of hypothesis is disproved – decision 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
Hutchison and Australian Securities and Investments Commission	[2018] AATA 760
Paszkievicz and Minister for Immigration and Border Protection	[2018] AATA 691
Hockey and Secretary, Department of Social Services	[2018] AATA 978

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		



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