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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.

Aviation

[Reubel and Civil Aviation Safety Authority](#) [2018] AATA 1639 (31 May 2018); Deputy President J Sosso

CIVIL AVIATION – conditional class 2 medical certificate – transient ischaemic attack - medical standards – examination of medical evidence – imposition of safety pilot condition for public safety – likelihood of Applicant becoming incapacitated during flight – safety relevant condition – decision under review affirmed

Child Support

[Smullen and Curwood](#) (Child support) [2018] AATA 1229 (19 March 2018); K Millar, Member

Child support – Estimate of likely adjusted taxable income – Discretion to refuse not exercised – Decision under review affirmed

[Goodridge and Goodridge](#) (Child support) [2018] AATA 1236 (27 March 2018); S Hoffman, Member

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

[Carlyle and Child Support Registrar](#) (Child support) [2018] AATA 1237 (27 March 2018); Y Webb, Member

Child support – Refusal to grant an extension of time to object – Departure from the assessment – No reasonable reason for delay – No merit – Decision under review affirmed

[Marcotte and Anning](#) (Child support) [2018] AATA 1225 (3 April 2018); W Kennedy, Member

Child support – Departure from assessment – Income and financial resources of parents – Business income – Proper needs of the child – Decision under review set aside and substituted

[Riordan and Child Support Registrar](#) (Child support) [2018] AATA 1478 (10 April 2018); J Walsh, Deputy President

Child support – Refusal of an extension of time to object – A decision to accept an estimate of income – No reasonable prospect of success – Application for review dismissed

Citizenship

[Lin and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1640 (13 June 2018); Senior Member R Cameron

CITIZENSHIP – citizenship by conferral – good character requirement – Protection (subclass 866) visa – commercial fishing offences – failure to notify immigration of criminal offences – lack of honesty in the citizenship process – decision affirmed

[Shafai and Secretary, Department of Home Affairs](#) (Citizenship) [2018] AATA 1624 (25 May 2018); Deputy President SA Forgie

CITIZENSHIP – applicants had requested evidence of Australian citizenship from Department of Home Affairs – request made under s 37(4) of Australian Citizenship Act 2007 denied as delegate not satisfied of applicants' respective identities – an application for review of a decision made under s 37(4) may not be made under s 52(1) – therefore Tribunal has no jurisdiction to review decision

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review – no reasonable prospects of success as decision of delegate not reviewable by Tribunal – application refused

[Singh and Minister for Home Affairs](#) (Citizenship) [2018] AATA 1633 (12 June 2018); Mr A Maryniak QC, Member

CITIZENSHIP – application for conferral of Australian citizenship – special residence requirement – whether the Applicant is an 'Executive Manager of an S&P/ASX All Australian 200 listed company' – Applicant employed as an External Base Maintenance Operations Manager with Qantas – meaning of 'Executive Manager' – Applicant an Executive Manager – decision under review set aside and remitted with direction that the Applicant meets the special residence requirement

WORDS AND PHRASES – 'Executive Manager'

[Umer and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1630 (6 June 2018); Senior Member L Kirk

CITIZENSHIP – application for Australian citizenship – refusal of citizenship – whether applicant is of good character – citizenship policy – domestic violence – making false statements in citizenship applications – decision under review affirmed

Compensation

[Gambino and Comcare](#) (Compensation) [2018] AATA 1638 (13 June 2018); Senior Member DJ Morris

COMPENSATION – shoulder condition claim – different diagnoses of condition – history of treatment – existence of other medical conditions – introduction of software at workplace – whether condition aggravated to substantial degree by employment – decision affirmed

[Nguyen and Comcare](#) (Compensation) [2018] AATA 1623 (6 June 2018); Deputy President BJ McCabe

COMPENSATION – section 14 SRC Act – whether reasonable administrative action – claimed bullying – claimed mismanagement – impact of performance review outcome on applicant – onset of condition – section 5A SRC Act exclusion applicable – decision under review affirmed

[Sincock and Comcare](#) (Compensation) [2018] AATA 1635 (12 June 2018); Senior Member DJ Morris

COMPENSATION – medical treatment – ongoing physiotherapy and myotherapy – evidence of degenerative condition – whether treatment is in relation to the accepted injury – decision affirmed

[Thoreau and Comcare](#) (Compensation) [2018] AATA 1517 (8 June 2018); Senior Member T Tavoularis

COMPENSATION – medical treatment – therapeutic treatments – previously accepted injuries – where liability for the Applicant’s condition of bilateral epicondylitis was accepted – where Applicant has received compensation for some 700 remedial massage sessions for her accepted condition – section 16 of the Safety Rehabilitation and Compensation Act 1988 (Cth) – whether the Applicant continues to suffer from her accepted condition – whether massage treatment is “medical treatment” for her condition – whether it is reasonable for the Applicant to continue to receive the massage treatment – Applicant does not continue to suffer from accepted condition – the massage treatment is not medical treatment for her accepted condition – it is not reasonable for the Applicant to continue to receive the massage treatment – decision under review affirmed

[Wincott-Whyte and Comcare](#) (Compensation) [2018] AATA 1631 (7 June 2018); Ms LM Gallagher, Member

COMPENSATION – Commonwealth employee – aggravation of neck sprain and aggravation of sprain of shoulder & upper arm (bilateral) – whether liable under section 16 and section 19 – whether suffers from ailment – section 14 determinations remain in force – decisions under review affirmed

COMPENSATION – Commonwealth employee – bilateral carpal tunnel syndrome – whether bilateral carpal tunnel syndrome contributed to, to a significant degree, by employment – decision under review affirmed

Education and Research

[Hale and Secretary, Department of Education and Training](#) [2018] AATA 1616 (7 June 2018); Senior Member BJ Illingworth

HIGHER EDUCATION – Higher Education Contribution Scheme – Application for remission of HECS HELP debt – Whether "special circumstances" existed – Whether applicant’s circumstances made it impracticable for the applicant to complete the requirements for the unit of study – Decision under review affirmed

Migration

[Juma and Minister for Home Affairs](#) (Migration) [2018] AATA 1620 (4 June 2018); Senior Member R Cameron

MIGRATION - application for revocation of mandatory cancellation of visa – where applicant fails character test - where applicant warned visa may be cancelled - serious criminal offending – offences involving violence – risk of harm if applicant re-offends - unacceptable risk of applicant reoffending - where Australian community would expect non-revocation - decision affirmed

[Misa and Minister for Home Affairs](#) (Migration) [2018] AATA 1511 (8 June 2018); Senior Member A Poljak

MIGRATION – visa cancellation – character test – substantial criminal record – domestic violence – Direction 65 – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – best interests of minor children in Australia – expectations of Australian community – decision affirmed

[Luong](#) (Migration) [2018] AATA 1491 (30 April 2018); K Raif, Senior Member

Migration – Other Family (Residence) (Class BU) – Subclass 835 (Remaining Relative) – Whether the applicant is the remaining relative of an Australian relative – Mother and sister are Australian permanent residents – Applicant’s biological father a near relative – Father’s whereabouts unknown – No contact or relationship between the visa applicant and the father – Decision affirmed

[NYEIN](#) (Migration) [2018] AATA 1645 (30 April 2018); S Norman, Member

Migration – Regional Employer Nomination (Permanent) (Class RN) visas – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Nominated position of Office Manager – Nomination application refused – Practice and procedure – Request for further information – Extension of time granted – Material evidence not received – Decision made on the papers – Decision under review affirmed

[Pena Arias](#) (Migration) [2018] AATA 1644 (2 May 2018); D Connolly, Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Nominated position of Disability Support Worker – Employed under a Subclass 457 visa – New employer refused to sponsor the applicant – Sponsorship nomination withdrawn – Request for Ministerial Intervention – No serious, ongoing and irreversible harm – Decision under review affirmed

[Kase](#) (Migration) [2018] AATA 1652 (3 May 2018); C Burnett-Wake, Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Nominated position of Office Manager – Tribunal set aside and substituted a decision to approve the employer’s nomination – Decision under review remitted for reconsideration

[Ali](#) (Migration) [2018] AATA 1533 (14 May 2018); K Synon, Member

Migration – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – Whether the applicant has substantial ties to Australia – Substantial family ties in Australia – Ties to home country significantly weakened over time - Whether ties are of benefit to Australia – Significant benefit to Australia citizens – “Genuine intention” to reside in Australia not determinative – Decision remitted with direction

[Nguyen](#) (Migration) [2018] AATA 1544 (21 May 2018); S Lucas, Member

Migration – Prospective Marriage (Temporary) (Class TO) – Subclass 300 (Prospective Marriage) visa – Genuine intention to marry – Cultural wedding ceremony in Vietnam – Notice of Intended Marriage form provided – No major financial commitments together – Parties living in different countries – Couple undertake and plan joint social activities when together – No impediment to the proposed marriage – Credible oral evidence – Decision under review remitted for reconsideration

[Shikeeb](#) (Migration) [2018] AATA 1531 (24 May 2018); N McGowan, Member

Migration – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – Whether there is a genuine spousal relationship – Third-party claim on the Department file – “Significant evidence of relationship” – Parties live together – Visited family in Afghanistan – Mutual commitment to a shared life as husband and wife – Decision under review remitted for reconsideration

[Ho](#) (Migration) [2018] AATA 1536 (25 May 2018); H Kroger, Member

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) visa – Whether there is a genuine and continuing relationship – Shared household expenses – Parties lived in the same unit with their children since October 2014 – Applicant and sponsor mutually support and care for their son and daughter – Shared household expenses – Parties represent themselves to other people as being married – Compelling witness statements – Further evidence available before the Tribunal – Decision under review remitted for consideration

Refugee

[1709285](#) (Refugee) [2018] AATA 1513 (11 May 2018); J Kelly, Senior Member

Refugee – Protection visa – Cancellation – Iraq – Ethnicity – Claims to be Stateless Bidoon from Kuwait – Bogus documents or incorrect information – Inconsistent evidence – Decision under review affirmed

[1513605](#) (Refugee) [2018] AATA 1526 (14 May 2018); N Goetz, Member

Refugee – Protection visa – India – Social group – Associated with Dera Sacha Sauda (DSS) – Attacked by Sikh youth foundation – Delay in protection application – Inconsistent evidence – Decision under review affirmed

Practice and Procedure

[Carey; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 1637 (12 June 2018); M East, Member

Practice and procedure – stay application with respect to AAT Tier 1 decision – Disability Support Pension – relevant factors – financial hardship – respondent difficulty in repaying debt – whether stay order would secure effectiveness of hearing – stay order granted for arrears but refused for ongoing payments

[Phillips and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1636 (14 June 2018); Deputy President Dr P McDermott RFD

PRELIMINARY ISSUE – where a debt was raised by Centrelink – where the valuation method of valuing a property is contested by the applicant – whether the applicant should be permitted to re-litigate the issues already determined by the Tribunal – no new or compelling evidence to suggest previous Tribunal decision should be regarded as non-determinative – order made to limit issues before Tribunal – application remitted to the respondent under section 42D

[Somba and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1626 (5 June 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – migration – visa cancellation – application for re-instatement – dismissal of application for failure to appear at hearing – requirement for application to be finalised within 84 days of applicant being notified of cancellation decision – application for re-instatement made after 84 day period expired – application dismissed

Social Security

[Boyle and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1618 (6 June 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – application refused – impairment tables – whether condition is fully diagnosed, treated and stabilised – mental health – stress, anxiety and agoraphobia – decision under review affirmed

[Durbridge and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1514 (8 June 2018); Ms S Burford, Member

Family Tax Benefit – application for extension of time – factors that are relevant when considering an application for extension of time – length of delay – explanation for the delay – merits of the substantive application for review – application refused

[Forner and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1512 (8 June 2018); Mr M Hyman, Member

SOCIAL SECURITY – age pension – disposal of assets – accounts for the benefit of grandchildren – whether assets were disposed of – treatment of disposed assets – amount of disposal – date of disposal – decision under review varied

[Frajnd and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1515 (12 June 2018); DK Grigg, Member

FAMILY ASSISTANCE – family tax benefit – overpayment – whether administrative error – whether there are any special circumstances – decision under review affirmed

[Johnston and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1617 (6 June 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – whether disability is fully diagnosed, treated and stabilised – whether applicant's impairments attract 20 points or more under the Impairment Tables during the relevant period – decision under review affirmed

[LRVS; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 1518 (8 June 2018); Mr C Edwardes, Member

Social Security – disability support pension – impairment tables – did the Respondent have 20 impairment points – did the Respondent have a continuing inability to work – did the Respondent participate in program of support – decision under review set aside and substituted

[Petrie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1641 (14 June 2018); LM Gallagher, Member

SOCIAL SECURITY – parenting payment single – parents separated – equal care of children – which parent principal carer – which parent in greater need of favourable determination – factors for consideration – mandatory factors – discretionary factors – parents' employment prospects – father in greater need of favourable determination – father the principal carer – decision under review affirmed

[RBJS and Secretary, Department of Jobs and Small Business](#) (Social services second review) [2018] AATA 1625 (1 June 2018); Mr C Edwardes, Member

Social Security – Newstart allowance – non-compliance with Employment Pathway Plan – failure to attend appointment with employment services provider – reconnection failure – medical conditions longstanding and temporary – cancellation of Newstart allowance – decision affirmed

[Shi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1627 (1 June 2018); Senior Member C Puplick AM

SOCIAL SECURITY – cancellation of Newstart Allowance – restoration of payment – whether mutual obligation requirements met – failure to attend interviews or appointments – obligation to re-engage with employment services provider – decision under review affirmed

[Tennant and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1628 (4 June 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY - Disability Support Pension – chronic fatigue syndrome – Lyme Disease – applicant suffers an impairment – applicant's impairments do not total 20 points or more under the impairment tables – decision under review affirmed

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1629 (6 June 2018); Dr L Bygrave, Member

SOCIAL SECURITY – application for the disability support pension – physical, intellectual or psychiatric impairment – impairment rating of 20 or more points – fully diagnosed, treated and stabilised condition – decision under review affirmed

Taxation

[Hookey and Commissioner of Taxation](#) (Taxation) [2018] AATA 1509 (8 June 2018); Deputy President BW Rayment

TAXATION – assessable capital gain – whether applicant is entitled to reduce that capital gain by application of the small business CGT concession – decision affirmed

[Mall and Commissioner of Taxation](#) (Taxation) [2018] AATA 1621 (5 June 2018); Deputy President BJ McCabe

TAXATION – taxable income – unexplained deposits into applicant's bank account – where applicant failed to present a case at hearing – where respondent identified adjustments to be made to assessment figures – assessment and penalty decisions varied

[Ward and Commissioner of Taxation](#) (Taxation) [2018] AATA 1519 (7 June 2018); Deputy President G Humphries

TAXATION – non-concessional contributions to superannuation fund attracted excess contributions tax – Commissioner’s refusal to disregard or allocate contributions to another tax year – whether there are special circumstances – whether determination is consistent with object of the division 292 – reviewable decision affirmed

Veterans' Affairs

[Carter and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2018] AATA 1642 (13 June 2018); Deputy President Boyle

Veteran’s Affairs – service death – cause of death possible Non-Hodgkin’s lymphoma – did the serviceman suffer from tropical sprue – peacetime service – standard of proof – meaning of reasonable satisfaction – decision under review affirmed

[MacDonald and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2018] AATA 1520 (6 June 2018); Senior Member A Nikolic AM CSC

VETERANS' AFFAIRS – claimed condition of disequilibrium – competing professional diagnoses of noise-induced vestibulocochlear nerve damage and cervicogenic dizziness - no applicable Statement of Principles for various diagnoses – evidence indicating range of possible causes for claimed condition - Tribunal not reasonably satisfied that Applicant suffered vestibulocochlear injury – 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
Hona and Minister for Immigration and Border Protection	[2018] AATA 773
Want and Comcare	[2018] AATA 877

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Read v Military Rehabilitation and Compensation Commission	[2017] AATA 1109	[2018] FCA 848



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