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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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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.

Anti-discrimination

[People With Disability Australia Incorporated and Australian Human Rights Commission](#)

[2018] AATA 1863 (19 June 2018); Deputy President Kenny and Senior Member Poljak

DISABILITY DISCRIMINATION – applications for review of decisions of Australian Human Rights Commission to grant exemptions under s 55 of Disability Discrimination Act 1992 (Cth) (DDA) – use of Business Services Wage Assessment Tool (BSWAT) by Australian Disability Enterprises (ADEs) to assess wages of supported employees following decision in *Nojin v Commonwealth of Australia* [2012] FCAFC 192; 208 FCR 1 (Nojin) – decisions under review together granted ten-month extension to earlier exemption – whether decisions under review correct and preferable on material before the Tribunal – decisions under review not inconsistent with objects of DDA – consideration of whether exemptions deprived supported employees of benefit of *Nojin* – consideration of settlement of representative proceedings in *Duval-Comrie v Commonwealth of Australia* [2016] FCA 1523 and Business Services Wage Assessment Tool Payment Scheme Act 2015 (Cth) – exemptions granted by decisions under review aligned with transitional arrangements for use of BSWAT in clause 16.4 of Supported Employment Services Award – consideration of utility of relief sought – decisions under review made on 18 December 2015 and 22 March 2016 – exemption period ceased on 29 February 2016 – exemptions granted for limited time with significant conditions attached – exemptions conducive to orderly transition away from BSWAT – exemptions provided clarity and certainty for ADEs and Commonwealth in transition period – decisions under review affirmed

Child Support

[Lander and Child Support Registrar](#) (Child support) [2018] AATA 1706 (1 May 2018); F Hewson, Member

Child support – Refusal to grant extensions of time to object – Departure determination – Reasons for delay not reasonable – Merit is weak – Decision under review affirmed

[Greenacre and Waghorn](#) (Child support) [2018] AATA 1712 (4 May 2018); T Hamilton-Noy, Member

Child support – Particulars of the administrative assessment – Adjusted taxable income for the last relevant year – Income correctly determined – Decision under review affirmed

[Dillon and Dillon](#) (Child support) [2018] AATA 1713 (29 April 2018); J Thomson, Member

Child support – Departure determination – Costs of education for the child – Income and financial resources of parents – Business income – Decision under review set aside and substituted

[Malley and Fordham](#) (Child support) [2018] AATA 1716 (27 April 2018); J Longo, Member

Child support – Percentages of care – No change in the likely pattern of care – Decision under review set aside and substituted – Late lodgement of the application for review – Special circumstances prevented the late lodgement – Determination made under subsection 95N(2) – Decision under review set aside

[Worton and Worton](#) (Child support) [2018] AATA 1729 (4 May 2018); K Timbs, Member

Child support – Percentages of care – Change to likely pattern of care – Decision under review set aside and substituted

Citizenship

[Bae and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1865 (25 June 2018); Senior Member L Kirk

CITIZENSHIP – application for conferral of Australian citizenship – refusal of citizenship application on grounds Applicant does not satisfy the general residence requirement under s 22(1) of the Australian Citizenship Act – meaning of “absent from Australia” considered – implies an intention to return to, and a continuing connection with, Australia – Applicant was not “absent from Australia” for the relevant period – decision affirmed

[FSDH and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1844 (22 June 2018); Ms S Burford, Member

Citizenship application – jurisdiction – visa cancellation – whether the applicant is a permanent resident – application dismissed

[Georgi and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1866 (25 June 2018); Senior Member L Kirk

CITIZENSHIP – application for conferral of Australian citizenship – refusal of citizenship application on grounds Applicant did not satisfy the residence requirement – discretion in section 22(11) of the Australian Citizenship Act 2007 not applicable to Applicant – decision under review affirmed

[Welday and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1851 (12 June 2018); Mr C Edwardes, Member

Sudanese refugee – application for citizenship refused – whether Tribunal satisfied of identity – consideration of country information – identity satisfied

Compensation

[Amev and Telstra Corporation Limited](#) (Compensation) [2018] AATA 1847 (21 June 2018); Deputy President SA Forgie

COMPENSATION – reasonable medical treatment – licensee liable to pay appropriate compensation for reasonable medical treatment – reviewable decision varied

[Coney and Comcare](#) (Compensation) [2018] AATA 1859 (22 June 2018); Ms M East, Member

Extension of time application – factors that are relevant when considering an application for an extension of time – poor prospects of success – lack of explanation of delay – applicant rested on her rights – need to prevent disruption to established practices – application refused

[Kennedy and Comcare](#) (Compensation) [2018] AATA 1837 (21 June 2018); Senior Member DJ Morris

COMPENSATION – Employee of licensed corporation – whether injury or disease – whether applicant continues to suffer from condition – no present liability for compensation – decisions under review affirmed

[Leach and Comcare](#) (Compensation) [2018] AATA 1632 (12 June 2018); Dr P McDermott RFD, Deputy President

COMPENSATION – Claim for mental injury arising out of the applicant's employment – application of s 53 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether the applicant failed to give notice of injury as soon as practicable after he became aware of injury – whether the respondent would be prejudiced if notice was treated as a sufficient notice – whether the failure to give notice resulted from ignorance, mistake or any other reasonable cause – notice was not given – no exceptions apply – decision under review affirmed

Professions and Trades

[Sweet Melon Family Day Care Pty Ltd and Secretary, Department of Education and Training](#) [2018] AATA 1862 (8 June 2018); Senior Member A Nikolic AM CSC

CHILD CARE – BENEFITS AND REBATES – cancellation of Applicant's approval as a child care service – Applicant no longer eligible for child care benefit or child care rebate – substantial non-compliance with regulatory framework – appropriate sanction under A New Tax System (Family Assistance) (Administration) Act 1999 – decision affirmed

Migration

[HMYH and Minister for Home Affairs](#) (Migration) [2018] AATA 1868 (27 June 2018); Brigadier AG Warner, Member

IMMIGRATION – section 501 visa refusal – whether applicant passes character test – risk that applicant would engage in criminal conduct in Australia – whether discretion should be exercised in accordance with ministerial direction – primary considerations – protection of the Australian Community – expectations of the Australian Community – other considerations – impact on family members – decision under review affirmed

[Matthews and Minister for Home Affairs](#) (Migration) [2018] AATA 1849 (25 June 2018); Senior Member DJ Morris

MIGRATION – mandatory cancellation of visa – applicant has substantial criminal record and does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – previous visa cancellation warning – primary considerations – other considerations – decision affirmed

[QKVH and Minister for Home Affairs](#) (Migration) [2018] AATA 1855 (20 June 2018); Deputy President SA Forgie

MIGRATION – refusal to grant visa – risk of applicant engaging in criminal conduct – failure to pass character test – exercise of discretion – decision affirmed

[SVWW and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1870 (26 June 2018); Mr R West, Member

MIGRATION – refusal of protection visa under s. 36(1C)(b) of Migration Act – criminal conduct – particularly serious crime – whether Applicant is a danger to the Australian community – assessment of risk of re-offending – decision remitted

[XCBY and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1853 (26 June 2018); Deputy President J W Constance

MIGRATION – mandatory visa cancellation – character test – Ministerial Direction No. 65 – protection of the Australian community – seriousness and nature of conduct – drug trafficking – expectations of Australian community – risk to community should conduct be repeated – decision set aside and remitted for reconsideration

[ZMBZ and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 1869 (27 June 2018); Senior Member A Younes

MIGRATION – protection visa – non-revocation of decision to cancel visa – failure to pass character test – non-refoulement obligations owed to applicant – Ministerial Direction 65 applied – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community – expectations of Australian community – impact on victim – decision affirmed

[Rosayro](#) (Migration) [2018] AATA 1934 (8 May 2018); S Trotter, Member

Migration – Other Family (Migrant) (Class BO) visa – Subclass 116 (Carer) – Grandson granted a Carer visa in 2009 – No longer provides full time care – Several adult children in Australia – Visa applicant – Grandson of the Review applicant – Other family members able to provide care either individually or collectively – Decision under review affirmed

[Meyer](#) (Migration) [2018] AATA 1884 (9 May 2018); K Raif, Senior Member

Migration – Aged Parent (Residence) (Class BP) visa – Subclass 804 (Aged Parent) – Valid Medical Officer of the Commonwealth assessment – Cost of the medical treatment – Private health insurance – Compelling circumstances – Capacity for independent living – Strong connection to Australia – Ministerial intervention referral – Decision under review affirmed

[Min](#) (Migration) [2018] AATA 1913 (9 May 2018); W Stooke AM, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – Genuine Temporary Entrant – Length of course – Admissions – Desire to bring children to Australia – Circumstances abroad – Separation from wife – Economic opportunities – Value of the course – Decision under review affirmed

[Fan](#) (Migration) [2018] AATA 1806 (31 May 2018); C Burnett-Wake, Member

Migration – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 186 (Employer Nomination Scheme) visa – Direct Entry stream – Nominated position of Corporate General Manager – Nomination approved upon review by Tribunal – Decision under review remitted with direction

[Vujicic](#) (Migration) [2018] AATA 1921 (21 June 2018); Deputy President J Redfern (Presiding) and S Burford, Member

MIGRATION – Partner (Temporary) (Class UK) – Subclass 820 (Partner) (Temporary) – refusal of visa on grounds applicant did not satisfy cl.820.211(2)(a) of Schedule 2 to the Migration Regulations 1994 – whether parties are in a spousal relationship – the Tribunal is satisfied that the parties marriage is valid for the purpose of the Migration Act 1958 – the Tribunal is satisfied that the couple have a mutual commitment to a shared life as a married couple to the exclusion of all others, are in a genuine and continuing relationship and live together and not separately and apart on a permanent basis – further evidence submitted to the Tribunal – consideration of the financial aspects of the relationship, nature of the household, social aspects of the relationship and nature of the persons' commitment to each other – Decision set aside and remitted for reconsideration

National Disability Insurance Scheme

[Furminger and National Disability Insurance Agency](#) [2018] AATA 1872 (26 June 2018); Dr P McDermott RFD, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – the application of the access criteria – access request requirements – whether the disability requirements and early intervention requirements are satisfied – the application of sections 21, 24 and 25 of National Disability Insurance Scheme Act 2013

Passports

[Azizi and Minister for Foreign Affairs](#) [2018] AATA 1871 (26 June 2018); Senior Member R Cameron

PASSPORTS – application for Australian child passport – refusal of parental consent by one parent – child an Australian citizen living in Afghanistan – allegations of domestic violence – allegations of blackmail – whether non-consenting parent has contact with child – whether matter referred to court – decision affirmed

Practice and Procedure

[Haroun and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1857 (21 June 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 – prejudice – whether substantive matter has merit – citizenship by conferral – failure to successfully complete citizenship test – extension of time application refused

[Lacey and Secretary, Department of Social Services](#) [2018] AATA 1852 (22 June 2018); Mr C Edwardes, Member

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review of decision – applicant lodged substantive application 12 weeks after required date – Tribunal not satisfied that reasonable in all circumstances to grant extension of time – mobility pension arrears – application for extension of time refused

[Saini and Minister for Home Affairs](#) (Citizenship) [2018] AATA 1867 (27 June 2018); Mr M Hyman, Member

PRACTICE AND PROCEDURE – extension of time – where applicant's citizenship application rejected on character grounds – principles for determining whether extension should be granted – explanation for delay – underlying merits of applicant's case – criminal procedures – sentence – period of time elapsed since sentence complete – extension of time granted

[Selleck and Secretary, Department of Social Services](#) [2018] AATA 1858 (22 June 2018); Mr C Edwardes, Member

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review of decision – applicant lodged substantive application 12 days after required date – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – age pension arrears – application for extension of time refused

[Trades College Australia Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 1703 (12 June 2018); Deputy President SA Forgie

PRACTICE AND PROCEDURE – Renewed stay application under s 41(2) of the Administrative Appeals Tribunal Act 1975 – Tribunal will not grant stay where doing so would be ineffectual in affecting implementation of reviewable decision by operation of law – stay would have legal effect if granted

PRACTICE AND PROCEDURE – decision by delegate to cancel registration – application for stay refused

Refugee

[1516115](#) (Refugee) [2018] AATA 1761 (18 April 2018); R Shanahan, Member

Refugee – Protection visa – Iran – Race – Faili Kurd – Social group – Irregular maritime arrival – Victim of assault and racial abuse – Accused of theft – Employment discrimination – Mistreated at University – Failed asylum seeker from a Western country – Membership of Basij – Credibility Issues – Decision under review affirmed

[1617817](#) (Refugee) [2018] AATA 1740 (19 April 2018); C Smolicz, Member

Refugee – Protection Visa – Vietnam – Non-convention reason – Fear of harm from former partner's family – Feared harm not for convention reason – Remote chance of significant harm – Witness credibility – Claims vague and lacking in detail – Decision under review affirmed

[1803203](#) (Refugee) [2018] AATA 1755 (20 April 2018); C Long, Member

Refugee – Protection visa – Fiji – No convention grounds – Economic hardship – Financial insecurity – Employment prospects – Fear of election outcomes – Decision under review affirmed

[1707637](#) (Refugee) [2018] AATA 1747 (30 April 2018); M Judd, Member

Refugee – Protection Visa – Malaysia – Debtor fearing creditor – Effective protection available – Economic reasons – Credibility concerns – Decision under review affirmed

[1508537](#) (Refugee) [2018] AATA 1737 (22 May 2018); P Vlahos, Member

Refugee – Protection visa – Eritrea – Social group – Former government employee – Male failed to complete national service – Illegal departure – Viewed as a ‘traitor’ – Fear of state government – Relocation issues – Decision under review remitted

Professions and Trades

[Beckett and Tax Practitioner's Board](#) [2018] AATA 1860 (14 June 2018); Mr PW Taylor SC, Senior Member

Tax Practitioners – tax practitioners board – registration as a tax agent – whether applicant is a fit and proper person – applicant proffering false dated copies of bank cheques – non-disclosure of unsatisfactory professional conduct – decision affirmed

Social Security

[Brennan and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1864 (27 June 2018); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Dudinski and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1843 (26 June 2018); Ms A Burke, Member

SOCIAL SECURITY – Newstart allowance – failure to attend appointment with employment services provider – failure to advise of non-attendance prior to appointment – whether reasonable excuse for the failure – penalty payment imposed – whether committed a serious failure because of persistent non-compliance with newstart obligations – whether eight week serious failure period should be applied to newstart payment – decision under review is affirmed

[Hudson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1845 (25 June 2018); Ms DK Grigg, Member

SOCIAL SECURITY – Newstart Allowance and Disability Support Pension – overpayment – where no administrative error – whether special circumstances – decision under review set aside and substituted – debt waived – special circumstances exist

[Hutchinson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1842 (25 June 2018); Senior Member R Cameron

SOCIAL SECURITY – disability support pension – Impairment Tables – whether condition fully treated and stabilised – decision affirmed

[JTDC and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1848 (22 June 2018); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether applicant qualifies for disability support pension – spinal condition – hypothyroidism – migraines – irritable bowel syndrome – cataracts – cognitive dysfunction – depression – anxiety – whether applicant meets Australian residency requirements – whether applicant meets requirements of the social security agreement between Australia and Germany – whether applicant's conditions rated at 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – decision affirmed

[Knapp; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 1839 (20 June 2018); Senior Member B Illingworth

SOCIAL SECURITY – Late lodgement of claim for family tax benefits – Single mother coping with son's addiction to illicit drugs – Whether special circumstances prevented timely lodgement of the tax return – Decision under review set aside and substituted

[Kontossis and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1846 (21 June 2018); Ms A Burke, Member

SOCIAL SECURITY – application for disability support pension — whether qualified – right shoulder, secondary chronic pain and cervical spine, and mental health conditions- whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review set aside and substituted

[TDQN and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1850 (7 June 2018); Senior Member R Cameron

SOCIAL SECURITY – disability support pension – whether qualified at date of cancellation – spinal condition, shoulder condition, carpal tunnel syndrome fully diagnosed, treated and stabilised – other conditions not fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under the Impairment Tables – Applicant has continuing inability to work – decision affirmed

[Yonan and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 1856 (26 June 2018); Ms A Burke, Member

SOCIAL SECURITY – disability support pension — whether qualified – whether spinal disorder, left knee meniscal tear, bilateral tennis elbow and adjustment 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

Superannuation

[Whittle and Australian Securities and Investments Commission](#) [2018] AATA 1861 (18 June 2018); Mrs JC Kelly, Senior Member

SUPERANNUATION – self-managed superannuation funds – approved SMSF auditor – Commissioner of Taxation referral to regulator – disqualification order issued by ASIC – failure to comply with auditor independence requirements – auditing of funds of immediate family and close family members – whether discretion should be exercised to disqualify applicant from being an approved SMSF or whether another decision should be made – decision affirmed

Veterans' Affairs

[Long and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 1841 (22 June 2018); Mrs JC Kelly, Senior Member

VETERANS' ENTITLEMENTS – disability pension – post-traumatic stress disorder – alcohol use disorder – substance use disorder – depressive disorder – whether applicant suffers from medical conditions – whether there is a connection between medical conditions and eligible defence service – decision varied

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
Dao and Minister for Home Affairs	[2018] AATA 1333
DGPZ and Minister for Home Affairs	[2018] AATA 469

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

Recent developments

Review of AAT's NDIS Practice Direction and internal procedures

The AAT has commenced a review of the [Review of National Disability Insurance Scheme Decisions Practice Direction](#) and the AAT's internal procedures for managing NDIS cases.

The AAT will be undertaking external consultation later this year. Further details will be announced in due course.

For the period of the review, the current NDIS Practice Direction will continue to apply.



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