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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.

Child Support

[Parnaby and Whittle](#) (Child support) [2018] AATA 1722 (17 April 2018); Y Webb, Member

Child Support – Percentage of care – Determination of the likely pattern of care – No change – Decision under review affirmed

[Coverdale and Easton](#) (Child support) [2018] AATA 1704 (20 April 2018); K Buxton, Member

Child Support – Departure determination – Income and financial resources of parents – Business income – Education of child in a manner expected by both parents – Orthodontic costs for the child – Decision under review set aside and substituted

[Nason and Nason](#) (Child support) [2018] AATA 1719 (20 April 2018); S Brakespeare, Member

Child support – Departure determination – Income and financial resources of parents – Ground not established – Refusal to make a departure determination – Decision under review set aside and substituted

[Strachan and Child Support Registrar](#) (Child support) [2018] AATA 1723 (30 April 2018); S Letch, Member

Child support – Adjusted taxable income of parent – Refusal to grant extension of time to object – The objection was lodged within the required timeframe – Decision under review set aside and remitted for reconsideration with the direction that the objection was lodged within time – Decision under review set aside

[Milburn and Milburn](#) (Child support) [2018] AATA 1718 (3 May 2018); K Timbs, Member

Child support – Application for fixed annual rate not to apply – Current income is not below the maximum base rate of parenting payment for a single person – Application refused – Decision under review affirmed

Citizenship

[Carey and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 2142 (28 June 2018); Mr P W Taylor SC, Senior Member

CITIZENSHIP – special category class TY subclass 444 visa – citizenship by conferral – good character – previous convictions – substantial criminal record – drug and dishonesty convictions – carnal knowledge of a minor – reporting obligation offences – personal circumstances – commendations – quality of good character – Citizenship Policy applied – character assessment – contemporary good character – decision set aside and remitted

[Zadeh and Minister for Home Affairs](#) (Citizenship) [2018] AATA 2145 (11 July 2018); Deputy President B W Rayment

CITIZENSHIP – citizenship by conferral – eligibility – applicant failed the citizenship test but attended every appointment – no limit to how many times the applicant can sit the test under the Ministerial Determination – reviewable decision is set aside and remitted

Compensation

[Milevska and Comcare](#) (Compensation) [2018] AATA 2141 (6 July 2018); Dr M Evans, Senior Member

WORKERS' COMPENSATION – Commonwealth Employee – physical injury – aggravation or new injury – psychological injury – adjustment disorder – post-traumatic stress disorder – whether a psychological injury is a disease or an injury other than a disease – soft tissue injury to neck and upper spine – Applicant trapped in a lift (elevator) in workplace – entitlement to compensation – entitlement to medical treatment and/or incapacity payments – whether Tribunal can alter description of injury or disease in s 14 determination – whether employment still a contributing factor to the Applicant's injury – physical injury decision affirmed – psychological injury decision set aside

[Winchester and Comcare](#) (Compensation) [2018] AATA 2146 (10 July 2018); Senior Member Theodore Tavoularis

COMPENSATION – permanent impairment – non-economic loss – where Applicant originally suffered a psychiatric injury in the early 1990s – whether Applicant continues to suffer from accepted psychiatric condition – whether Applicant now suffers from adjustment disorder – where Applicant has subsequently had a stroke, had cancer and had several children – whether other factors exist such that Applicant's present injury can no longer be said to arise out of his employment – decision under review affirmed

Education and Research

[Ullah and Secretary, Department of Education and Training](#) [2018] AATA 2159 (11 July 2018); Mark Hyman, Member

HIGHER EDUCATION – FEE-HELP – where applicant enrolled in units part-time – online study – wife pregnant – thyroid condition – birth of child – neonatal jaundice – where applicant withdrew from units after the census date – difficulties with assessments – where applicant studying remotely in Pakistan – whether special circumstances – whether beyond applicant's control – whether circumstances made their full impact after the census date – whether circumstances made it impracticable for applicant to continue studies – decision under review affirmed

Industrial Law

[Spataro and Secretary, Department of Employment](#) [2018] AATA 2139 (6 July 2018); Deputy President FD O'Loughlin

EMPLOYEE ENTITLEMENTS – Redundancy pay entitlement – insolvency of employer – calculation of redundancy pay entitlement under governing instrument – whether company policy falls within definition of governing instrument – decision under review set aside

[Tabone and Secretary, Department of Employment](#) [2018] AATA 2138 (6 July 2018); Deputy President FD O'Loughlin

EMPLOYMENT ENTITLEMENTS – Claim for advance under Fair Entitlements Guarantee Act 2012 – whether Applicant an employee or a contractor – unpaid remuneration due to insolvency event – Applicant initially engaged as contractor – relationship with employer changed over time to that of employee – change to employment relationship not reflected in formal arrangements between Applicant and employer – decision set aside

Migration

[Bhangu and Minister for Immigration and Border Protection](#) [2018] AATA 2143 (6 July 2018); Senior Member R. Cameron

MIGRATION – Request for revocation of mandatory cancellation of visa – Applicant fails character test – serious criminal record – burglary, theft and criminal damage – low risk of reoffending – best interests of minor child in favour of revocation – decision set aside and substituted

[NDRW and Minister for Home Affairs](#) (Migration) [2018] AATA 2144 (6 July 2018); Deputy President J W Constance

MIGRATION – mandatory cancellation of visa – discretion to revoke cancellation of visa – Ministerial Direction No. 65 – protection of the Australian community – seriousness and nature of conduct – assault – possession of prohibited substances – burglary – best interests of minor children in Australia affected by the decision – expectations of Australian community – risk to community should conduct be repeated – international non-refoulement obligations – decision affirmed

[Tahuriorangi and Minister for Immigration and Border Protection](#) [2018] AATA 2158 (10 July 2018); Senior Member Theodore Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – visa was cancelled under s 501(3A) because the Applicant did not pass character test and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – Considerations in Direction No. 65 – Applicant been in Australia for 17 years has family in Australia - considerations outweighed by protection of the Australian community and community expectations – decision under review affirmed

[MORGOS](#) (Migration) [2018] AATA 2227 (1 June 2018); R Matheson, Member

Migration – Partner (Residence) (Class BS) visa – Subclass 309 (Spouse (Provisional)) – Whether there is a genuine and continuing relationship – Quick inception of the relationship – Money transfers – Little knowledge of each other's financial circumstances – Trip to Vietnam – Short term stay in a hotel – Limited social activities together – Inconsistent evidence – Conflicting recollection of the wedding and other events – Decision under review affirmed

[Fahmy](#) (Migration) [2018] AATA 1982 (5 June 2018); D Barker, Member

Migration – Parent (Migrant) (Class AX) visa – Subclass 103 (Parent) visa – Whether the review applicant is a well settled Australian citizen – Relocated to Qatar on a temporary basis for work – Significant financial and professional links to Australia – Re-established a household in Australia – Seeking employment in Australia – Cultural responsibility to look after his mother – Decision under review remitted for reconsideration

[LAM](#) (Migration) [2018] AATA 2026 (5 June 2018); H Claringbold, Member

Migration – Child (Residence) (Class BT) visa – Subclass 101 (Child) – Over 18 years old – Full time study – 3 year gap in studies – Not a ‘reasonable time’ – Decision under review affirmed

[BHARDWAJ](#) (Migration) [2018] AATA 2008 (7 June 2018); H Sanderson, Member

Migration – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – Daughter sponsor of the applicant – Other siblings in India – Wrong application filed – Applicant is illegible – Decision under review affirmed

[Makwati](#) (Migration) [2018] AATA 1980 (7 June 2018); H Sanderson, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – Visa applicant over 18 – Not undertaking a full-time course of study – Completed Bachelor’s degree – Not working – No incapacity – Lived with mother in Zimbabwe – Mother deceased – Decision under review affirmed

Practice and Procedure

[Dimitropoulos and Australian Securities and Investments Commission](#) [2018] AATA 2160 (9 July 2018); Senior Member L. Kirk

PRACTICE AND PROCEDURE – summons issued to the respondent – set aside or revoke summons – section 37 of the Act – relevant principles – whether appropriate to issue summons – summons set aside

Refugee

[1508989](#) (Refugee) [2018] AATA 2116 (17 May 2018); J Marquard, Member

Refugee – Protection visa – Zambia – Particular social group – People with HIV – Political opinion – United Party for National Development – Murders of family members – Sexual abuse – Availability of medication – Political violence – Decision under review affirmed

[1515803](#) (Refugee) [2018] AATA 2087 (1 June 2018); D McCulloch, Member

Refugee – Protection visa – China – Religion – Christian – Social group – Family business owner – Member of underground church – Work issues – Fear of harm by debt collectors – Fear of harm by affected residents – Inconsistent evidence – Credibility issues – Decision under review affirmed

[1619942](#) (Refugee) [2018] AATA 2072 (4 June 2018); M Hawkins, Member

Refugee – Protection visa – Solomon Islands – Violated tribal customs – Relationship with a woman from a different ethnic background – Paid compensation to family – Adverse findings of the Department – Bogus documentation – Did not experience any harm in the Solomon Islands – Regular and frequent visitor to Australia – Delay in applying for protection – Decision under review affirmed

[1702934](#) (Refugee) [2018] AATA 2085 (4 June 2018); A Murphy, Member

Refugee – Cancellation – Protection visa – Afghanistan – Incorrect information – Ethnicity – Hazara – Social group – Fear of harm by extremists – Decision under review set aside

[1722928](#) (Refugee) [2018] AATA 2089 (12 June 2018); M Hawkins, Member

Refugee – Protection visa – Papua New Guinea – Federal Court remittal – Fear of Harm – Further sexual harassment and assault – Sexual assault victim – Social group – Single young woman – Country information supports the applicant’s claims – Credibility issues – Difficulty articulating claims – Joint application with siblings – Decision under review remitted

Social Security

[Birt and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2147 (10 July 2018); Member C Edwardes

SOCIAL SECURITY – FTB Part A – premature baby – medical conditions of child – Centrelink – notices and letters of entitlement – no application – lack of knowledge – payment of arrears – no special circumstances – circumstances of prevention – AAT1 decision affirmed

[Carroll and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2156 (9 July 2018); Senior Member T Tavoularis

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – depression – spinal conditions – where Applicant had 30 impairment points – Applicant had a severe impairment – whether Applicant had a continuing inability to work – where Applicant underwent five Job Capacity Assessments – where successive reports had lower baseline work capacities – whether program of support was unlikely to improve Applicant’s capacity for work – Applicant had a continuing inability to work – decision set aside and

[CQCD and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2151 (11 July 2018); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – Family Tax Benefit – FTB – whether there was a change in the care of the children – when the applicant had care of the children – when the other party had care of the children

[DKRH and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2149 (9 July 2018); Member D K Grigg

SOCIAL SECURITY – disability support pension – DSP – mental health condition – asthma condition – whether mental health condition fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables at the qualification date – decision under review affirmed

[Havet and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2155 (10 July 2018); Chris Puplick AM, Senior Member

Social Security – Disability Support Pension – Whether the Applicant’s appeal against an unsuccessful application for a Disability Support Pension should be granted – Impairment Tables – Qualification period – Traumatic brain injury – Blepharitis – Blood pressure – Haemochromatosis – Liver problems – Ischaemic heart disease – Fully diagnosed and fully treated – fully stabilised – Decision under review is affirmed

[KSWB and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 2153 (10 July 2018); Member C Edwardes

Social Security – disability support pension – medical conditions – impairment tables – continuing inability to work rating – participation in program of support – decision under review affirmed

[Lawson and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 2140 (16 May 2018); Senior Member B Stefaniak AM RF

SOCIAL SECURITY – disability support pension – lump sum preclusion period – whether special considerations exist – ill health – emotional state – financial circumstances – incorrect or insufficient legal advice – changed circumstances – decision set aside

[Spurrell and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 2148 (6 May 2018); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – impairment tables – insufficient points under Impairment tables – decision affirmed

[Sue and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2157 (11 July 2018); C Edwardes, Member

SOCIAL SECURITY – disability support pension cancelled – whether applicant had conditions that were fully diagnosed, fully treated and fully stabilised – whether applicant had 20 points at date of cancellation – chronic degeneration of the lumbar spine – diabetes – chronic degeneration of the right hip, right knee and both shoulders – asthma and COPD – depression – obesity – hypertension – other conditions after date of cancellation – 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
Cao and Minister for Home Affairs	[2018] AATA 1261
Somba and Minister for Immigration and Border Protection	[2018] AATA 1626

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
HSKJ v Minister for Immigration and Border Protection	[2017] AATA 1802	[2018] FCA 1013



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