



Administrative
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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.

Contents

Recent developments	3
New factsheets	3
AAT Recent Decisions	4
Citizenship	4
Compensation.....	4
Corporations	5
Migration.....	5
Practice and Procedure.....	6
Social Security	7
Veterans' Affairs.....	9
Appeals.....	10
Appeals lodged	10
Appeals finalised.....	10

Recent developments

New factsheets

The AAT has produced 12 new factsheets designed to assist our migration and refugee review applicants to better present their cases before the Migration and Refugee Division. The factsheets provide information about the issues considered by the Tribunal in particular review types and the kind of material applicants can provide to support their review.

These new factsheets are located on the Migration and Refugee Division factsheets page on our [website](#) with the general information factsheets.

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

[Galuk and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 2301 (19 July 2018); Senior Member DJ Morris

CITIZENSHIP – Revocation of citizenship by conferral – whether person would be rendered stateless – whether contrary to the public interest for the person to remain a citizen – serious rape – long period between offence and conviction – crimes against the person – pattern of other crimes – mitigating circumstances – whether discretion should be exercised – decision to revoke affirmed

[Kuel and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 2238 (12 July 2018); Dr D Cremean, Senior Member

CITIZENSHIP – child born in South Sudan – whether Applicant child's biological father – whether citizenship by descent – factors considered – decision set aside

[Singh and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 1310 (19 July 2018); Senior Member D.J. Morris

CITIZENSHIP – Citizenship by conferral – good character test – applicant convicted of sexual offence in 2008 – other associated breaches – other behaviour in Australia – pattern of conduct – contemporary good character assessment – decision set aside and remitted with direction applicant satisfies good character requirement

[Verma and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 2280 (5 June 2018); Mrs JC Kelly, Senior Member

CITIZENSHIP – refusal – whether applicant of good character – criminal record – domestic violence – Tribunal not satisfied in the circumstances that sufficient time had passed – decision under review affirmed

Compensation

[Bacic and Comcare](#) [2018] AATA 2384 (13 July 2018); Ms AF Cunningham, Senior Member

COMPENSATION – accepted injury – incapacity payments – ability to earn – voluntary redundancy – no offer of suitable employment – decision under review set aside and substituted

[De Gail and Comcare](#) (Compensation) [2018] AATA 2309 (20 July 2018); Dr P McDermott RFD, Deputy President

COMPENSATION – liability rejected for bilateral lateral epicondylitis condition – whether condition is an injury or disease – condition was not significantly contributed to by employment – decision under review affirmed

[ZZRP and Comcare](#) (Compensation) [2018] AATA 2240 (16 July 2018); Deputy President BW Rayment

COMPENSATION – whether applicant is still suffering the effects of his previous compensable condition – psychological condition – depressive disorder and anxiety state – claimed cause being workplace stress and bullying – found consistent pattern of diagnosis – reviewable decision set aside and remitted for quantification of monetary entitlements

Corporations

[Williams and Australian Securities and Investments Commission](#) [2018] AATA 2312 (13 July 2018); Deputy President BJ McCabe

CORPORATIONS – banning order – permanent ban – whether applicant is of good fame and character – where qualifications falsified – where non-compliance with a financial services law – whether suspension or enforceable undertaking an appropriate alternative to a ban – decision to impose permanent ban set aside and substituted with six year ban

Education and Research

[Merc Training Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 2298 (17 July 2018); Senior Member A Poljak

VOCATIONAL EDUCATION AND TRAINING – application for initial registration – Standards for NVR Registered Training Organisations – non-compliance with standards – Fit and Proper Person Requirements – honesty and character of chief executive officer – decision under review affirmed

PRACTICE AND PROCEDURE – Commonwealth as model litigant – duty to assist Tribunal to arrive at “correct or preferable decision” – failure to lodge all documents in possession or control relevant to the decision under review – reliance on findings of original decision-maker

Migration

[Baath and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 2300 (19 July 2018); Mr R West, Member

MIGRATION – refusal of application for Partner visa – criminal offences – driving under the influence of alcohol – character test – Direction 65 – discretionary factors – protection of the Australian community – best interests of minor children – expectations of the Australian community – impact on family members

[McGrath and Minister for Home Affairs](#) (Migration) [2018] AATA 2305 (2 July 2018); Dr P McDermott RFD, Deputy President

MIGRATION – visa cancellation under section 501(2) – applicant sentenced to multiple terms of imprisonment for a period of 12 months or more – applicant does not pass the character test – the protection of the Australian community is relevant – the expectations of the Australian community are not met – the best interests of minor children is relevant – other considerations are relevant – visa should be cancelled – decision under review affirmed

[Singh and Minister for Home Affairs](#) (Migration) [2018] AATA 430 (13 July 2018); Senior Member DJ Morris

MIGRATION – visa applicant – applicant fails character test under s 501(1) of Migration Act – sexual offending – one incident – no other relevant offending – discretion exercised on previous occasion not to cancel visa – risk of re-offending – impact on immediate family members – decision set aside

[Suleman and Minister for Home Affairs](#) (Migration) [2018] AATA 2310 (13 July 2018); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – where visa was cancelled under s 501(3A) because Applicant did not pass the 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 – where Applicant has committed more than 100 offences – where Australia owes international non-refoulement obligations to Applicant – considerations outweighed by protection of the Australian community and community expectations – decision under review affirmed

PRACTICE AND PROCEDURE – Migration Act 1953 (Cth) – s 500(6H) – two day rule – scope of oral submissions and evidence allowed from the Applicant

Practice and Procedure

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2243 (16 July 2018); Mr C Edwardes, Member

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review of decision – Tribunal refuses to grant an extension of time – disability support pension

[LKWV and Child Support Registrar](#) (Child support second review) [2018] AATA 2296 (18 July 2018); Ms S Burford, Member

Extension of Time – explanation for delay – length of the delay significant – applicant’s awareness of appeal rights – prospects of success – poor prospects of success – extension of time application refused

[Panayiotides and Australian Securities and Investments Commission](#) [2018] AATA 2383 (19 July 2018); Deputy President BW Rayment

PRACTICE AND PROCEDURE – production and inspection – summons to produce documents – objected to on the grounds that the documents sought were manifestly irrelevant, too broad, oppressive and caused the summonsed parties stress and difficulty – whether the respondent can seek to set aside the summonses – respondent allowed to apply to set aside summons – whether the summons required summonsed parties to seek documents from agents to answer the summons and discussions concerning any expenses incurred – summonsed party directed to produce documents in their possession or obtained without expense from an agent, but without access to any person until further order

[Park and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 2299 (18 July 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – whether it is reasonable in all the circumstances to grant the extension – whether delay was significant – whether explanation for delay was sufficient – whether the application has merit – cancellation of approval of application for Australian citizenship – whether applicant is a permanent resident – failure to attend citizenship ceremony and make pledge of commitment – notification correspondence sent to wrong address – whether administrative error – extension of time application granted

Social Security

[Davies and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2303 (19 July 2018); Ms DK Grigg, Member

SOCIAL SECURITY – farm household allowance – income maintenance period – whether severe financial hardship – decision under review is varied

[GCFD and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2248 (6 July 2018); Mr C Edwardes, Member

Family Tax Benefit – FTB – was there a change in the pattern and percentage of care of children – review of revocation of determination – determination of percentage of care – whether an interim period percentage should be applied – lack of corroborating evidence decision under review affirmed

[Govindarajula Naidu and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2244 (2 May 2018); Senior Member MJ McGrowdie

SOCIAL SECURITY – refusal of disability support pension – whether conditions fully diagnosed, treated and stabilised – Tribunal satisfied that applicant's conditions are fully diagnosed – whether conditions have significant impact on applicant's functioning – applicant not enrolled in or excused from program of support – decision affirmed

[Jenkins and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2277 (17 July 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – refused – 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

[Johnson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2295 (18 July 2018); Ms AF Cunningham, Senior Member

SOCIAL SECURITY – cancellation of disability support pension – conditions not fully treated and stabilised – no impairment rating – failure to satisfy program of support provisions – failure to satisfy continuing inability to work provisions – decision under review affirmed

[Krawczyk and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2304 (13 July 2018); Senior Member MJ McGrowdie

SOCIAL SECURITY – Centrelink – family tax benefit – whether the Applicant had 100% care of children – whether Applicant was a member of a couple – Applicant and spouse residing at same address – decision under review affirmed

[Librizzi and Secretary, Department of Health](#) (Social services) [2018] AATA 2278 (17 July 2018); Mr C Edwardes, Member

AGED CARE – age care provider – asset – assessment – residential aged care assessment – financial hardship qualification – sole home owner – close relative renting property – unrealisable asset – decision under review affirmed

[Lisi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2308 (19 July 2018); Mr R West, Member

SOCIAL SECURITY – cancellation of disability support pension – whether conditions rate 20 points or more under Impairment Tables – post traumatic stress disorder – depression – decision set aside

[Milne and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2306 (13 July 2018); Member I Thompson

SOCIAL SECURITY – disability support pension – whether the applicant's conditions were fully diagnosed, fully treated and fully stabilised at the date of the claim or within 13 weeks – decision under review set aside

[Nieukerke and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2245 (16 July 2018); Mr C Edwardes, Member

SOCIAL SECURITY – age pension – overpayment – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – no “special circumstances” – AAT1 decision under review affirmed

[Owens and Secretary, Department of Social Services](#) [2018] AATA 2302 (13 July 2018); Senior Member B Stefaniak AM RF

SOCIAL SECURITY – disability support pension – payment suspended due to overseas absence – maximum portability period – extension of portability period where event occurred or begun during period of absence – whether applicant meets requirements for unlimited portability – whether temporary absence for a humanitarian purpose – cancellation of disability support pension – decision under review varied

[Trevillien and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2279 (18 July 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – Newstart Allowance application rejected – assets test – realisable assets – whether financial hardship – principal home – subsequent granting of Newstart Allowance – frozen assets – decision under review set aside and substituted

Veterans' Affairs

[Clarke and Repatriation Commission](#) (Veterans' entitlement) [2018] AATA 2246 (13 July 2018); Deputy President J Sosso

VETERANS' ENTITLEMENTS – war widow pension – service in Malaya and Thailand - Deledio test – Statement of Principles No. 37 of 2013 – where veteran died of malignant neoplasm of the colorectum – whether the veteran's smoking habit increased during his operational service – whether his increase in smoking habit was connected to his rendering of operational service

[Dorsett and Repatriation Commission](#) (Veterans' entitlement) [2018] AATA 2241 (12 July 2018); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – application for special rate of pension – conditions of post-traumatic stress disorder and alcohol dependence – whether non-accepted conditions prevented the applicant from undertaking employment – whether other factors prevented the applicant from undertaking employment – alone test not satisfied – ameliorating provisions not satisfied – 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
Hunt and Repatriation Commission	[2018] AATA 1110
Leach and Comcare	[2018] AATA 1632
MacGinnes and Residual Assco Group Limited	[2018] AATA 1248
Twentyman and Secretary Department of Social Services	[2018] AATA 110

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Mason v John Holland Pty Ltd	[2018] AATA 415	[2018] FCA 1046



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