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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.

Compensation

[Barton and Comcare](#) [2018] AATA 2582; 27/07/18; Senior Member N A Manetta

Psychiatric disorder – injury occurring in workplace - whether result of reasonable administrative action – held actions in question not reasonable and injury compensable – decision set aside and substituted

[de Gail and Comcare](#) [2018] AATA 2309; 20/07/18; Dr P McDermott RFD, Deputy President

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

[Eliades and Comcare](#) [2018] AATA 2576; 27/07/18; Senior Member N A Manetta and L Stephan, Member

Back injury – lower back pain – gym membership – whether Comcare should pay gym membership fees as reasonable therapeutic treatment – held home exercise regime equally effective – cost of gym membership not reasonable – decision affirmed

[McDonald and Comcare](#) [2018] AATA 2565; 27/07/18; Senior Member N A Manetta

Domestic gardening services – whether required as a result of compensable injury – held that services were not so required – decision affirmed

Freedom of Information

[Carpenter and Bureau of Meteorology](#) [2018] AATA 2506; 27/07/18; Senior Member N A Manetta

Employment records – applicant claiming records show unlawful or improper departmental conduct and records should be altered accordingly – held Tribunal not intended in its review to decide illegality of departmental action – decision affirmed

Immigration and Citizenship

[Mheich and Minister for Immigration and Border Protection](#) [2018] AATA 2569; 18/05/18; Senior Member M J McGrowdie

Whether Applicant has permanent or enduring physical or mental incapacity at the time of making his application for citizenship – further professional medical opinion required – prospects of success for the Applicant's application for review considered – extension of time application refused

[Mishra and Minister for Immigration and Border Protection](#) [2018] AATA 2567; 30/07/18; Dr P McDermott RFD, Deputy President

Permanent resident – application for Australian Citizenship – application for citizenship refused on character grounds – whether the applicant was of good character – previous convictions – conduct since convictions – Australian’s observance of laws and openness in dealings

[Sinnathamby and Minister for Immigration and Border Protection](#) [2018] AATA 2579; 4/07/18; Senior Member D J Morris

Identity of applicant – provision of bogus document – threshold requirement not met – good character requirements – inconsistency in information provided to Department – decision affirmed

[Ali and Minister for Home Affairs](#) [2018] AATA 2512; 17/07/18; Senior Member C Puplick AM

Mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa – Failed character test – Substantial criminal record – Driving while disqualified – Alcohol – Domestic violence – Common assault – Assault occasioning actual bodily harm – Two-day rule – Re-offending – Grandchildren – Police – Local Court – Imprisonment – Another reason to set aside revocation – Ministerial Direction No. 65 – Primary considerations – Protection of the Australian community – Best interests of minor children – Expectations of the Australian community – Other considerations – Non-refoulement obligations – Strength, nature and duration of ties – Impact on victims – Extent of impediments if removed – Decision of the delegate of the Minister not to revoke mandatory cancellation of visa is affirmed

[Azizi and Minister for Home Affairs](#) [2018] AAT 2561; 23/07/18; Deputy President Rayment QC

Application for bridging visa – visa refused – applicant found by delegate not to pass character test – previous Tribunal decision found that applicant passed the character test – no circumstances relating to the applicant had changed since previous decision – delegate failed to treat previous Tribunal decision as normative – previous decision to be followed for consistency – no remaining issues to consider – reviewable decision set aside and remitted with the direction that the discretion to refuse applicant’s application for a visa on character grounds is to be exercised in his favour

[BNHW and Minister for Home Affairs](#) [2018] AATA 2578; 1/08/18; Dr D Cremean, Senior Member

Decision not to revoke mandatory cancellation of visa – long history of offending – protection of community and community expectations – best interests of minor children – strength nature and duration of ties with Australia – international non-refoulement obligations – application of Jones v Dunkel – decision affirmed

[Chibwana and Minister for Home Affairs](#) [2018] AATA 2571; 31/07/18; Senior Member A Younes

Decision not to revoke section 501 visa cancellation – orphan relative visa – failure to pass character test – whether another reason why original decision should be revoked – Ministerial Direction 65 applied – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of minor children in Australia – expectations of the Australian community – other considerations – whether Tribunal required to consider international non-refoulement obligations – strength, nature and duration of ties to Australia – impact on victims – extent of impediments if removed – decision not to revoke the cancellation of the applicant’s orphan relative visa affirmed

[GQVS and Minister for Home Affairs](#) [2018] AATA 2562; 17/07/2018; Dr D Cremean, Senior Member

Decision not to revoke mandatory cancellation – long history of offending – protection of community and community expectations – best interests of minor children – strength nature and duration of ties with Australia – international non-refoulement obligations – decision affirmed

[Manku and Minister for Immigration and Border Protection](#) [2018] AATA 2570; 30/07/18; Senior Member M Griffin QC

Application for a student visa – whether decision-maker is to exercise discretion to refuse the grant of a visa – whether the Applicant is of good character – whether there is a risk of harassing, molesting, intimidating or stalking another person – apprehended domestic violence order – Direction No 65 – decision set aside

[ZCNR and Minister for Home Affairs](#) [2018] AATA 2511; 20/07/18; Senior Member L Kirk

Exercise of discretion to revoke Mandatory Visa Cancellation Decision – failure to pass character test – Ministerial Direction 65 applied – protection of the Australian community – nature and seriousness of Applicant’s conduct – risk to Australian community - best interests of minor children – expectations of Australian community – whether non-refoulement obligations owed to Applicant – strength, nature and duration of any family or social links – extent of impediments if applicant removed – decision set aside and substituted

National Disability Insurance Scheme

[Sheldon and National Disability Insurance Agency](#) [2018] AATA 2560; 30/07/18; Dr L Bygrave, Member

Whether the applicant meets the disability requirements set out in the NDIS Act to participate in the NDIS – access criteria considered – objects and principles of the Act considered – potential risks of surgery weighed against expert medical evidence – applicant has not undertaken any recent medical review about alternative treatments – further treatment may be available for applicant’s impairment – Tribunal not satisfied impairment is permanent – decision affirmed

Practice and Procedure

[Sims and Hayes](#) [2018] AATA 2577; 27/07/18; Deputy President P Britten-Jones

Seafarers – Where applicant injured while working as a deckhand – Identifying the proper respondent – Definition of employer – Inclusive definition of employer is not a deeming provision

Social Security

[Bota and Secretary, Department of Social Services](#) [2018] AATA 2508; 27/07/18; Senior Member C Puplick AM

Disability support pension – whether pension should be paid at the single or married rate – meaning of “a member of a couple” – whether applicant living separately and apart from his wife – section 24 discretion – whether special reason not to be treated as a member of a couple – ability to pool resources – decision under review affirmed

[Choy and Secretary, Department of Social Services](#) [2018] AATA 2503; 27/07/18; Senior Member A Poljak

Youth allowance – suspension due to overseas absence – maximum portability period – exemption for purpose of undertaking studies that form part of the course of education – decision under review affirmed

[Dawe and Secretary, Department of Social Services](#) [2018] AATA 2509; 27/07/18; Senior Member PJ Clauson

Disability Support Pension – Refusal – Inflammatory Myopathy Condition – Vestibular Neuropathy Condition – GORD Condition – whether impairments are of 20 points of more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

[Harris and Secretary, Department of Social Services](#) [2018] AATA 2574; 1/08/18; Senior Member R Cameron

Reduction of payment – Newstart allowance – superannuation payment – whether superannuation payment ordinary income – spousal superannuation pension – scope of reviewable decision – whether an Act has retrospective effect – decision affirmed

[Lucas and Secretary, Department of Social Services](#) [2018] AATA 2563; 31/07/18; Senior Member T Tavoularis

Disability support pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the relevant period – whether conditions attracted 20 impairment points or more – epilepsy – post-traumatic stress disorder – chronic pain syndrome – sleep apnoea – left arm conditions – conditions were fully diagnosed – whether Applicant undertook reasonable treatment during the relevant period – conditions were not fully treated or stabilised – no impairment points can be attributed – decision under review affirmed

[Mahoney and Secretary, Department of Social Services](#) [2018] AATA 2510; 27/07/18; Senior Member P J Clauson

Disability Support Pension – Refusal – Mental Health Condition – Neck Condition – whether impairments are of 20 points of more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

[Ponnahennadige and Secretary, Department of Social Services](#) [2018] AATA 2505; 27/07/18; Dr P McDermott RFD, Deputy President

Eligibility for age pension – qualifying for age pension – qualifying Australian residence – start day provision – International Agreements Act – international agreement between Australia and Japan – totalisation for Australian benefits

[Ritskos and Secretary, Department of Social Services](#) [2018] AATA 2580; 13/07/18; Senior Member R Cameron

Eligibility for disability support pension – whether conditions fully treated and stabilised during qualification period – whether rating can be assigned under Impairment Tables – decision under review affirmed

[RJNH and Secretary, Department of Social Services](#) [2018] AATA 2568; 7/06/18; A Wood, Member

Mobility allowance – impairment – date from which allowance should be paid – decision set aside and substituted

[Shevki and Secretary, Department of Social Services](#) [2018] AATA 2566; 5/03/18; Ms A Burke, Member

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 – decision affirmed

[Spaleta and Secretary, Department of Social Services](#) [2018] AATA 2581; 18/05/18; Senior Member R Cameron

Disability support pension – whether qualified – mental and physical health conditions diagnosed but not fully treated or stabilised – whether impairments attract rating of 20 points or more under Impairment Tables – whether program of support undertaken – decision affirmed

[Stegemann and Secretary, Department of Social Services](#) [2018] AATA 2504; 27/07/18; Senior Member N A Manetta

Pensions, benefits and allowances – Disability Support Pension – whether impairments warranted 20 points under a single table – held less than 20 points eligible to be awarded – program of support requirements not fulfilled – decision affirmed

[Wenzler and Secretary, Department of Social Services](#) [2018] AATA 2572; 27/07/18; Senior Member P J Clauson

Disability Support Pension – Refusal – Cervical Spinal Condition – Lumbar Spine Condition – Anxiety Condition – Migraine Condition - whether impairments are of 20 points or more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

[Wright and Secretary, Department of Social Services](#) [2018] AATA 2575; 31/07/18; M Hyman, Member

Disability support pension – rejection of claim – inflammatory arthritis with osteoarthritis – whether fully diagnosed, - whether fully treated and stabilised – chondromalacia patellae – Hashimoto's thyroiditis – depression and anxiety – decision under review affirmed

Taxation

[Mitchell and Commissioner of Taxation](#) [2018] AATA 2507; 27/07/18; Senior Member L Hespe

Meal allowance expense – deductibility – whether incurred in gaining or producing assessable income – whether of a private or domestic nature – substantiation requirements – whether requirements for reasonable overtime meal allowance exception satisfied – whether expenses covered by meal allowance

Veterans' Affairs

[Brunswick and Repatriation Commission](#) [2018] AATA 2564; 26/07/18; Brigadier A G Warner

Overpayment of service pension – date from which Applicant's service pension should be calculated at partnered rate – date on which Applicant entered into de facto relationship – decision under review affirmed

[Wall and Repatriation Commission](#) [2018] AATA 2573; 7/06 2018; Senior Member A A Nikolic AM CSC

Pension – left optic atrophy – major depressive disorder – operational service – whole of the material does not raise a reasonable hypothesis connected to circumstances of operational service – 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
Beckett and Tax Practitioner's Board	[2018] AATA 1860

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Goodricke v Comcare	[2017] AATA 1249	Dismissed 26.7.18. See [2018] FCA 873



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