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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

[Carey and Carey](#) (Child support) [2018] AATA 2414 (5 June 2018); F Hewson, Member

Child support – Non agency payments – Whether travel costs were mutually intended to be in lieu of child support – Decision to credit part of a payment – Decision under review set aside and substituted

Child support – Non agency payments – Whether travel costs were mutually intended to be in lieu of child support – Decision not to credit the payments – Decision under review affirmed

[Cortes and Dodman](#) (Child support) [2018] AATA 2408 (13 June 2018); S Hoffman, Member

Child support – Departure determination – Income and financial resources of the parents – Proper needs of the children – Costs of private school fees – Decision under review set aside and substituted

[Gill and Crabbe](#) (Child support) [2018] AATA 2409 (19 June 2018); K Timbs, Member

Child support – Percentages of care – Whether there was a change to the pattern of care – Refusal to revoke the existing percentage of care – Decision under review affirmed

[Hartwell and Thomas](#) (Child support) [2018] AATA 2416 (6 June 2018); J Cuthbert, Member

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

[PCXM and Child Support Registrar](#) (Child support second review) [2018] AATA 2663 (6 August 2018); Brigadier A G Warner, Member

Child support – whether there was a change of care – interpretation of Court orders – whether Court orders not complied with – whether interim care determination applies – decision under review affirmed

[PHHZ and Child Support Registrar](#) (Child support second review) [2018] AATA 2595 (6 August 2018); M J McGrowdie, Senior Member

SOCIAL SECURITY - child support - percentage of care – whether there was a change in care – actual care - decision affirmed

[Reid and Gates](#) (Child support) [2018] AATA 2410 (8 June 2018); P Glass, Member

Child support – Departure determination – Whether there is new information since the last departure decision – A ground for departure not established – Refusal to make a determination – Decision under review affirmed

Compensation

[Diehm and TNT Australia Pty Ltd](#) (Compensation) [2018] AATA 2670 (8 August 2018); Dr P McDermott RFD, Deputy President

COMPENSATION – Claim for workers' compensation for myocardial infarction – whether condition can be classified as an injury – whether condition can be classified as a disease – when myocardial infarction occurred – evidence suggests myocardial infarction started when the applicant was not at work – condition not classified as an injury or a disease – decision under review affirmed

[Thompson and Comcare](#) (Compensation) [2018] AATA 2707 (9 August 2018); Deputy President Rayment QC

COMPENSATION – workers compensation – osteoarthritis of the right hip – femoroacetabular impingement – whether applicant suffered an injury or disease – whether employment contributed to a significant degree – insufficient medical evidence to find that employment accelerated applicant's condition – decision under review affirmed

Freedom of Information

[Butler and Commonwealth Scientific and Industrial Research Organisation](#) (Freedom of information) [2018] AATA 2668 (7 August 2018); T Tavoularis, Senior Member

FREEDOM OF INFORMATION – where Applicant seeks documents from the CSIRO regarding testing of fire alarms – whether documents are exempted from the Freedom of Information Act 1982 (Cth) – section 7 – whether request was in respect of documents in respect of the CSIRO's commercial activities – commercial activities – whether activities undertaken on a commercial basis – whether the CSIRO was in competition with others – the CSIRO was not in competition with others – whether it was reasonably expected in the foreseeable future that the CSIRO would be in competition with others – the documents are exempted – decision under review affirmed

Migration

[Burford Consulting Pty Ltd](#) (Migration) [2018] AATA 2685 (10 July 2018); P Emmerton, Member

Migration – Nominated sponsorship – Regional Sponsor Migration Scheme – Direct Entry nomination scheme – Employment on a full-time basis for at least 2 years – Business expansion into the Chinese community – Visa applicant's multi language skills – Detailed knowledge of business activities – Practice and Procedure – Joint hearing with visa applicant – Decision under review set aside

[DND and Minister for Home Affairs](#) (Migration) [2018] AATA 2716 (9 August 2018); Mr P W Taylor SC, Senior Member

MIGRATION – cancellation of Applicant’s visa – whether cancellation of the Applicant’s visa should be revoked – primary considerations – protection of the Australian community – nature and seriousness of the conduct – expectations of the Australian community – assault – shoplifting – robbery – mid range PCA – best interests of minor children in Australia – other considerations – strength, nature and duration of ties to Australia – impact on victims – decision set aside

[Ferdous](#) (Migration) [2018] AATA 2692 (4 July 2018); K Raif, Senior Member

Migration – Cancellation – Student (Temporary) (Class TU) – Subclass 573 (Higher Education Sector) visa – Risk to health safety and good order of the Australian community – Criminal charges – Assault occasioning actual bodily harm of partner – Visa applicant subject to an Apprehended Violence Order – Applicant denies having committed any offences – Degree of hardship – Financial investment in studies – Unable to complete course – Decision under review affirmed

[Ferreira and Minister for Home Affairs](#) (Migration) [2018] AATA 2599 (6 August 2018); C Puplick AM, Senior Member

MIGRATION – mandatory cancellation of a visa – failed character test – substantial criminal record – dishonesty, driving and drug-related offences – multiple sentences of imprisonment – previous visa warnings and cancellation – whether another reason why original decision should be revoked – Ministerial Direction No. 65 – Primary considerations – protection of the Australian community – best interests of minor children – expectations of Australian community – Other considerations – strength, nature and duration of ties – extent of impediments if removed – significant language, cultural and employment barriers – decision under review affirmed

[LKQD and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 2710 (9 August 2018); L M Gallagher, Member

MIGRATION – refusal to grant protection visa – failure to meet criterion in s 36(1C) of Migration Act – whether applicant is a danger to the Australian community – decision under review affirmed

[MAN OFFICE \(AUSTRALIA\) PTY LTD](#) (Migration) [2018] AATA 2672 (11 July 2018); B Cullen, Member

Migration – Sponsorship approval – Direct Entry Nomination Scheme – Regional Sponsored Migration Scheme – Genuine need for paid employee – No current employees – Nominated position – Sales and Marketing Manager – Visa applicant’s qualifications irrelevant to the proposed role – Lack of details of role duties – Practice and Procedure – Joint hearing with nominee – Decision under review affirmed

[Nevili](#) (Migration) [2018] AATA 2658 (2 July 2018); K Raif, Senior Member

Migration – Cancellation – Special Category (Temporary) (Class TU) – Subclass 444 (Special Category) visa – Risk to the safety and good order of the Australian community – Charged and convicted with a range of offences – Latest conviction stealing from a person – Incidents not a one off – Applicant easily influenced by peers – Degree of hardship – Separation from immediate family members – Wants to help support Mother and younger siblings – Decision under review affirmed

[Rowe and Minister for Home Affairs](#) (Migration) [2018] AATA 2708 (9 August 2018); C Puplick AM, Senior Member

Migration – mandatory cancellation of a visa – applicant does not pass character test – substantial criminal record – dishonesty/stealing offences – whether another reason why original decision should be revoked – mental health issues – diagnosis of schizophrenia – recent engagement with treatment – Direction No. 65 – Primary considerations – protection of the Australian community – best interests of minor children – expectations of Australian community – Other considerations – strength, nature and duration of ties – extent of impediments if removed – importance of maintaining current treatment regime – decision under review set aside and substituted

[Qasimi](#) (Migration) [2018] AATA 2677 (12 July 2018); J Billings, Senior Member

Migration – Visitor (Class FA) – Subclass 600 (Visitor) – Sponsored Family Stream – Practice and procedure – First decision remitted to the Department – Sponsorship by a well settled Australian relative – Current review – Whether the review and visa applicant are close relatives – Identity documents do not include mother’s details – Consistent with country information – Authentic documents submitted – Credible witness – Tribunal satisfied of mother and daughter relationship – Decision under review remitted

National Disability Insurance Scheme

[David and National Disability Insurance Agency](#) [2018] AATA 2709 (8 August 2018); R Cameron, Senior Member

National Disability Insurance Scheme – applicant with Nemaline Myopathy – whether cost of transport reasonable and necessary support – object of NDIS – cost of airplane tickets for carer to attend sporting events – cost of taxis to visit friends and family – decision set aside and substituted

[Rain and National Disability Insurance Agency](#) [2018] AATA 2597 (2 August 2018); K Parker, Member

National Disability Insurance Scheme – application for review of statement of supports in NDIS plan – participant requested funding for a wheelchair and a support carer to propel the wheelchair – whether reasonable and necessary supports – whether support warranted on account of the participant’s physical condition – participant suffers from borderline personality disorder – whether requested support may present a risk of dependence if provided – whether support required to allow the participant to having greater involvement in community activities that require travelling long distances – consideration of alternative supports

Practice and Procedure

[Stonebridge and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2594 (3 August 2018); 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 – disability support pension – application for extension of time refused

Refugee

[1513556](#) (Refugee) [2018] AATA 2318 (14 June 2018); R Shanahan, Member

Refugee – Protection visa – Turkey – Ethnicity – Kurdish – Political opinion – Member of BDP – Kurdish political activist – Member of illegal terrorist organisation – Draft evader – Victim of physical abuse by police – Forced conscription – Credibility issues – Decision under review affirmed

[1618964](#) (Refugee) [2018] AATA 2273 (20 June 2018); C Smolicz, Member

Refugee – Protection visa – Cambodia – Business debt – Harm – Fears physical harm from money lenders – Real chance of serious harm – Social group – ‘Single/separated women in Cambodia’ – Domestic violence victim – Well-founded fear of persecution – Decision under review remitted for consideration

[1509054](#) (Refugee) [2018] AATA 2239 (25 June 2018); L Nicholls, Senior Member

Refugee – Protection visa – Algeria – Fears serious harm from terrorist groups – Father kidnapped – No detailed evidence to support claim – Religion – Atheist – No public declaration of atheism – Returned to Algeria – Vague evidence – No real risk of serious harm – Decision under review affirmed

[1731082](#) (Refugee) [2018] AATA 2316 (29 June 2018); S Baker, Member

Refugee – Protection visa – China – Social group – Protester against land confiscation and compensation – Victim of torture and mistreatment – Fear of harm by police – Credibility concerns – Decision under review affirmed

[1621593](#) (Refugee) [2018] AATA 2314 (2 July 2018); M Hawkins, Member

Refugee – Protection visa – Vietnam – Harm – Domestic Violence – Protection order – Second husband – Connections to the Mafia – Debt – Sign papers under duress – Inconsistent evidence – Credibility issues – Decision under review affirmed

Social Security

[De Silva and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2718 (9 August 2018); Ms A Burke, Member

FAMILY TAX BENEFIT - whether FTB should be paid at the base rate - absences from Australia - decision under review affirmed

[Galea and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2719 (23 May 2018); B Stefaniak AM RFD, Senior Member

SOCIAL SECURITY – newstart allowance – lump sum preclusion period – whether special considerations exist – ill health – financial circumstances – changed circumstances – expenditure on an invention – decision affirmed

[Johnson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2717 (9 August 2018); B Stefaniak AM RFD, Senior Member

SOCIAL SECURITY – family tax benefit – late lodgement of tax returns – whether special circumstances prevented lodgement of tax returns on time – health issues – lack of knowledge of change of time limits – decision affirmed

[Katovic and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2600 (3 August 2018); Mr R West, Member

SOCIAL SECURITY – refusal of disability support pension – whether conditions rate 20 points or more under Impairment Tables – lower back pain – asthma - decision affirmed

[Loh and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2598 (3 August 2018); Mr R West, Member

SOCIAL SECURITY – refusal of disability pension – whether conditions rate 20 points or more under Impairment Tables – Chronic Myeloid Leukaemia – cardiac and respiratory disorders – pleural effusions – meaning of ‘assistance’ - decision affirmed

[Moonlight Family Day Care Pty Ltd and Secretary, Department of Education and Training](#) [2018] AATA 2706 (7 August 2018); Dr D Cremean, Senior Member

SOCIAL WELFARE—Child Care Benefits approval —admitted breaches by provider----appropriate sanction—cancellation of approval—decision affirmed

[Norouz and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2712 (8 August 2018); D K Grigg, Member

FAMILY ASSISTANCE – family tax benefit – percentage of care – whether there was a change in the percentage of care – what is the correct percentage of care - decision under review varied

[Perlina and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2667 (6 August 2018); I F Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether there was a "continuing inability to work" – reports of medical practitioners considered – Job Capacity Assessment conducted – decision under review affirmed

[Russell and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2664 (25 July 2018); D K Grigg, Member

SOCIAL SECURITY – Newstart Allowance – meaning of “liquid assets” - statutory construction – whether section 1118 of the Social Security Act 1991 applies to “liquid assets” waiting period in section 14A – decision under review set aside and remitted for reconsideration and calculation

[Troendle and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2665 (7 August 2018); B Stefaniak AM RFD, Senior Member

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – diabetes – lower limb condition – whether applicant’s conditions rated at 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – decision affirmed

[Vakrinos and Secretary Department of Health](#) (Social services) [2018] AATA 2669 (7 August 2018); Ms A Burke, Member

AGED CARE ASSESSMENT – means tested daily fee – whether refundable accommodation deposit is an asset – whether a loan can be used to reduce the value of the assessable asset – decision affirmed

Taxation

[Cataldo and Inspector-General in Bankruptcy](#) (Taxation) [2018] AATA 2596 (4 July 2018); Deputy President F D O’Loughlin

Application to Inspector-General in Bankruptcy for review of amount of remuneration claimed by trustee of bankrupt estate – application made outside of prescribed 28 day period – application for extension of time due to special circumstances – special circumstances not found – decision affirmed

Veterans' Affairs

[Coghill and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 2705 (7 August 2018); Mrs J C Kelly, Senior Member

Whether Applicant eligible for Intermediate Rate of Pension or Special Rate of Pension –test for eligibility set out in s 23(1)(b) or s 24(1)(b) of the Veterans’ Entitlements Act 1986 – relevant standard of proof reasonable satisfaction – Applicant’s army service considered eligible and operational service under the Act - Applicant’s accepted conditions and medical opinion considered – 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
Lawson and Secretary, Department of Social Services	[2018] AATA 2140
Sharma and Minister for Immigration and Border Protection	[2018] AATA 2110

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v ACN 154 520 199 Pty Ltd (in liq) (formerly EBS & Associates Pty Ltd) and AAT	[2018] AATA 33	[2018] FCA 1140
Favas v Comcare	[2017] AATA 1317	[2018] FCA 1156
Gropel v Comcare	[2017] AATA 1290	[2018] FCA 1146
Secretary, Department of Social Services v Sesalim	[2017] AATA 68	[2018] FCA 1159
QSVS v Minister for Home Affairs and Anor	[2017] AATA 2708	[2018] FCA 524 [2018] FCAFC 124



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