



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT 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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# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Compensation.....	3
Freedom of Information .....	4
Migration.....	4
Practice and Procedure.....	5
Professions and Trades .....	5
Social Security .....	6
Taxation.....	8
Veterans' Affairs.....	8
<b>Appeals.....</b>	<b>9</b>
Appeals lodged .....	9
Appeals finalised.....	9

# 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

[Dalton and Comcare](#) (Compensation) [2018] AATA 2923 (16 August 2018); Mr M Hyman, Member

COMPENSATION – bullying and isolation – psychological condition - whether the applicant's claim is for an injury or a disease - exclusion for wilful and false representation that the applicant had previously suffered from the disease for which compensation is now claimed – whether the representations were for purposes connected with employment – whether the disease denied in the representations was the same as that for which compensation was claimed – diagnosis of adjustment disorder – alternative diagnosis of dysthymia – potentially compensable disease not the same as the disease denied in the representations – claim is not excluded

[Dango and Comcare](#) (Compensation) [2018] AATA 2898 (15 August 2018); Mr K Parker, Member

Compensation – psychological injury – adjustment disorder with depressed and anxious mood – whether aggravation or continuation of underlying non-compensable condition – disease – whether injury was the result of administrative action – identification of administrative actions – underperformance management process – refusal to transfer employee to a different branch within the Department – whether each administrative action was reasonable action taken in a reasonable manner – whether actions were inconsistent with the employer's obligations under an enterprise agreement and its internal policies – decision set aside

[Martin and Comcare](#) (Compensation) [2018] AATA 2870 (3 August 2018); Deputy President JW Constance

COMPENSATION – whether Applicant suffered from an ailment or aggravation of such an ailment – whether the ailment or aggravation was contributed to by the Applicant's employment – was the ailment or aggravation suffered as a result of administrative action taken in respect of the Applicant's employment – whether administrative action was reasonable – whether administrative action was taken in a reasonable manner – reviewable decision set aside

[O'Sullivan and P&O Maritime Services Pty Ltd](#) (Compensation) [2018] AATA 2899 (15 August 2018); Mr S Webb, Member

SEAFARERS' COMPENSATION – claim for compensation in respect of an injury – previous accepted injury – scope of claim – jurisdiction of the Tribunal – request for referral of a question of law to the Federal Court and a stay of proceedings – preconditions and relevant considerations to exercise of discretion – meaning of "question of law arising in a proceeding" – facts necessary to the question posed not yet determined – referral would be premature – discretion not exercised – no reasonable grounds to stay proceedings – request refused

[Smith and Comcare](#) (Compensation) [2018] AATA 2901 (15 August 2018); Deputy President G Humphries

COMPENSATION – whether physiotherapy reasonable treatment – whether massage reasonable treatment – factors to be considered in determining this issue – reviewable decision set aside

## Freedom of Information

[Burgess; Secretary Department of Veterans' Affairs and](#) (Freedom of information) [2018] AATA 2897 (8 August 2018); Deputy President I Hanger AM QC

FREEDOM OF INFORMATION – professional indemnity insurance - policy schedule – exempt document – breach of confidence – quality of confidentiality – detriment – unauthorised disclosure

## Migration

[Aciek and Minister for Home Affairs](#) (Migration) [2018] AATA 2755 (19 July 2018); Mr PW Taylor SC, Senior Member

MIGRATION – Class XB Subclass 202 Global Special Humanitarian visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – serious criminal convictions – protection of the Australian community – community expectations – risk of reoffending – expectations of the Australian community – best interests of minor children – strength nature and duration of ties – hardship in the event of removal – South Sudan – non-refoulment obligations – decision affirmed

[Bouyer and Minister for Home Affairs](#) (Migration) [2018] AATA 2926 (16 August 2018); Mr M Kennedy, Member (Presiding) and Mr B Illingworth, Senior Member

VISA CANCELLATION – Character – Aggravated assault – Domestic violence – Multiple breach of intervention orders – Best interest of children affected by decision – Unacceptable risk to the community – Decision affirmed

[Corrigan and Minister for Home Affairs](#) (Migration) [2018] AATA 2873 (14 August 2018); Senior Member A Younes

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – serious criminal convictions – domestic violence offences – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength nature and duration of ties – impact on victims – extent of impediments if removed – decision affirmed

[Dharma and Minister for Home Affairs](#) (Migration) [2018] AATA 2757 (20 July 2018); Mr PW Taylor SC, Senior Member

MIGRATION – Class BF transitional (permanent) visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – serious criminal convictions – protection of the Australian community – expectations of the Australian community – best interests of minor children – strength nature and duration of ties – extent of impediments if removed – decision affirmed

[DGVR and Minister for Home Affairs](#) (Migration) [2018] AATA 2892 (15 August 2018); M Kennedy, Member (Presiding) and M O'Loughlin, Member

VISA CANCELLATION – mandatory cancellation – multiple periods of imprisonment – driving offences – violent offences – post-traumatic stress disorder – bests interests of minor children – decision set aside

[Fiu Uolilo and Minister for Home Affairs](#) (Migration) [2018] AATA 2876 (13 August 2018); Senior Member C Puplick AM

MIGRATION – visa application refused - Applicant failed character test – failure to disclose details of criminal conviction and prison sentence – supply of false or misleading or non-genuine documents – “bogus document” defined – no formal extradition treaty between Australia and Samoa – Ministerial Direction 65 applied – protection of Australian community – best interests of minor children – expectations of Australian community – impact on family members – impact on victims – impact on Australian business interests – decision affirmed

[Maut and Minister for Home Affairs](#) (Migration) [2018] AATA 2754 (24 July 2018); Mr PW Taylor SC, Senior Member

MIGRATION – Class XB Subclass 202 Global Special Humanitarian visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – criminal convictions – protection of the Australian community – risk of reoffending – expectations of the Australian community – best interests of minor children – strength nature and duration of ties – impact on victims – hardship – applicant's disability – PTSD – trauma survivor – alcohol abuse – international non-refoulement obligations – decision set aside and substituted

## **Practice and Procedure**

[MQMV and Child Support Registrar](#) (Child support second review) [2018] AATA 2924 (17 August 2018); Deputy President Rayment QC

PRACTICE AND PROCEDURE – Jurisdiction – child support – percentage of care – whether the departmental decision determined a person's percentage of care for a child – power to determine a new percentage depends on the revocation of the existing determination – departmental decision determined the applicant's percentage of care – the Tribunal found to have jurisdiction to review the AAT1 decision

## **Professions and Trades**

[Dadwal and Tax Practitioners Board](#) [2018] AATA 2878 (14 August 2018); Ms K Parker, Member

Termination of tax agent's registration – applicant convicted of three offences of indecent assault – applicant placed on Register of Sex Offenders for 15 years – assessed low to moderate risk of applicant reoffending – offending behaviour occurred as an isolated event – degree to which the applicant conveyed contrition for offending behaviour – subsequent non-disclosure of convictions and false and misleading statements to statutory bodies, professional bodies and this Tribunal – whether applicant fit and proper person under the Tax Agents Services Act 2009 (Cth) – consideration of the role of a tax agent – criminal misconduct that took place outside of professional context – consideration of significance of subsequent non-disclosures and false and misleading statements – lack of honesty, candour and integrity – decision affirmed – applicant's registration terminated – applicant may not reapply for registration as a tax agent for a period of two years

[Hilal Family Day Care Scheme and Secretary, Department of Education and Training](#) [2018]

AATA 2922 (15 August 2018); Deputy President Rayment QC

CHILD CARE – benefits and rebates – family assistance law – cancellation of Applicant's approval as a child care service – breach of obligation to provide weekly reports containing accurate information – failure to institute a proper system to comply with statutory obligations – failure to remit moneys wrongly paid – serious contravention of family assistance law – decision affirmed

## **Social Security**

[Al-Salem; Secretary, Department of Social Services and](#) (Social services second review) [2018]

AATA 2745 (10 August 2018); Mr C Edwardes, Member

Social Security – disability support pension – mental health – Post-traumatic stress disorder – left foot – impairment tables – credibility and truthfulness – did Respondent have 30 impairment points – continuing inability to work – participation in program of support – decision under review set aside – DSP application not approved

[Connor and Secretary, Department of Social Services](#) (Social services second review) [2018]

AATA 2893 (13 August 2018); Deputy President I Hanger AM QC

SOCIAL SECURITY – disability support pension - impairment tables – qualification period – fully diagnosed, treated and stabilised – continuing inability to work – wrist condition – knee condition – back condition – psychiatric condition – post-traumatic stress disorder – disability discrimination – human rights

[De Mulder and Secretary, Department of Social Services](#) (Social services second review) [2018]

AATA 2925 (17 August 2018); Senior Member A Poljak

SOCIAL SECURITY – age pension – qualification for payment – whether 10 years qualifying Australian residence – permanent resident visa obtained through Ministerial intervention – decision under review affirmed

[Douglas and Secretary, Department of Social Services](#) (Social services second review) [2018]

AATA 2895 (8 August 2018); Deputy President I Hanger AM QC

SOCIAL SECURITY – age pension – compensation preclusion period – person's start date for claim – accepted as contact in relation to a claim – miscalculation – special circumstances – CDDA – Compensation for Detriment caused by Defective Administration

[Flenley; Secretary, Department of Social Services and](#) (Social services second review) [2018]

AATA 2872 (2 August 2018); Senior Member R Cameron

SOCIAL SECURITY – disability support pension – whether qualified at date of application – spinal condition, mental health condition - fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under the Impairment Tables – no continuing inability to work – decision affirmed

[GCFD and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 2248 (06 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

[Gidley and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 2890 (14 August 2018); Ms DK Grigg, Member

SOCIAL SECURITY – Carer Payment – whether satisfied qualification criteria – whether applicant providing “constant care” – applicant attending school – decision under review affirmed

[Hettiarachchi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2789 (13 August 2018); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – whether there is a “special reason” to treat applicant as not being a member of a couple – whether applicant able to pool resources with wife – availability of assets and average cost of living in Sri Lanka relevant factors taken into consideration – decision under review affirmed

[Richards and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 2896 (16 August 2018); Mr K Parker, Member

SOCIAL SECURITY – disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – heart condition – right leg injury – reactive depression – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised – mental health condition not diagnosed by psychiatrist or clinical psychologist – whether the impairments attracted 20 points or more – whether the applicant had a continuing inability to work – whether the exception under s 7(5) of the Social Security (Active Participation for Disability Support Pension) Determination 2014 applied which meant applicant was not required to complete the usual 18 months of participation in a program of support – decision set aside

[Singh and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 2747 (23 July 2018); Senior Member R. Cameron

SOCIAL SECURITY – compensation preclusion period – whether applicant subject to compensation preclusion period – whether compensation debt due – special circumstances – whether all or part of compensation payment can be disregarded – decision relating to compensation debt affirmed – decision relating to preclusion period varied

[Stafford and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 1276 (10 August 2018); 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

## Taxation

[Fox and Commissioner of Taxation](#) (Taxation) [2018] AATA 2791 (10 August 2018); Senior Member R Pintos-Lopez

TAXATION – OBJECTION DECISION – Employee Share Scheme – Applicant obtained Performance Rights subject to vesting conditions – deferred taxing point – Employer placed into administration – share value rendered worthless – Notice of Assessment included amount relating to discount from deferral scheme – outstanding tax liability – Applicant claims entry into share scheme influenced by coercion – contract vitiation – lack of evidence to substantiate coercion or undue influence – decision affirmed

PRACTICE AND PROCEDURE – JURISDICTION OF TRIBUNAL – Submission that finding of coercion may involve exercise of judicial power by Tribunal – ascertainment of existing rights and liabilities between parties – Tribunal as administrative body cannot exercise judicial power – distinction between resolving questions of law and making findings of fact – Tribunal can make certain findings of fact and form opinion as to party right and liabilities in performing its function – Tribunal would not impermissibly exercise judicial power in granting relief

[Sunlea Enterprises Pty Ltd As Trustee for Drummond Cove Unit Trust and Commissioner of Taxation](#) [2018] AATA 2792 (2 August 2018); Dr M Evans, Senior Member

Goods and Services Tax (GST) – whether creditable acquisitions pursuant to section 11-5 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act) – whether Applicant entitled to claim input tax credit – carrying on an enterprise – tax invoices – property development – project management – whether invoices for unrecouped project costs evidence the making of taxable supplies – joint venture heads of agreement – burden of proof – reviewable decision affirmed

## Veterans' Affairs

[Brown and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 2790 (2 July 2018); Senior Member DJ Morris

VETERANS' ENTITLEMENTS – service pension – value of assets – property other than principal home is an asset – periodic valuation disputed – property in developing area – principals followed in valuations under Act – 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

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CASE NAME	AAT REFERENCE
<b>Zadeh and Minister for Home Affairs</b>	<a href="#">[2018] AATA 2145</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ford v Comcare</b>	<a href="#">[2018] AATA 648</a>	<a href="#">[2018] FCAFC 127</a>

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