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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

[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

[LYNY and Child Support Registrar](#) (Child support second review) [2018] AATA 3032 (22 August 2018); Senior Member BJ Illingworth

Child support – Whether there was a change in the care percentage of the child – Assessment of actual care – Whether changes to care arrangement – The Mother's evidence preferred – Decision under review affirmed

Citizenship

[El Masri and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3007 (21 August 2018); Senior Member A Younes

CITIZENSHIP – application for citizenship by conferral – applicant not successfully completed citizenship test – applicant sat and failed multiple citizenship tests – decision affirmed

[Khan and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3029 (22 August 2018); Senior Member BJ Illingworth

CITIZENSHIP – Cancellation of approval to grant citizenship – Whether applicant is of good character – Where applicant supplied bogus document under an honest but mistaken belief – Whether applicant engaged in misleading and deceptive conduct – Where applicant gainfully employed – Decision under review set aside and remitted

[Samhat and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3027 (22 August 2018); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant of good character – serious criminal offence – history of aggression – mitigating factors – Tribunal not satisfied reasonable amount of time has passed – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

Compensation

[Ahearn and Comcare](#) (Compensation) [2018] AATA 2975 (20 August 2018); Mr A Ward, Member

COMPENSATION – Claim for installation of a reverse-cycle split system air conditioner – Whether claim out of time – Whether direct link between injury and items requested – Whether prejudice to respondent – Whether delay in making claim and giving notice occasioned by mistake, absence from Australia or other reasonable cause – Decision under review affirmed

[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

Please note this decision was erroneously listed under the heading 'Social Security' in the last Bulletin (No. 32/2018 dated 20 August 2018).

[Graham and Comcare](#) (Compensation) [2018] AATA 3013 (21 August 2018); Deputy President G Humphries

COMPENSATION – adjustment disorder with anxiety – whether ailment was contributed to, to a significant degree, by the employee's employment – scope of employment – direction to return to work – scope of performance of employment duties – reviewable decision set aside

[Perkins and Comcare](#) (Compensation) [2018] AATA 3010 (8 August 2018); Deputy President J Sosso and Dr P Wilkins, Member

COMPENSATION – adjustment disorder – whether Applicant is still suffering from the accepted compensable condition – whether an ailment or an aggravation thereof was contributed to, to, to a significant degree, by an employee's employment – does the disease require medical treatment that is reasonable in the circumstances – is it reasonable for the Applicant to continue to be treated in Canberra – does the disease result in incapacity for work – does the disease result in permanent impairment – decision under review covering ss 16 and 19 set aside – decision under review concerning s 24 affirmed.

[ZXCF and Comcare](#) (Compensation) [2018] AATA 3017 (21 August 2018); Dr M Evans, Senior Member

Workers' Compensation – Commonwealth employee – injury sustained prior to 1988 – reasonable medical expenses – chiropractic treatment – mild whiplash injury – prolapsed disc – whether treatment obtained is in relation to the workplace injury or for pre-existing degenerative changes which are unrelated to the injury – whether Applicant presently entitled to medical expenses – decision under review affirmed

Corporations

[McCann and Secretary, Department of Jobs and Small Business](#) [2018] AATA 3030 (22 August 2018); Deputy President P Britten-Jones

FAIR ENTITLEMENTS GUARANTEE – Eligibility for an advance – Whether applicant an employee or a contractor – Whether applicant a de facto director – Decision under review affirmed

Migration

[Cooper](#) (Migration) [2018] AATA 2995 (9 July 2018); K Raif, Senior Member

Migration – Contributory Parent (Migrant) (Class CA) visa – Subclass 143 (Contributory Parent) – Balance of family test – Close relationship between sponsor and visa applicant – Child from previous relationship – Ineligible children – Decision under review affirmed

[Guan](#) (Migration) [2018] AATA 2978 (3 July 2018); S Trotter, Member

Migration – Extended Eligibility (Temporary) (Class TK) visa – Subclass 445 – Dependent Child – Employed for approximately 30 hours per week in Australia for at least eight months since arrival – Significant means to income from employment – Reliance on sponsor in preceding 12 months not greater than reliance upon herself – Decision under review affirmed

[Hausner](#) (Migration) [2018] AATA 2983 (3 July 2018); D Connolly, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 – Australian Federal Police (AFP) check – Not undertaken 12 months immediately before day of application – Applicant's important role in biodiversity project – Exceptional economic and scientific benefit to Australia – Referred for ministerial intervention – Decision under review affirmed

[Ihemebigam](#) (Migration) [2018] AATA 2958 (4 July 2018); D Barker, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 500 – Not a genuine temporary entrant – Currently enrolled in Master of Professional Accounting – Failed to complete ELICOS, nursing and project management courses – No military service commitments in Nigeria – Stable employment and a higher pattern of earnings in Australia – Decision under review affirmed

[Kapene Te Amo](#) (Migration) [2018] AATA 2214 (9 July 2018); J Redfern, Deputy President (Presiding) and M Ison, Senior Member

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – cancellation under s.116(1)(e)(ii) of the *Migration Act 1958* - whether applicant is or may be, or would or might be, a risk to the health, safety of an individual or individuals – where applicant has been convicted of criminal charges and sentence to a term of imprisonment of less than 12 months – where applicant is the subject of further criminal charges – consideration of the applicant’s conduct while in immigration detention and alleged gang involvement – lack of probative evidence in respect of gang involvement in criminal activity – ground for cancellation established – whether the power to cancel the visa should be exercised – consideration of the degree of hardship to the applicant and his family, the mandatory legal consequences of cancellation and the circumstances in which the ground for cancellation arose – decision under review affirmed

[Latumeten](#) (Migration) [2018] AATA 2691 (6 July 2018); C Kannis, Member

Migration – Cancellation – Partner (Migrant) (Class BC) – Subclass 100 (Spouse) – Change in circumstances – Parties divorced – Marital difficulties – Genuine and continuing relationship at the time of immigration clearance – Decision under review set aside and substituted

[Narinder Pal Singh](#) (Migration) [2018] AATA 2966 (3 July 2018); J Cripps Watts, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 500 – Not a genuine temporary entrant – Initial student visa in higher education sector – Five years holding student or related bridging visas – Prioritised work over study – No progress beyond VET courses – Changes to academic sectors – No clear career path – Decision under review affirmed

[Ng](#) (Migration) [2018] AATA 2961 (3 July 2018); M Edgoose, Member

Migration – Student (Temporary) (Class TU) visa – Subclass 500 – English language proficiency – Changes in instruments – Lack of clarity regarding requirements – Decision under review remitted

[Nine Dings Pty Ltd](#) (Migration) [2018] AATA 2689 (9 July 2018); D Galvin, Member

Migration – Nominated sponsorship – Financial capacity to pay nominee’s full time salary – Financial statements provided – Injection of funds from overseas – Business losses increased annually – Decision under review affirmed

[Qian](#) (Migration) [2018] AATA 2970 (2 July 2018); H Claringbold, Member

Migration – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – Law of the applicant’s home country – No compelling reason to believe grant of visa not in best interests of applicant – Matter decided on papers – Child born out of wedlock – Death of biological father – Sponsor the legal guardian of child – Decision under review remitted

[Riyadh](#) (Migration) [2018] AATA 2981 (4 July 2018); A Mercer, Member

Migration – Skilled (Provisional) (Class VC) visa – Subclass 485 – English language proficiency – Did not hold a specified passport – Did not undertake specified English test within specified period – Post-application IELTS scores shows high level of proficiency – Claims of erroneous advice from department – Tribunal has no discretion – Possible recourse to ministerial intervention – Compensation for Detriment caused by Defective Administration (CDDA) Scheme – Decision under review affirmed

[Sandhu](#) (Migration) [2018] AATA 2849 (28 June 2018); M Sheargold, Member
Migration – Regional Employer Nomination (Permanent) (Class RN) – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Nominated position of Hotel or Motel Manager – Technical change of location and role to Café or Restaurant Manager – Position descriptions identical – Role in both locations best characterised as Café or Restaurant Manager – Tribunal approved nomination – Decision under review remitted

[Sayson](#) (Migration) [2018] AATA 2733 (29 June 2018); M Brophy, Member

Migration – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – Disclosure of past relevant information – False and misleading information – Past relationship – Social media status – In a relationship while married to sponsor – Married to another woman – Sponsor’s health condition – Decision under review affirmed

[Tran and Minister for Home Affairs](#) (Migration) [2018] AATA 3028 (21 August 2018); Senior Member M Griffin QC

MIGRATION – revocation of mandatory visa cancellation – Applicant did not pass character test – whether there is another reason why the original decision should be revoked – Ministerial Direction No. 65 applied – primary considerations – protection of Australian community – best interests of minor children in Australia – expectations of the Australian community – other considerations – strength, nature and duration of Applicant’s ties to Australia – extent of impediments if removed – decision under review affirmed

National Disability Insurance Scheme

[BIJD and National Disability Insurance Agency](#) [2018] AATA 2971 (10 August 2018); Deputy President G Humphries

NATIONAL DISABILITY INSURANCE SCHEME – funding for supports included in the statement of participant supports – whether two days of in-home care for a child is a reasonable and necessary support – whether support meets each of the requirements set out in s 34(1) of the National Disability Insurance Scheme Act 2013 – child suffering from severe, life-threatening, congenital heart disease – reviewable decision affirmed

Refugee

[1512955](#) (Refugee) [2018] AATA 2927 (18 July 2018); M McAdam, Member

Refugee – Protection visa – Pakistan – Social group – Homosexual men – Real chance of serious harm – Discovered with a sexual partner in Pakistan – Physically assaulted – No state protection available – Credible witness – No right to enter and reside in another country – Decision under review remitted for reconsideration

[1614812](#) (Refugee) [2018] AATA 2972 (18 July 2018); A Duffield, Senior Member

Refugee – Federal Circuit Court remittal – Protection Visa – Sri Lanka – Race – Tamil – Particular social group – Young Tamil male – Wealthy Tamil – Failed Tamil asylum seeker – Imputed political opinion – Supporter of the Liberation Tigers of Tamil Eelam – Applicant advised Tribunal to rely on decision of previously constituted Tribunal – Decision affirmed

Refugee – Ministerial Intervention – Where the applicant’s partner and children have been granted Subclass 790 (Safe Haven Enterprise) visas – Where the applicant is barred from applying as a member of his partner’s family unit – Where the applicant and his partner suffer from significant mental health issues – Significant hardship if applicant were to be made to depart Australia – Matter referred to the Department for consideration

[1705574](#) (Refugee) [2018] AATA 2931 (19 July 2018); M Hawkins, Member

Refugee – Protection Visa – Vietnam – Whether the applicant has destroyed or disposed of documentary evidence of the applicant’s identity, nationality or citizenship – Where the applicant has destroyed their passport – Whether the applicant has a reasonable explanation for the destruction or disposal – Where applicant claims they cannot recall their reasons – Where applicant has repeatedly misled the Department – Applicant does not have a reasonable explanation – Decision affirmed

[1506898](#) (Refugee) [2018] AATA 2889 (20 July 2018); J Lindsay, Member

Refugee – Protection visa – Lebanon – Complementary protection – Imputed political opinion – Imputed links with Fatah al Islam – Sale of item to terrorists – Unlawful imprisonment and torture in Roumieh Prison – Assassination attempt by Lebanese intelligence – Convicted *in absentia* of terrorism offences by Lebanese Judicial Council – Death penalty suspended – Fear of imprisonment and death penalty – Unable to pay for mental health services in Lebanon – Credibility issues – Inconsistent evidence – Decision under review affirmed

Social Security

[Armstrong and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3018 (16 August 2018); Deputy President I Hanger AM QC

Social Security – disability support pension – whether Mr Armstrong’s disability support pension was correctly suspended – whether Mr Armstrong’s disability support pension was correctly cancelled – decision under review affirmed

[Auckram and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2976 (20 August 2018); Senior Member M J McGrowdie

Social Security – Austudy payment – whether company assets should be treated as Applicant’s assets – application of ‘income maintenance period’ – decisions under review affirmed

[Bastian and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3016 (17 August 2018); Dr M Evans, Senior Member

Social Security – youth allowance – liquid assets – liquid asset test waiting period – monies in bank account – whether Applicant and his parents established a trust – oral bare trust – attribution of assets – when assets or income will be attributed to an individual – attributable stakeholder – designated private trust – controlled private trust – part 3.18 of the Social Security Act 1991 (Cth) – decision under review affirmed

[Jorgensen and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3011 (17 August 2018); Dr P McDermott RFD, Deputy President

Social Security – family tax benefit – percentage of care – whether there was a change in the percentage of care – when the parties had care of the child – percentage of care is correct – decision under review affirmed

[Lam; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 3031 (22 August 2018); Dr D Cremean, Senior Member

Social Security – cancellation of benefits – whether husband and wife members of a couple – whether living separately and apart on a permanent or indefinite basis – waiver or writing off of debt – decision affirmed

[Obaidi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2968 (17 August 2018); Senior Member R Cameron

Social Security – disability support pension – whether qualified – fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under the Impairment Tables – decision affirmed

[Senior and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3008 (17 August 2018); Senior Member Chris Puplick AM

FAMILY ASSISTANCE AND SOCIAL SECURITY - Family Tax Benefit – two non-government parties – determine child care arrangements between parties in the relevant period – percentages of shared care – “eligible carer” and “shared carer” defined – “care of the child” considered – Child Support Guide – decision under review set aside and substituted

[Yang and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3009 (19 July 2018); Senior Member DJ Morris

DISABILITY SUPPORT PENSION – start date – applicant already in receipt of DSP – no review lodged of ARO decision within 13 weeks – effect of s 152(4) of Administration Act as then in force – any favourable decision may only take effect from date review lodged – this date after Applicant in receipt of DSP – review therefore futile – application dismissed as no reasonable prospects of success

Taxation

[Mangat and Commissioner of Taxation](#) (Taxation) [2018] AATA 3012 (21 August 2018); Ms G Lazanas, Senior Member

TAXATION – INCOME – EMPLOYEE SHARE SCHEMES – date of acquisition of beneficial interest in right to acquire shares – whether more than 12 months before cancellation of options – whether capital gains tax discount applies – default assessment – imposition of administrative penalty due to failure to lodge tax return – penalty partially remitted – whether penalty should be further remitted – objection decision regarding income tax affirmed – objection decision regarding remission of penalty set aside and remitted

Veterans' Affairs

[Ruth Carlson by her tutor Deborah Gili and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 3014 (21 August 2018); Deputy President Rayment QC

VETERAN'S AFFAIRS – widow's pension claim – whether the veteran's death was a war-caused death – veteran's chronic obstructive pulmonary disease was a cause of death – Deledio principles – application of Statement of Principles – decision under review is set aside and the matter remitted to the respondent for assessment of the relevant entitlements

[Williams and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 3015 (17 August 2018); Deputy President JW Constance and Senior Member L Kirk

VETERANS' ENTITLEMENTS – whether injury or disease is war-caused – date of the clinical onset of the condition – Post-Traumatic Stress Disorder – Alcohol Use Disorder – Major Depressive Disorder – hypothesis connecting injury or disease with the circumstances of operational service – Statement of Principles – decision set aside

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
Egan and Minister for Immigration and Border Protection	[2017] AATA 2705

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugtniet v Migration Agents Registration Authority	[2016] AATA 299	[2017] FCA 537
		[2018] FCAFC 5
		[2018] HCATrans 157
Warren v Repatriation Commission	[2017] AATA 872	[2018] FCA 1193



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