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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.

Citizenship

[NXYD and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3144 (30 August 2018); Senior Member K Raif

CITIZENSHIP – refusal of application for citizenship by conferral – applicant failed to meet the general residence requirement under the Australian Citizenship Act 2007 – not present in Australia for the period of 4 years immediately before the day the application was made – absence for a period of more than 12 months – special residency requirement not met – defence service requirement not met – other claims – decision affirmed

[ZVNT, GNGJ, SWQL and MFYW and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3045 (17 August 2018); Member C Edwardes

Myanmar refugees - applications for citizenship refused – prohibition to approve a person becoming an Australian citizen unless the Minister is satisfied of the identity of the person - whether Tribunal satisfied of identity of Applicants – decision affirmed

Compensation

[Harris and Comcare](#) (Compensation) [2018] AATA 3095 (27 August 2018); M Hyman, Member

COMPENSATION – school Business Manager – relations with new Principal - psychological condition – scope of the claim – whether contributed to, to a significant degree, by employment – whether contributing events were reasonable administrative action taken in a reasonable manner – whether direction to return to school fell within the scope of the claim – whether exacerbation of symptoms constituted an aggravation – decision affirmed

[King and Comcare](#) (Compensation) [2018] AATA 3042 (24 August 2018); Senior Member A Poljak

COMPENSATION – accepted claim for workers compensation – section 16 entitlement – remedial massage – whether medical treatment – whether reasonable to obtain in the circumstances – treatment provides temporary alleviation not permanent improvement – applicant dependent on the treatment – decision under review affirmed

[Stitt and Comcare](#) (Compensation) [2018] AATA 3092 (24 August 2018); Deputy President S Boyle

COMPENSATION – medical treatment – treatment which was reasonable for the Applicant to obtain in the circumstances – whether physiotherapy is reasonable treatment in the circumstances – decisions under review are affirmed

Corporations

[Tindall and Australian Securities and Investments Commission](#) [2018] AATA 3101 (29 August 2018); Deputy President B J McCabe

CORPORATIONS – banning order from providing financial services for five years – contravention of financial services law – whether conduct misleading or deceptive – whether conduct dishonest – whether length of banning order is appropriate – decision under review affirmed

Migration

[CNNS and Minister for Home Affairs](#) (Migration) [2018] AATA 3043 (9 August 2018); K Millar, Member

MIGRATION – Mandatory visa cancellation– Global Special Humanitarian (Subclass 202) visa – Failure to pass character test – Substantial criminal record – Applicant sentenced to 12 months or more imprisonment – Whether there is another reason why mandatory visa cancellation should be revoked – Consideration of principles under Ministerial Direction 65 – Primary and other considerations – Decision under review set aside and substituted

[Dinkha and Minister for Home Affairs](#) (Migration) [2018] AATA 3037 (24 August 2018); Senior Member C Puplick AM

MIGRATION – mandatory visa cancellation – character test – discretion to revoke mandatory visa cancellation – substantial criminal record – multiple sentences of imprisonment – repeated breaches of bond, bail and community service orders – repeated breaches of regulations in prison and immigration detention – drug and alcohol misuse – failure to participate in rehabilitative programmes – protection of the Australian community – expectations of the Australian community – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

[Tenari and Minister for Home Affairs](#) (Migration) [2018] AATA 3036 (15 June 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 had committed a number of domestic violence offences – decision under review affirmed

[ZPWB and Minister for Home Affairs](#) (Migration) [2018] AATA 3097 (29 August 2018); Deputy President P Britten-Jones

MIGRATION — Application for Bridging E (Class WE) visa — Visa refusal — Character test — Consideration of past and present criminal conduct — Consideration of past and present general conduct — Whether there is a risk the Applicant would engage in criminal conduct if allowed to remain in Australia — Offences — Unlawful assault — Domestic violence — Applicant fails the character test — Consideration of whether the discretion to refuse to grant the visa should be exercised — Consideration of primary considerations — Protection of Australian community — Expectations of Australian community — Consideration of other considerations — Decision under review affirmed

National Disability Insurance Scheme

[Mazy and National Disability Insurance Agency](#) [2018] AATA 3099 (9 August 2018); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME - whether support is reasonable and necessary - whether cost of support is reasonable - whether support is most appropriately funded or provided through the National Disability Insurance Scheme - whether administering insulin to Applicant falls under the Scheme - non-verbal - intellectual disability - blind - hearing impaired - decision set aside

Practice and Procedure

[KPTT and Commissioner of Taxation](#) (Taxation) [2018] AATA 3146 (27 July 2018); Mr P W Taylor SC, Senior Member

PRACTICE AND PROCEDURE - lodging of documents with the Tribunal - application for an order that the respondent lodge additional material - redacted documents - claim that the redacted material may be relevant to the decision under review - section 37 of the Administrative Appeals Tribunal Act 1975 as modified by s14ZZF of the Taxation Administration Act 1953 - Tribunal refuses to exercise discretion under s 37

[Lee and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3041 (24 August 2018); Dr L Bygrave, Member

EXTENSION OF TIME – principles to be applied – Hunter Valley Developments Pty Ltd v Cohen – whether it is reasonable in all the circumstances to grant an extension of time – acceptable explanation for delay – prejudice to the respondent and general public – merits of substantive application – extension of time refused

[Tandem College Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3046 (27 August 2018); Deputy President Rayment QC

PRACTICE AND PROCEDURE – application for stay orders – reviewable decisions were to refuse applicant's renewal of registration and amend the scope of applicant's registration – registration as a national VET regulator registered training organisation – applicant has sufficient prospects of success in the applications for review – refusal of stay would adversely affect applicant and applicant's students – public interest does not require that stay be refused – stay granted subject to certain conditions

[Technical Education Australia Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3047 (23 August 2018); Senior Member R Cameron

PRACTICE AND PROCEDURE – stay application – interim stay order revoked - Applicant's registration cancelled under National Vocational Education and Training Regulator Act 2011 - renewal of registration as an RTO refused – consideration of factors as to whether stay should be granted – public interest – financial circumstances of Applicant – whether application rendered nugatory if stay not granted

[VMQD and Commissioner of Taxation](#) (Taxation) [2018] AATA 3147 (29 August 2018); Mr P W Taylor SC, Senior Member

PRACTICE AND PROCEDURE - lodging of documents with the Tribunal - application for an order that the respondent lodge additional documents - claim that the documents that may be relevant to the decision under review are in the possession of the respondent but have not been lodged - section 37 of the Administrative Appeals Tribunal Act 1975 as modified by s 14ZZF of the Taxation Administration Act 1953 - respondent obliged to produce documents which are considered necessary to the review - respondent to lodge documents

Social Security

[BQCY and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3038 (24 August 2018); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – Newstart Allowance debt – whether the applicant was overpaid amounts of rent assistance – whether special circumstances exist – whether debt should be waived or written off – applicant not entitled to rent assistance during relevant period – debt is payable to the Commonwealth – decision under review affirmed

[JYHX and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3093 (27 August 2018); D K Grigg, Member

SOCIAL SECURITY – disability support pension – whether medical conditions permanent – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Lombardi and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3044 (24 August 2018); Senior Member B J Illingworth

SOCIAL SECURITY – Age pension – Overseas applicant – Application to dismiss – Whether any reasonable prospects of success – Whether any special circumstances – Whether any discretion – Whether Respondent required to provide notice of change to legislation – Application for review dismissed

[Ognjenovic and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3098 (29 August 2018); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – cancellation of disability support pension – portability of disability support pension – whether applicant qualified for disability support pension – major depressive disorder and post-traumatic stress disorder – type 2 diabetes mellitus – spine condition – upper limb condition – lower limb condition – hypothyroidism – umbilical hernia – stress urine incontinence – vision loss – hearing loss – asthma – whether applicant's conditions rated at 20 points or more under the Impairment Tables – whether applicant had a continuing inability to work – decision affirmed

[Sziva and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3040 (11 July 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – mental health condition – whether applicant’s condition attracted 20 points or more under the Impairment Tables during the relevant period – set aside and substituted

Taxation

[Ford and Commissioner of Taxation](#) (Taxation) [2018] AATA 3039 (23 August 2018); D K Grigg, Member

TAX – where applicant failed to provide her income tax return on time - whether administrative penalty correctly imposed under section 284-75(3) of Schedule 1 of the Taxation Administration Act 1953 — whether discretion should be exercised to remit the penalty - decision under review affirmed

[Mango Reef Pty Ltd and Commissioner of Taxation](#) (Taxation) [2018] AATA 3091 (28 August 2018); Deputy President I R Molloy

TAXATION – objections to assessments – creditable acquisitions – alleged gold transactions – creditable acquisitions of scrap gold of which input tax credits should be attributed – administrative penalties – remission of administrative penalties

Veterans' Affairs

[Costa and Repatriation Commission](#) (Veterans’ entitlements) [2018] AATA 3035 (23 August 2018); Deputy President JW Constance

VETERANS’ ENTITLEMENTS – application for widow’s pension – whether spouse’s death was war-caused – hypertension – cerebrovascular accident – atrial fibrillation – smoking and alcohol related condition – hypothesis connecting injury or disease with the circumstances of operational service – Statement of Principles No. 63 of 2013 – Statement of Principles No. 65 of 2015 – Statement of Principles No. 49 of 2014 – 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
Al Mansori and Minister for Immigration and Border Protection	[2017] AATA 713
FYVY and Minister for Immigration and Border Protection	[2018] AATA 671
Khalil and Minister for Immigration and Border Protection	[2018] AATA 311
Lam and Minister for Home Affairs	[2018] AATA 2005
Romanov and Minister for Immigration and Border Protection	[2018] AATA 937

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Wu v Commissioner of Taxation	[2015] AATA 78	[2018] FCA 1339



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