



Administrative
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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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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.

Bankruptcy

[Jones and Inspector-General in Bankruptcy](#) [2018] AATA 3260 (5 September 2018); Deputy President Boyle

BANKRUPTCY – trustee's objection to discharge – does the objection specify at least one special ground – elements of s 149D(1)(d) – request in writing by the trustee to provide written information – was the request for information a valid request – did the Applicants' fail to comply with the request – decision set aside and substituted

Citizenship

[Kanis and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3222 (5 September 2018); Senior Member L Kirk

CITIZENSHIP – application for citizenship by conferral – permanent resident – unable to satisfy general residency requirement or special residency requirement – ministerial discretion sought to consider applicant the de facto partner of an Australian citizen – applicant's absences did not relate to de facto relationship – special residence requirement – whether Applicant is the member of crew of an aircraft – whether Applicant is required to travel outside Australia because of work – flight simulation instructor – not satisfied – decision affirmed

Compensation

[Boateng and Comcare](#) (Compensation) [2018] AATA 3198 (29 August 2018); Mr M Hyman, Member

COMPENSATION – jurisdiction – whether jurisdiction extends to both psychiatric and physical conditions – claim form and supporting material – omission of physical condition from scope of initial determination – inclusion of physical condition in reconsideration determination – tribunal's jurisdiction on review extends to physical condition

[Dring and Telstra Corporation Limited](#) (Compensation) [2018] AATA 3149 (31 August 2018); Ms A Burke, Member

WORKERS' COMPENSATION – injury resulting from fall – whether injury arose out of or in the course of employment – whether injury occurred in interval between periods of work – whether consumption of alcohol constituted serious and willful misconduct – causation – permanent impairment – decision affirmed

[Liu and Comcare](#) (Compensation) [2018] AATA 3200 (4 September 2018); Deputy President G Humphries

COMPENSATION – SRC Act s 5A – whether Ms Liu suffered her psychological ailment as the result of reasonable administrative action taken in a reasonable manner in respect of her employment – whether the taking of the reasonable administrative action was an event without which Ms Liu’s psychological ailment would not have been a disease – reviewable decision affirmed

[Sarraf and Comcare](#) (Compensation) [2018] AATA 3196 (19 July 2018); Ms AF Cunningham, Senior Member

COMPENSATION – notice – notice of injury – whether notice was given as soon as practicable – whether failure to give notice would prejudice respondent – notice was given

Corporations

[Atkins and Australian Securities and Investments Commission](#) [2018] AATA 3223 (5 September 2018); Dr M Evans, Senior Member

CORPORATIONS – 3 year banning order – financial services – self-managed superannuation fund advice – limited recourse borrowing arrangement advice – decision by Australian Securities and Investments Commission to make banning order prohibiting Applicant from providing financial services for 3 years – duration of banning order – failure to comply with a financial services law – advice vetted by financial services licensee – failure to act in best interests of clients – no findings of fraud or dishonesty – no complaints from clients – new evidence not before delegate – decision under review affirmed

Migration

[Barton and Minister for Home Affairs](#) (Migration) [2018] AATA 3261 (6 September 2018); Senior Member C Puplick AM

MIGRATION – mandatory visa cancellation – character test – discretion to revoke mandatory visa cancellation – substantial criminal record – sentence of imprisonment – driving offences – domestic violence offences – repeated breaches of apprehended violence orders – drug misuse – mental health issue – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – decision affirmed

[Bhattarai and Migration Agents Registration Authority](#) (Migration) [2018] AATA 3151 (31 August 2018); Senior Member C Puplick AM

Migration – Migration agents registration – renewal of registration application – determination of period of registration – whether application lodged within time – jurisdiction of the Tribunal – application of deeming provisions – definition of reviewable decision – decision set aside and substituted

[VXKK and Minister for Home Affairs](#) (Migration) [2018] AATA 3268 (6 September 2018); Ms A Burke, Member

MIGRATION – non-revocation of mandatory cancellation of visa – 12 month term of imprisonment – applicant does not pass character test in s 501(6)(a) – applicant an unacceptable risk to the Australian community – minor children in Australia – strong ties to Australia – impediments if applicant removed – decision under review set aside

Practice and Procedure

[Australian Appaloosa Association Ltd and Australian Securities and Investments Commission](#) [2018] AATA 3173 (31 August 2018); Deputy President JW Constance

PRACTICE AND PROCEDURE – extension of time application – whether it is reasonable in all the circumstances to grant the extension – explanation for delay – prejudice – whether substantive matter has merit – extension of time granted

[Perks and Secretary, Department of Social Services](#) [2018] AATA 3221 (5 September 2018); Dr L Bygrave, Member

EXTENSION OF TIME – principles to be applied – whether application for extension of time is reasonable in all the circumstances – grounds for waiving whole or part of FTB debt and schoolkids bonus debt – definition of "special circumstances" under A New Tax System (Family Assistance) (Administration) Act 1999 – extension of time refused

Social Security

[Carper and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3191 (28 August 2018); K Parker, Member

Debt – debt raised to recover overpayments of carer payments – overpayments arose because debtor's wife's income from invalidity pension not factored into calculation – debtor's wife's invalidity pension information disclosed to Centrelink but not coded onto system – whether Centrelink provided incorrect advice to debtor about effect of invalidity pension on carer payments – whether whole or part of debt should be written off – whether debtor had no capacity to repay the debt – whether deductions from benefits to repay the debt would cause severe financial hardship – whether whole or part of the debt should be waived – whether debt solely attributable to an administrative error on the part of the Commonwealth – consideration of periodic information notices provided to the debtor – whether debtor received the overpayments in good faith – whether debtor knowingly failed to comply with his statutory obligations – whether special circumstances exist to warrant waiver of debt – whether more appropriate to waive rather than write off the debt – circumstances warranted waiver of debt – decision under review set aside

[Carper and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3192 (28 August 2018); K Parker, Member

Debt – debt raised to recover overpayments of disability support pension – overpayments arose because debtor’s income from invalidity pension not factored into calculation – debtor’s invalidity pension information disclosed to Centrelink but not coded onto system – whether Centrelink provided incorrect advice to debtor about effect of invalidity pension on disability pension payments – whether whole or part of debt should be written off – whether debtor had no capacity to repay the debt – whether deductions from benefits to repay the debt would cause severe financial hardship – whether whole or part of the debt should be waived – whether debt solely attributable to an administrative error on the part of the Commonwealth – consideration of periodic information notices provided to the debtor – whether debtor received the overpayments in good faith – whether debtor knowingly failed to comply with her statutory obligations – whether special circumstances exist to warrant waiver of debt – whether more appropriate to waive rather than write off the debt – circumstances warranted waiver of debt – decision under review set aside

[Stevenson and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3220 (4 September 2018); Mr K Parker, Member

SOCIAL SECURITY – age pension – date of commencement – Respondent conceded Applicant’s claim and paid age pension – application for review successful – issue in dispute resolved – Respondent made new decision to reflect concession made – application no longer had any substance – application had no prospects of success – application dismissed

[Treloar and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3203 (4 September 2018); Senior Member BJ Illingworth

SOCIAL SECURITY – Disability Support Pension – Overpayment – Debt due to the Commonwealth – Whether attributable solely to administrative error – Whether payment received in good faith – Whether payment raised within the six week period – Decision set aside and substituted

[VQFV and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3152 (31 August 2018); Ms A Burke, Member

SOCIAL SECURITY – Disability Support Pension – whether qualified – right knee, dermatitis allergy condition and hypertension/hypercholesterolaemia conditions – whether impairment attracts rating of 20 points or more under Impairment Tables – program of support had been undertaken – whether continuing inability to work – decision affirmed

[Warren and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3199 (3 September 2018); Senior Member T Tavoularis

SOCIAL SECURITY – 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 – Sjogren’s syndrome – lupus – gastrointestinal conditions – depression – dry eyes – conditions were fully diagnosed – whether conditions were fully treated and stabilised – some conditions fully treated and stabilised – where Applicant’s conditions attracted 20 impairment points under multiple tables – whether Applicant has a continuing inability to work – where Applicant had not actively participated in a program of support – decision under review affirmed

[WVVD and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3150 (31 August 2018); D K Grigg, Member

SOCIAL SECURITY – Youth Allowance – whether decision to rejection claim was correct – whether youth allowance payable from an earlier date – whether section 43(6) of the Administrative Appeals Tribunal Act 1975 applies – decision under review affirmed

Veterans' Affairs

[Potterat and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 3262 (5 September 2018); Senior Member DJ Morris

VETERANS' ENTITLEMENTS – special rate pension – disabling condition – whether by reason of incapacity resulting from war-caused disabilities – whether veteran incapable of undertaking remunerative work for more than 8 hours per week – whether non-war caused preventative factors – 'alone test' – Tribunal satisfied that criteria are met – decision set aside and new decision substituted

[THSV and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2018] AATA 3201 (30 August 2018); Deputy President J Sosso

VETERANS' ENTITLEMENTS – peacetime service – statement of principles no 66 of 2013 – gastro-oesophageal reflux disease – decision affirmed – permanent impairment compensation – guide to determining impairment and compensation 2016 – chapter 4 emotional and behavioural – chapter 6 gastrointestinal impairment – chapter 10 sexual function, reproduction and breasts – chapter 15 intermittent impairment – chapter 16 activities of daily living – chapter 17 disfigurement and social impairment – combined values chart – chapter 22 lifestyle effects – calculating permanent impairment compensation – decision substituted

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
Ali and Minister for Home Affairs	[2018] AATA 2512
TPRS and Minister for Immigration and Border Protection	[2018] AATA 1278

Extension of Time Applications lodged

CASE NAME	AAT REFERENCE
Adekoya and Minister for Immigration and Border Protection	[2017] AATA 2028
Hanna and Secretary, Department of Social Services	[2018] AATA 1347
Miles and Comcare	[2018] AATA 349
NVDC and Minister for Immigration and Border Protection	[2018] AATA 457
XFKR and Minister for Immigration and Border Protection	[2017] AATA 2385

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
G v Minister for Immigration and Border Protection and Anor	[2017] AATA 1052	[2018] FCA 1229

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They **commence on 24 September 2018**:

Adrenal insufficiency (Balance of Probabilities) – No. 72 of 2018

<https://www.legislation.gov.au/Details/F2018L01183>

Adrenal insufficiency (Reasonable Hypothesis) – No. 71 of 2018

<https://www.legislation.gov.au/Details/F2018L01182>

Bronchiolitis obliterans organising pneumonia (Balance of Probabilities) – No. 80 of 2018

<https://www.legislation.gov.au/Details/F2018L01179>

Bronchiolitis obliterans organising pneumonia (Reasonable Hypothesis) – No. 79 of 2018

<https://www.legislation.gov.au/Details/F2018L01178>

Reactive arthritis (Balance of Probabilities) – No. 76 of 2018

<https://www.legislation.gov.au/Details/F2018L01165>

Reactive arthritis (Reasonable Hypothesis) – No. 75 of 2018

<https://www.legislation.gov.au/Details/F2018L01164>

Scrub typhus (Balance of Probabilities) – No. 78 of 2018

<https://www.legislation.gov.au/Details/F2018L01163>

Scrub typhus (Reasonable Hypothesis) – No. 77 of 2018

<https://www.legislation.gov.au/Details/F2018L01162>

Sinusitis (Balance of Probabilities) – No. 74 of 2018

<https://www.legislation.gov.au/Details/F2018L01177>

Sinusitis (Reasonable Hypothesis) – No. 73 of 2018

<https://www.legislation.gov.au/Details/F2018L01175>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They **commence on 24 September 2018**:

Loss of Teeth (Balance of Probabilities) – No. 84 of 2018

<https://www.legislation.gov.au/Details/F2018L01176>

Loss of Teeth (Reasonable Hypothesis) – No. 83 of 2018

<https://www.legislation.gov.au/Details/F2018L01171>

Malignant neoplasm of the breast – No. 81 of 2018

<https://www.legislation.gov.au/Details/F2018L01166>

Malignant neoplasm of the breast – No. 82 of 2018

<https://www.legislation.gov.au/Details/F2018L01167>

Tooth wear (Balance of Probabilities) – No. 86 of 2018

<https://www.legislation.gov.au/Details/F2018L01170>

Tooth wear (Reasonable Hypothesis) – No. 85 of 2018

<https://www.legislation.gov.au/Details/F2018L01169>

Veterans' Entitlements (Statements of Principles—Category 1B Stressor) Amendment

Determination 2018 – No. 87 of 2018

Note - This instrument makes amendments to various Statements of Principles

<https://www.legislation.gov.au/Details/F2018L01188>

Statements of Principles to be repealed

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be repealed** on **24 September 2018**:

Adrenal insufficiency – No. 75 of 2009

<https://www.legislation.gov.au/Details/F2009L04046>

Adrenal insufficiency – No. 74 of 2009

<https://www.legislation.gov.au/Details/F2009L04045>

Bronchiolitis obliterans organising pneumonia – No. 63 of 2009

<https://www.legislation.gov.au/Details/F2009L03226>

Bronchiolitis obliterans organising pneumonia – No. 62 of 2009

<https://www.legislation.gov.au/Details/F2009L03225>

Reactive arthritis – No. 27 of 2010

<https://www.legislation.gov.au/Details/F2010L01043>

Reactive arthritis – No. 26 of 2010

<https://www.legislation.gov.au/Details/F2010L01042>

Scrub typhus – No. 73 of 2009

<https://www.legislation.gov.au/Details/F2009L04044>

Scrub typhus – No. 72 of 2009

<https://www.legislation.gov.au/Details/F2009L04043>

Sinusitis – No. 10 of 2010

<https://www.legislation.gov.au/Details/F2010L00554>

Sinusitis – No. 9 of 2010

<https://www.legislation.gov.au/Details/F2010L00553>



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