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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

[Merrill and Westaway](#) (Child support) [2018] AATA 3279 (18 July 2018); S Brakespeare, Member

Child support – Date of effect of an objection decision to a care percentage decision – Whether special circumstances prevented the applicant objecting to the care percentage decision within the required timeframe – There were no special circumstances to make a determination under subsection 87AA(2) – Decision under review affirmed

[Messon and Kregan](#) (Child support) [2018] AATA 3213 (19 July 2018); P Jensen, Member

Child support – Percentage of care – Pattern of care – Less than regular care – Change of care not notified within a reasonable period – Decision under review varied

Child support – Percentage of care – Date of effect of objection decision – Whether special circumstances prevented lodgement of the objection within time – Decision under review set aside and substituted

[Wellington and Child Support Registrar](#) (Child support) [2018] AATA 3206 (23 July 2018); R Ellis, Senior Member

Child support – Percentage of care – Change to the likely pattern of care – Existing care percentage determinations revoked – New percentages of care determined – Decision under review set aside and substituted – Late application for review – Date of effect of Tribunal's decision – No special circumstances – Refusal to make determination

[Wells and Miller](#) (Child support) [2018] AATA 3287 (24 July 2018); W Kennedy, Member

Child support - Departure determination – Whether income, property and financial resources of the liable parent makes the administrative assessment unjust and inequitable – Business income – No ground for departure – Decision under review affirmed

[Hesney and Roberts](#) (Child support) [2018] AATA 3282 (24 July 2018); C Breheny, Member

Child support – Application for collection of unpaid amounts during a specified period – All amounts paid – Decision under review affirmed

Citizenship

[Chambers and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3376 (13 September 2018); Ms DK Grigg, Member

CITIZENSHIP – cancellation of approval to grant citizenship – whether applicant of good character – decision under review affirmed

[Prajapati and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3375 (13 September 2018); Dr L Bygrave, Member

CITIZENSHIP – citizenship by conferral – whether applicant is of good character – criminal offences committed – failure to disclose all offences – whether any mitigating factors or explanations by applicant outweigh behaviour – character references considered – domestic violence conduct inconsistent with community standards of behaviour – applicant unable to satisfy good character requirements – decision under review affirmed

Compensation

[Carlson and Telstra Corporation Limited](#) (Compensation) [2018] AATA 3359 (10 September 2018); D K Grigg, Member

COMPENSATION — whether applicant entitled to compensation – whether injury contributed to a “significant degree” by employee’s employment – decision under review affirmed

[Denhard and Comcare](#) (Compensation) [2018] AATA 3372 (12 September 2018); Deputy President Dr P McDermott RFD

DEPENDENCY – WORKERS’ COMPENSATION – accepted worker’s compensation claim and funeral expenses for employee – accepted work related death – dependency claim by children of employee – wholly or partly dependent on employee at time of employee’s death – whether dependent for economic support – decision under review affirmed

[Gazzard and Comcare](#) (Compensation) [2018] AATA 3276 (5 September 2018); Deputy President J Sosso

COMPENSATION: ceased effects determination – appropriate diagnosis – whether employment still contributes, to a significant degree, to the applicant’s ailments – cervical spondylosis – causal link between sedentary work and cervical spondylosis – Telstra Corporation Ltd v Hannaford - decisions affirmed

[LHHL and Comcare](#) (Compensation) [2018] AATA 3272 (7 September 2018); Ms S Taglieri SC, Member

COMPENSATION – liability for previously accepted injury – entitlement to medical expenses and incapacity payments – nature of original compensable injury – whether effects of compensable injury are continuing – subacromial bursitis – secondary complex regional pain syndrome – decision under review set aside and remitted.

Migration

[Ammoun](#) (Migration) [2018] AATA 3325 (22 August 2018); R Gagliardi, Member

Migration – Visitor (Class FA) visa – Subclass 600 (Visitor) – Tourist stream – Genuine entrant – Previous visit in 2015 – Several visitor visa refusals – Adverse information – Anonymous dob in – Applicant breached no work condition – No evidence to support allegation – Instability in visa applicant's home region – Economic incentives to stay in Australia – Financially comfortable in Lebanon – Large cash deposits – Decision under review affirmed

[B&G Green Trading Pty Ltd](#) (Migration) [2018] AATA 2801 (10 August 2018); Deputy President J Redfern (Presiding) and A Mercer, Member

MIGRATION – Subclass 457 (Temporary Work (Skilled)) visa – nomination refusal under [section 140GB](#) of the [Migration Act 1958](#) and regulation 2.72 of the Migration Regulations 1994 – where nomination application was made before 18 March 2018 and an associated subclass 457 visa application had not been made prior to 18 March 2018 – whether the applicant meets the prescribed criteria for approval of the nomination – consideration of the effect of the repeal and replacement of regulation 2.72 – impact of the transitional provisions – statutory interpretation – scope and content of a nomination to be assessed at the time of application for the purposes of determining the application of r.2.72 – accrued right to have nomination assessed according to the law – no contrary intention evinced by the scope and apparent intent of the amending regulations – no prescribed criteria against which to assess the nomination for the purposes of section 140GB(2)(b)

[Faiumu and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3431 (11 September 2018); Senior Member MJ McGrowdie

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – mandatory cancellation – revocation – failure to pass the character test – substantial criminal record – Ministerial Direction no 65 – protection of the Australian community – seriousness and nature of the relevant conduct – the risk conduct may be repeated – best interests of minor children – expectations of Australian community – impact on victims of Applicant's criminal conduct – impact on Applicant's family – strength, nature and duration of ties – extent of impediments if removed from Australia – decision affirmed

[Fualau and Minister for Home Affairs](#) (Migration) [2018] AATA 3373 (22 August 2018); Senior Member D J Morris

MIGRATION – mandatory cancellation of visa – applicant has substantial criminal record and does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – persistent breaches of family violence intervention orders – aggravated burglary with offensive weapon – Direction No. 65 primary considerations – other considerations – decision affirmed – oral decision given and written reasons later provided

[Karim](#) (Migration) [2018] AATA 3306 (20 August 2018); S Conwell, Member

Migration – Student (Temporary) (Class TU) – Subclass 500 (Student) – Genuine temporary entrant – Did not commence Higher Education Course – Enrolled in current course on day of commencement – Breach of work rights – Working approximately 40 hours per week – Decision under review affirmed

[Kennell and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3368 (10 September 2018); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory visa cancellation decision – non-expedited matter – where Applicant is a UK citizen – where Applicant’s visa cancelled under s 501(3A) because Applicant did not pass character test – whether there is a reason discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 65 – risk of re-offending – risk of harm to Australian community – minor children – expectations of the Australian community – ties to Australia – extent of impediments if removed – decision under review affirmed

[Kleinberg and Minister for Home Affairs](#) (Migration) [2018] AATA 3367 (10 September 2018); Deputy President P Britten-Jones

IMMIGRATION — Mandatory cancellation of visa — Request for revocation of cancellation — Character test — Substantial criminal record over long period — Sentence of imprisonment of 12 months or more — Protection of the Australian community — Best interests of minor children — Expectations of the Australian community — Other considerations — Strong ties to Australia — Warning given as to consequences of re offending — Decision under review affirmed

[Leone and Minister for Home Affairs](#) (Migration) [2018] AATA 3363 (10 September 2018); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of the child – expectations of the Australian community – other considerations – decision under review affirmed

[MBELU](#) (Migration) [2018] AATA 3174 (31 August 2018); Deputy President J Redfern (Presiding) and D McCulloch, Member

MIGRATION – Student (Temporary) (Class TU) Subclass 500 visa – cancellation under [s.116\(1\)\(g\)](#) of the [Migration Act 1958](#) – whether the prescribed ground in r.2.43(1)(o) of the *Migration Regulations 1994* applies – visa cancelled following investigation into the circumstances surrounding the grant – consideration of the expressions ‘reasonably suspects’, ‘as a result of’ and ‘fraudulent conduct’ – evidence that application was deficient and of a payment being made to the Department officer who granted the applicant’s visa – ground for cancellation established – whether the power to cancel the visa should be exercised – consideration of the degree of hardship, circumstances in which the ground for cancellation arose, legal consequences of cancellation, past and present behaviour towards the Department – decision affirmed

PRACTICE AND PROCEDURE – certificate issued under [s.375A](#) of the [Migration Act 1958](#) revoked by the Department – certificate issued under [s.376](#) of the [Migration Act 1958](#) – whether it is appropriate to disclose information subject to a [s.376](#) certificate – consideration of public interest reasons specified by the Secretary, principles set out in the [Privacy Act 1988](#) and sufficiency of information released to the applicant – information not released

[Morris and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3374 (11 September 2018); Senior Member Dr M Evans

Migration – decision to refuse application for Partner (Provisional) (Class UF) visa – subclass 309 – consideration of criminal conduct - whether there is a risk of engaging in criminal conduct - traffic offences – whether traffic offences are “criminal offences” – five traffic offences in three years – driving offences – Ministerial Direction no 65 – protection of the Australian community – expectations of the Australian community – risk to the Australian community – likelihood of re-offending – impact on family members – Applicant found not to be of good character – decision under review affirmed

[Nguyen](#) (Migration) [2018] AATA 3411 (27 August 2018); P Maishman, Member

Migration – Partner (Temporary) (Class UK) – Subclass 820 (Spouse) – Whether the applicant is the spouse of the sponsor – Lived together for an extended period of time – Joint bank accounts – Letters of support from family – Relationship disclosed to Department of Veteran Affairs – Decision under review remitted for reconsideration

[Quigley](#) (Migration) [2018] AATA 3297 (23 August 2018); K Raif, Senior Member

Migration – Skilled (Residence) (Class VB) – Subclass 887 (Skilled – Regional) – 2 year residence requirement – Out of Australia for over 1 year – Compelling circumstances – Tragic death of family members in home country – Stayed to support family – No discretion to waiver the statutory requirement – Decision under review affirmed

[The Trustee for the Fuzzy Events Unit Trust and Minister for Home Affairs](#) (Migration) [2018] AATA 3273 (7 September 2018); The Hon. Justice Stevenson, Deputy President

IMMIGRATION – character test – risk that visa applicant will commit a criminal offence in Australia – discretion – expectations of the Australian community in granting or refusing a visa – impact on Australian business interests if visa refused – decision set aside and substituted

[Turner and Minister for Home Affairs](#) (Migration) [2018] AATA 3274 (7 September 2018); Dr L Bygrave, Member

MIGRATION - whether matter to be dismissed as Applicant failed to appear at hearing - visa - cancellation - character test - substantial criminal record - traffic offences - possession of drugs - violent offences - protection of the Australian community - best interests of minor children - expectations of the Australian community - strength nature and duration of ties to Australia - extent of impediments if removed from Australia - decision under review affirmed

[VKTT and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3377 (13 September 2018); Deputy President Dr P McDermott RFD

IMMIGRATION – Refusal to revoke mandatory cancellation of a visa under s 501(CA) –applicant does not pass the character test – sentenced to 12 month period of imprisonment – protection of the Australian community and expectations of the Australian community weigh against revocation – best interests of minor children weighs in favour of revocation - other relevant considerations – non-refoulement obligations – strength, nature and duration of ties to Australia – considerations weigh against revocation – decision under review affirmed

[Yucel and Minister for Home Affairs](#) (Migration) [2018] AATA 3364 (10 September 2018); Senior Member M Griffin QC

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 – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – strength nature and duration of ties – extent of impediments if removed – decision affirmed

Practice and Procedure

[Howard-Smith and National Disability Insurance Agency](#) [2018] AATA 3434 (13 September 2018); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – extension of time application – whether reasonable in the circumstances to grant application – delay in seeking extension of time – merits of substantive application considered – disability and early intervention requirements under National Disability Insurance Scheme Act – substantive matter may have merit – extension of time application granted

[Summerland Financial Services Limited and Commissioner of Taxation](#) (Taxation) [2018] AATA 3370 (11 September 2018); Deputy President B J McCabe

TAXATION – objection decision – single objection against multiple assessments of GST – jurisdiction issue – invalid objection for earlier assessment periods – valid objection for later assessment periods

[Sydney Training Academy Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3361 (7 September 2018); Senior Member C Puplick AM

GENERAL ADMINISTRATIVE – application to stay decision of Australian Skills Quality Authority – decision cancelled Applicant's registration – prospects of success – public interest – consequences for parties – consequences on application for review – stay application granted with conditions

[TWWH and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3371 (29 August 2018); Deputy President S A Forgie

PRACTICE AND PROCEDURE – application for citizenship by descent refused – application for a stay – orders sought for removal of applicant and his mother to Australia from China – consideration of scope of power to stay - orders refused

Refugee

[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

[1510767](#) (Refugee) [2018] AATA 3382 (24 August 2018); D McCulloch, Member

Refugee – Protection visa – Mongolia – Social group – Homosexual – Victim of physical attacks – Verbal mistreatment – Decision under review remitted

[1600846](#) (Refugee) [2018] AATA 3379 (9 August 2018); S Norman, Member

Refugee – Protection visa – China – Social group – Failed asylum seeker – Claimed youth indiscretion – Fear of Chinese authorities – Fear of harm for making complaint against Chinese official – Delay in lodging visa application – Mistreatment at college – Possible relocation – Decision under review affirmed

[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

Social Security

[Andrews; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 3197 (8 August 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – Newborn Supplement – whether Applicant entitled to Newborn Supplement – parent for the purposes of Family Assistance Act – whether special circumstances exist – reviewable decision set aside and substituted

[Jansen and Secretary Department of Social Services](#) (Social services second review) [2018] AATA 3362 (7 September 2018); C Edwardes, Member

Social Security – disability support pension – mental illness – spine condition - not fully diagnosed, fully treated & fully stabilised – not fully treated & fully stabilised – impairment rating cannot be assigned – continuing inability to work rating – participation in program of support – decision under review affirmed

[Klinger and Secretary Department of Social Services](#) (Social services second review) [2018] AATA 3366 (27 August 2018); C Edwardes, Member

Social security – disability support pension – medical conditions – questionable written evidence – impairment tables – continuing inability to work rating – participation in program of support – decision under review affirmed

[Nikoloski and Secretary Department of Social Services](#) (Social services second review) [2018] AATA 3365 (31 August 2018); C Edwardes, Member

SOCIAL SECURITY – disability support pension cancelled – whether applicant had conditions that were fully diagnosed, fully treated and fully stabilised – whether applicant had 20 impairment points at date of cancellation – spine – lower limb – upper limb – decision affirmed

[Sarre and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3270 (6 September 2018); Dr D Cremean, Senior Member

SOCIAL SECURITY—carer payments—debt raised for overpayment—compensation payments—whether compensation affected payments—whether such payments should be treated as ordinary income—whether payee principal carer—decision set aside

[Sertich and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3271 (6 September 2018); Mr M Hyman, Member

FAMILY ASSISTANCE – family tax benefit - where claim made out of time – special circumstances discretion – whether circumstances were special – whether circumstances prevented lodgement of claim – decision under review affirmed

[Simmonds and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3194 (3 September 2018); Mr M Hyman, Member

SOCIAL SECURITY – disability support pension – rejection of claim – psychiatric condition – bilateral subacromial bursitis of the shoulders – whether conditions fully diagnosed, treated and stabilised – severity of psychiatric condition – decision affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3148 (31 August 2018); D K Grigg, Member

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

Taxation

[Hourigan and Commissioner of Taxation](#) (Taxation) [2018] AATA 3369 (10 September 2018); Deputy President R I Hanger QC

TAXATION – whether fraud or evasion – whether applicant discharged onus to show whether amended assessment excessive – whether liable for penalty uplift – unexplained deposits – whether shortfall interest charge should be remitted – decision under review regarding assessment set aside and remitted – administrative penalty and shortfall interest charges – further submissions

[Moreton Resources Ltd and Innovation and Science Australia](#) (Taxation) [2018] AATA 3378 (10 September 2018); Deputy President S A Forgie

TAXATION – RESEARCH AND DEVELOPMENT TAX INCENTIVE – underground coal gasification pilot project - whether R&D activities – decision affirmed

Trade and Commerce

[Cavalry Investments Pty Ltd and Minister for Revenue and Financial Services](#) [2018] AATA 3433 (12 September 2018); Deputy President B J McCabe

BUSINESS NAME REGISTRATION – whether proposed business name undesirable – whether Ministerial discretion should be exercised to grant registration – whether business name likely to offend – implications of business name registration legislative scheme – decisions under review 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
Rain and National Disability Insurance Agency	[2018] AATA 2597

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Goonewardena v Secretary, Department of Social Services	[2017] AATA 1281	[2018] FCA 1387
Sesalim v Secretary, Department of Social Services & Anor	[2016] AATA 170	[2018] FCA 1401 [2018] FCA 1159

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](#).

Amended Statements of Principles

The AAT has been advised that the following instrument was made, amending the Statement of Principle for the specified condition:

Motor neurone disease No. 88 of 2018

<https://www.legislation.gov.au/Details/F2018L01198>

Repealed Statements of Principles

The AAT has been advised that the following instrument has been made which repeals sixteen (16) Statements of Principles:

Veterans' Entitlements (Repeal of Expired Amendment Statements of Principles) Determination No. 2 2018 (No. 89 of 2018)

<https://www.legislation.gov.au/Details/F2018L01277>



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