



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 37/2018**

**24 September 2018**

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Citizenship .....	3
Compensation.....	4
Corporations .....	4
Migration.....	5
National Disability Insurance Scheme.....	6
Practice and Procedure.....	6
Professions and Trades .....	7
Social Security .....	7
<b>Appeals.....</b>	<b>9</b>
Appeals lodged .....	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.

## Citizenship

[Cyer and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3600 (21 September 2018); Senior Member B J Illingworth

CITIZENSHIP – Permanent resident – Application for Australian Citizenship – Application for citizenship refused on character grounds – Whether the applicant was of good character – Previous convictions – Failure to disclose offences – Domestic violence – Application under review affirmed

[Patel and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3466 (14 September 2018); C Edwardes, Member

CITIZENSHIP – criminal offences – failure to disclose criminal record – whether applicant of good character – meaning of good character – applicant found not to be of good character – pattern of dishonest behaviour – decision under review affirmed

[Visvanathan and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3541 (19 September 2018); Senior Member K Raif

CITIZENSHIP – New Zealand citizen – subclass 444 Special Category (Temporary) visa – citizenship by conferral – applicant not a permanent resident at time of application – decision affirmed

[VQLM and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3540 (5 September 2018); C Edwardes, Member

CITIZENSHIP – whether applicant of good character – meaning of good character – criminal behaviour – serious offences – applicant's evidence not credible - character references not reliable – no independent evidence to test the veracity of claims in character references - applicant found not to be of good character at time of application for citizenship – decision under review is affirmed

## Compensation

[Brice and Comcare](#) (Compensation) [2018] AATA 3463 (10 September 2018); Mr S. Webb, Member

WORKERS' COMPENSATION - accepted injury - anxiety - subsequent claims in respect of anxiety, depression, fibromyalgia, headaches rejected - previous Tribunal decision in respect of then present liability under heads of compensation - Comcare found to be liable in respect of 'fibromyalgia' – nature of 'injury' - subsequent determination made denying present liability affirmed on reconsideration - application for review - scope of Tribunal's jurisdiction - jurisdiction conferred in respect of reconsideration decision determining claims relating to 'fibromyalgia' - jurisdiction to decide issues of employment causation of 'fibromyalgia' however described, including change in medical diagnosis – jurisdiction to decide entitlements to compensation in respect of incapacity to work and medical treatment expenses as a result of physiological and psychiatric symptoms of 'fibromyalgia' 'injury' - ruling given

[Burton and Commonwealth Bank of Australia](#) (Compensation) [2018] AATA 3464 (14 September 2018); AG Melick AO SC, Deputy President

COMPENSATION – minor wrist injury – secondary psychiatric symptoms or disorder - questions of liability and compensation – wilful and false misrepresentation – exclusionary provision – whether s 7(7) of SRC Act applies – physical injury decision affirmed – psychological injury decision set aside

[Cashin and Comcare](#) (Compensation) [2018] AATA 3519 (18 September 2018); Ms A Wood, Member

COMPENSATION – whether applicant continues to suffer incapacity for work – whether lower back injury arose out of employment related incident – whether impairment permanent – entitlement to compensation for medical expenses – decisions under review set aside

[Cremona and Comcare](#) (Compensation) [2018] AATA 3598 (21 September 2018); Senior Member T Tavoularis

COMPENSATION – where Applicant suffers from somatization disorder – where Applicant has been in receipt of gardening and household services – where Applicant seeks compensation for an MRI – whether Applicant continues to suffer from somatization disorder – whether the Applicant reasonable requires gardening and household services as a resolute of her accepted condition – whether the MRI scan constitutes medical treatment – whether the MRI scan is treatment obtained in relation to the Applicant's accepted injury – whether it was reasonable for the Applicant to obtain an MRI in the circumstances – decisions under review affirmed

## Corporations

[Hutchison and Australian Securities and Investments Commission](#) [2018] AATA 3520 (18 September 2018); Deputy President Boyle

FINANCIAL SERVICES AND FINANCIAL MARKETS – permanent banning order – whether power to make a banning order – financial services business – whether the Applicant engaged in dishonest conduct in relation to a particular financial product or financial service – whether the Applicant is of good fame or character – whether the Applicant is likely to contravene a financial services law – dishonesty was not in relation to a financial product or a financial service – decision under review is set aside

## Migration

[Kaur and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3470 (17 September 2018); Ms A Burke, Member

MIGRATION – visa refusal – applicant is a citizen of the India – applicant applied for a Partner (Provisional) (Class UF) Visa – applicant does not pass character test in s 501(6) of the Migration Act 1958 – applicant not of good character on account of criminal conduct – whether discretion to refuse visa should be exercised – severely disabled dependent child – community expectations – significant period of time since offending – decision under review affirmed

[NRND and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 3601 (21 September 2018); Deputy President J W Constance

MIGRATION - discretion to refuse the application for a visa - Partner visa - whether the visa applicant is of good character - substantial criminal record - people smuggling - transportation of refugees - humanitarian crisis - Ministerial Direction No. 65 - protection of the Australian community - seriousness and nature of conduct - expectations of the Australian community - risk to community should conduct be repeated - decision set aside and remitted to the Minister

[Pizarro and Minister for Home Affairs](#) (Migration) [2018] AATA 3517 (18 September 2018); Deputy President S A Forgie

MIGRATION – revocation of cancellation of visa – exercise of discretion – decision set aside

[Tangipiri and Minister for Home Affairs](#) (Migration) [2018] AATA 3599 (21 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

[Wytrwal and Minister for Home Affairs](#) (Migration) [2018] AATA 3486 (17 September 2018); Dr D Cremean, Senior Member

MIGRATION – decision not to revoke mandatory cancellation – long history of offending – protection of community and community expectations – best interests of minor children – strength nature and duration of ties with Australia —impact of impediments if returned--health concerns – decision affirmed

[ZTGP and Minister for Home Affairs](#) (Migration) [2018] AATA 3518 (18 September 2018); K Parker, Member

MIGRATION – application for revocation of mandatory cancellation of visa – applicant is a citizen of New Zealand – applicant does not pass character test – whether another reason to revoke decision to cancel visa – history of criminal offending resulting in imprisonment – offences involved domestic violence – repetition of criminal offending – seriousness of applicant’s offences and conduct – consideration of mitigating circumstances – applicant had long history of suffering from substance abuse (alcohol and methyl amphetamine) – applicant suffered physical abuse by his primary carer as a child – where Australian community would expect non-revocation – applicant has lived in Australia for the past 13 years – applicant’s wife remains supportive of applicant – applicant’s wife is an Australian citizen living in Australia – applicant’s wife presently unable to leave Australia because her son is in the care of her mother under court orders – unacceptable risk of the applicant reoffending – extent to which applicant will face impediments when settling in New Zealand – applicant unlikely to suffer harm that would trigger international non-refoulement obligations - decision affirmed

## **National Disability Insurance Scheme**

[LJJY and National Disability Insurance Agency](#) [2018] AATA 3506 (18 September 2018); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME - whether support is reasonable and necessary - whether the requested support assists the Applicant to pursue the goals, objectives and aspirations included in the statement of goals and aspirations – whether the requested support assists the Applicant to undertake activities, so as to facilitate social and economic participation – whether the support represents value for money in that the cost of the support is reasonable – whether the requested support be, or likely be, effective and beneficial to the Applicant, having regard to current good practice – after school care - Autism - decision affirmed

## **Practice and Procedure**

[Johnson and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3469 (17 September 2018); S Burford, Member

Application for extension of time – factors that are relevant when considering an application for extension of time – length of delay – explanation for the delay – merits of the substantive application for review – application refused

[Rasmini and Minister for Home Affairs](#) (Citizenship) [2018] AATA 3465 (14 September 2018); Deputy President S A Forgie

PRACTICE AND PROCEDURE – JURISDICTION – whether application made to the Tribunal for review within the prescribed time – determination of date on which the respondent’s decision was deemed to have been received by applicant – application not made within prescribed time and no power to extend that time.

[Rasmussen and Inspector-General in Bankruptcy](#) [2018] AATA 3468 (13 September 2018); Deputy President S A Forgie

PRACTICE AND PROCEDURE – application to extend time within which to lodge application for review – no jurisdiction to review decision of which review sought – application refused

[Sivagnanasampanthan and Minister for Home Affairs](#) (Migration) [2018] AATA 3523 (19 September 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – jurisdiction – whether the Tribunal has jurisdiction to determine application for review – Tribunal may only review decisions in which jurisdiction has been conferred by enactment – delegate’s decision reviewable under Part 5 of the Migration Act – whether application for review made in accordance with conditions specified by the Migration Act – visa application lodged outside the migration zone – legislative requirement for applicant’s Australian citizen or permanent resident relatives who have standing to apply for review not satisfied – application for review not properly made – no jurisdiction to hear application

## **Professions and Trades**

[Yousefi and Victorian Building Authority](#) [2018] AATA 3542 (19 September 2018); Dr M Evans, Senior Member

MUTUAL RECOGNITION – application of Mutual Recognition Act 1992 (Cth) – registration of building surveyor – application of mutual recognition principles – substantial equivalence of occupations – Applicant a registered building surveyor in Western Australia – refusal of registration in Victoria – whether activities of building surveyor in Western Australia substantially the same as those of a building surveyor in Victoria under respective registrations – decision under review affirmed

## **Social Security**

[Mumo and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3505 (13 September 2018); M Hyman, Member

SOCIAL SECURITY – disability support pension – portability – whether the applicant was entitled to unlimited portability - whether portability should be extended for an acute family crisis – whether portability should be extended because events occurred to prevent his return - whether pension should be cancelled – mental health condition - whether the applicant’s condition is fully diagnosed, treated and stabilised – whether new claim should be rejected - decision affirmed

[Perkins; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 3578 (21 September 2018); Senior Member D J Morris

SOCIAL SECURITY – disability support pension (DSP) – whether conditions permanent in terms of the Determination – spinal condition – mental health condition – other conditions – 20 or more impairment points required – 10 points allocated – not qualified for DSP – decision of Social Services and Child Support Division set aside

[Scates and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3461 (14 September 2018); Ms D K Grigg, Member

SOCIAL SECURITY – age pension – overpayment - whether solely attributable to administrative error – consideration of special circumstances and whether they exist – decision under review affirmed

[Syler and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3467 (11 September 2018); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – mental health condition – lumbar spinal pain – whether applicant’s conditions rated at 20 points or more under Impairment Tables – 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

---

CASE NAME	AAT REFERENCE
<b>Martin and Comcare</b>	<a href="#">[2018] AATA 2870</a>
<b>Vo and Minister for Home Affairs</b>	<a href="#">[2018] AATA 1305</a>

---



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).

