



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 39/2018

8 October 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.

Contents

AAT Recent Decisions	3
Citizenship	3
Compensation.....	4
Migration.....	4
Refugee	6
Practice and Procedure.....	6
Social Security	7
Veterans' Affairs.....	7
Appeals.....	8
Appeals lodged	8
Appeals finalised.....	8

AAT Recent Decisions

The following decisions were recently delivered by the AAT in the General, FOI, NDIS, Security, Taxation & Commercial and Veterans' Appeals Divisions. 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. If the decision is to be summarised, this will be noted. Click on the links for direct access to the full text of the decision.

Child Support

[Allens and Kelly](#) (Child support) [2018] AATA 3212 (12 July 2018); S Letch, Member

Child support – Percentage of care – Change to the likely pattern of care – Existing care percentage determinations revoked – New care percentage determinations made – Decision under review varied

[Astor and Hinch](#) (Child support) [2018] AATA 3278 (17 July 2018); F Hewson, Member

Child support – Whether a fixed annual rate should apply – Current income likely to be higher than the parenting payment (single) maximum basic amount – Fixed annual rate should apply – Decision under review affirmed

[Daley and Tompkins](#) (Child support) [2018] AATA 3074 (12 July 2018); M Martellotta, Member

Child support – Departure determination – Income and financial resources of parent operating a business through a company – Decision under review set aside and substituted

[Neville and Coach](#) (Child support) [2018] AATA 3285 (17 July 2018); K Timbs, Member

Child support – Non-Agency payments – Payments made by the payer to a bank account of the payee's sister – Payments received by the payee – Payments intended by the payer and by the payee to satisfy the child support liability for the period – Decision under review set aside and substituted

[Trailer and Calladen](#) (Child support) [2018] AATA 3077 (3 July 2018); M Douglas, Member

Child support – Departure determination – High costs of child care – Income, property and financial resources of liable parent – Grounds for departure exist – Adjusted taxable income of liable parent varied – Decision under review varied

Citizenship

[BVML and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3699 (4 October 2018); Dr L Bygrave, Member

CITIZENSHIP – application for citizenship by conferral – whether applicant is of good character – criminal, traffic and driving offences committed – failure to disclose offences and term of imprisonment – whether any mitigating factors or explanations by applicant outweigh behaviour – character references considered – record of domestic violence incidents – domestic violence inconsistent with community standards of behaviour – applicant unable to satisfy good character requirement – decision under review affirmed

[Fang and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3686 (3 October 2018); Senior Member C Puplick AM

CITIZENSHIP – Applicant granted Australian citizenship – Applicant later found to have entered Australia with a forged passport – Applicant's Australian citizenship revoked by the Minister – Applicant found guilty of migration offences for false and misleading statements on visa and citizenship application – whether revocation of citizenship is in the public interest – consideration of the “public interest” – whether discretion to revoke citizenship should be exercised – decision under review affirmed

Compensation

[McNamara and Comcare](#) (Compensation) [2018] AATA 3688 (3 October 2018); Deputy President J Sosso

COMPENSATION – workplace injury – chronic pain syndrome – fibromyalgia – whether medical treatment sought to be obtained is in relation to the compensable condition – whether massage therapy and physiotherapy treatments were reasonable for the employee to continue to receive – decisions under review affirmed

Migration

[Al Hassan](#) (Migration) [2018] AATA 3480 (30 August 2018); H Kroger, Member

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) visa – Genuine and continuing relationship – Sponsorship withdrawal revoked – Parties reconciled – Applicant working overseas – Social aspects – Photographic evidence provided – Applicant visits wife and children in Australia – Second hearing conducted – Applicant sought unpaid leave to attend hearing – Deep level of commitment – Credible witness – Decision under review remitted for reconsideration

[BLSL and Minister for Home Affairs](#) (Migration) [2018] AATA 3681 (2 October 2018); Senior Member R Cameron

IMMIGRATION – decision refusing to grant protection visa – decision refused on character grounds – where applicant owed international non-refoulement obligations – decision affirmed

[Dang](#) (Migration) [2018] AATA 3596 (17 August 2018); I Garnham, Member

Migration – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner (Temporary)) – Whether the applicant satisfies the relevant Schedule 3 criteria – Applicant's lack of substantive visa within the control of the applicant – Whether there are compelling reason for waiving the Schedule 3 criteria – Where the sponsor is financially dependent on the applicant – Where the sponsor is pregnant – Welfare of the sponsor and child constitutes a compelling circumstance – Decision remitted with direction

[de Bruin](#) (Migration) [2018] AATA 3642 (27 August 2018); A Dronjic, Member

Migration – Cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Business (Long Stay)) – Whether the grounds for cancellation exist – Employment ceased for longer than 90 days – Whether the visa should be cancelled – Where the applicant was made redundant – Where the applicant made a genuine attempt to find employment – Where the recruitment process was drawn out - Where the applicant is currently employed – Decision set aside and substituted

[Dreamchasers Pty Ltd ATF Serendipity Unit Trust](#) (Migration) [2018] AATA 3479 (28 August 2018); D Connolly, Member

Migration – Nomination refusal – Direct Entry Scheme – Genuine business – Nominated occupation – Retail Manager – Whether tasks match the nominated position – Nominee performs some tasks relevant to the nominated position – Business franchise – Marketing and suppliers largely controlled by the franchise – Nominee currently covering others shifts – Proposing to pay nominee under market rate – Decision under review affirmed

[FLLB and Minister for Home Affairs](#) (Migration) [2018] AATA 3661 (2 October 2018); Dr L Bygrave, Member

MIGRATION – Class XB Subclass 202 Global Special Humanitarian visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – serious criminal convictions – protection of the Australian community – nature and seriousness of conduct to date – risk to the Australian community – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – strength nature and duration of ties – hardship in the event of removal – South Sudan – decision affirmed

[Ghori](#) (Migration) [2018] AATA 3640 (27 August 2018); K Raif, Senior Member

Migration – Cancellation – Skilled (Residence) (Class VB) visa – Subclass 886 (Skilled (Sponsored)) – Whether the applicant provided incorrect information in the application form – Where applicant used an alias to obtain a migration outcome – Where the applicant failed to disclose an outstanding debt to the Commonwealth – Incorrect information provided – Whether the visa should be cancelled – Where the applicant's children have spent their formative years in Australia – Significant hardship if visa is cancelled – Best interests of the applicant's children would be to remain in Australia – Applicant's consistent, concerted efforts to deceive authorities outweigh other considerations – Decision affirmed

[He](#) (Migration) [2018] AATA 3554 (16 August 2018); J Cipolla, Senior Member

Migration – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Direct Entry stream – Whether the applicant provided false and misleading information in the application – Whether the sponsoring business was found to be not lawfully operating in Australia - Where the applicant claims the information was provided without her consent by a migration agent – Where the applicant claims to have undertaken sufficient probity checks on the migration agent and sponsoring business – Probity checks undertaken not sufficient – Applicant did knowingly provided false and misleading information – Whether the requirements should be waived – No compelling circumstances – Decision affirmed

[JRJZ and Minister for Home Affairs](#) (Migration) [2018] AATA 3687 (3 October 2018); Deputy President Rayment QC

MIGRATION – Protection (subclass 866) visa cancellation – applicant held to be a non-citizen in respect of whom Australia has protection obligations – definition of a “particularly serious crime” – definition of “danger to the Australian community” – involves consideration of the whole of the relevant facts and circumstances – support from family and partner – severance of ties with gang – secured employment opportunity – no reasonable grounds which find that the applicant is a danger to the Australian community – reviewable decision is set aside and remitted to the respondent for reconsideration with the direction that the applicant is not a danger to Australia

[QZGZ and Minister for Home Affairs](#) (Migration) [2018] AATA 3683 (3 October 2018); Senior Member A Nikolic AM CSC

MIGRATION – Bridging Visa refusal – failure to pass the character test – criminal charge pending – whether the risk that the Applicant would engage in criminal conduct is made out if Applicant is allowed to remain in Australia – Applicant passes the character test – decision set aside and remitted for reconsideration with a direction that Applicant passes the character test

Refugee

[1707593](#) (Refugee) [2018] AATA 3504 (10 August 2018); R Gagliardi, Member

Refugee – Protection Visa – Malaysia – Personal dispute – Fears harm from gangsters – Effectiveness of the police and legal system – Vague, undetailed and illogical evidence – Credibility concerns – Decision under review affirmed

[1514689](#) (Refugee) [2018] AATA 3629 (14 August 2018); J Silva, Member

Refugee – Protection visa – Pakistan – Claims differ to primary application – Assisted Christians who were victims of mob violence – Social group – Secret marriage with woman from another caste – Shame and stigma – Couple divorced – Fears honour killings – Credibility issues – Unsubstantiated evidence – Improvising details of events – No genuine fear of harm – Decision under review affirmed

[1803217](#) (Refugee) [2018] AATA 3635 (15 August 2018); C Packer, Member

Refugee – Protection Visa – Vietnam – Irregular Maritime Arrival – Full Federal Court remittal – Political opinion – Anti-authorities – No profile as a political activist – Membership of a particular social group – Successful self-employed tradesmen – Failed asylum seeker – People without ho khau in Vietnam – Departmental data breach – Decision to refuse to grant the applicant a Protection (Class XA) visa under review set aside – Substitute a decision to refuse to grant the applicant a Protection (Class XD) visa

[1608643](#) (Refugee) [2018] AATA 3630 (27 August 2018); N Lamont, Member

Refugee – Protection Visa – United States of America – Race – White Americans – Age – Middle aged – Economic hardship – Delay in applying for a Protection Visa – Decision under review affirmed

Practice and Procedure

[Australian Accredited College Institute Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3662 (28 September 2018); Senior Member C Puplick AM

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

[NMDR and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3462 (12 September 2018); Senior Member DJ Morris

PRACTICE AND PROCEDURE – request for confidential orders on two published decisions – jurisdiction of the Tribunal after hearings concluded – power of Tribunal to make such orders exercisable – basis for request – consideration of passage of time in relation to each hearing – whether parties aware of ability to seek orders before hearing – section 35 order restricting access to evidence in one hearing made

Social Security

[Alnaser and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3698 (3 October 2018); M East, Member

EXTENSION OF TIME APPLICATION – relevant factors when considering an application for an extension of time – poor prospects of success – lack of explanation of delay – applicant rested on his rights – need to prevent disruption to established practices – application refused

[Kosturski and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 3684 (3 October 2018); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability support pension – whether statutory requirements under section 94 of the Social Security Act 1991 satisfied – Impairment Tables – fully diagnosed, treated and established – severe impairment under Table 4-spinal function – cervical spondylosis and L5 disc protrusion – decision set aside and remitted

Veterans' Affairs

[Bradley and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 3660 (28 September 2018); Dr M Evans, Senior Member

VETERANS' AFFAIRS – Veterans' entitlements – whether reasonable hypothesis has been raised – whether posttraumatic stress disorder war-caused – alcohol use disorder – whether Applicant meets the Statement of Principles – decision set aside and 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
Dring and Telstra Corporation Limited	[2018] AATA 3149

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Sharpcan Pty Ltd	[2017] AATA 2948	[2018] FCAFC 163



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.

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](#).