



Administrative  
Appeals Tribunal

AAT  
Bulletin

# 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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# 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.

## Aviation

[Grima and Civil Aviation Safety Authority](#) [2018] AATA 3737 (8 October 2018); Senior Member A Poljak

CIVIL AVIATION – cancellation of pilot licence – whether applicant fit and proper person – attempted solo flight in multi-engine aircraft – multi-engine aircraft endorsement – veracity of applicant's records – whether adequate flight time – airworthiness of aircraft – whether appropriate level of planning – flight carrying persons later identified as wanted by police – whether applicant pilot in command – whether applicant's involvement in the flight bears upon his fitness and propriety – meaning of 'fit and proper person' – need to take account of the responsibilities, functions and duties of the licence holder – Tribunal not able to be reasonably satisfied on a number of issues – applicant displayed lack of judgment and overconfidence in flying ability – consequences of decision considered – intention to pursue flying as a livelihood – decision under review set aside and substituted

## Bankruptcy

[Mallett and Inspector-General in Bankruptcy](#) [2018] AATA 3739 (4 October 2018); Deputy President RI Hanger QC

BANKRUPTCY – objection to discharge – where bankruptcy trustee filed a notice to objection to the Applicant's discharge from bankruptcy – where the Applicant put money in a trust account prior to becoming a bankrupt – where most of the trust money had been spent – whether the Applicant made a transfer that was void against the trustee because it was made to defeat creditors – whether the Applicant failed to adequately explain the purpose for which money was spent – whether the Applicant failed to comply with a trustee's request for written information about her property – decision under review affirmed

## Citizenship

[Ezzati and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3776 (12 October 2018); Deputy President I Hanger QC

CITIZENSHIP – criminal history – criminal damage – intentionally cause injury – breach of suspended sentence order – drive in a manner dangerous – whether of good character – decision affirmed

[FBRB and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3736 (4 October 2018); Senior Member DJ Morris

CITIZENSHIP – citizenship by conferral – good character test – history of offending – no recent offending – other behaviour in Australia – pattern of conduct – assessment must be contemporary – decision set aside and remitted with direction applicant satisfies good character requirement

[Huang and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3659 (28 September 2018); Senior Member K Raif

CITIZENSHIP – application for citizenship by conferral – permanent resident – refusal of citizenship – application of Citizenship Policy – good character – providing false or misleading information to the Department – false identity – breach of immigration laws – previous conviction – decision affirmed

[Kong and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3733 (5 October 2018); C Edwardes, Member

CITIZENSHIP – permanent resident – whether applicant of good character – meaning of good character – traffic offences – failure to disclose – character references – applicant found not to be of good character – decision under review is affirmed

[Liang and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3782 (10 October 2018); Senior Member L Kirk

CITIZENSHIP – application for Australian citizenship by conferral – general residence requirements not satisfied – whether Ministerial discretion can be applied to treat the Applicant's periods of absence from Australia as a period in which he was present as a permanent resident – whether Applicant likely to reside or continue to reside in Australia – whether Applicant had a close and continuing association with Australia during relevant period – Citizenship Policy applied – Applicant had continuing, but not close, association with Australia – decision under review affirmed

[Polat and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3743 (5 October 2018); C Edwardes, Member

CITIZENSHIP – whether applicant of good character – meaning of good character – criminal behaviour – serious offences – domestic violence – Australian values – applicant found not to be of good character at time that the Minister made decision – decision under review affirmed

## **Compensation**

[Doutch and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 3812 (31 August 2018); Senior Member A Nikolic AM CSC

VETERANS' AFFAIRS – claim for compensation – right knee osteoarthritis – right knee replacement – claim that right knee condition arises from accepted left knee condition – right knee condition not caused by military service – decision under review affirmed

[Heales and Comcare](#) (Compensation) [2018] AATA 3788 (11 October 2018); M Hyman, Member

COMPENSATION – reasonable medical treatment – massage and acupuncture – whether massage and acupuncture are medical treatment - whether massage and acupuncture provided in relation to the applicant’s compensable injury – whether massage and acupuncture are reasonable treatment in the circumstances – application of the Clinical Framework for the Delivery of Health Services – effectiveness of therapies – scientific basis – whether applicant had become dependent on therapies – not reasonable to continue acupuncture – reasonable to continue massage

[Lieschke and Telstra Corporation Limited](#) (Compensation) [2018] AATA 3787 (11 October 2018); A Ward, Member, M O’Loughlin, Member and D Ben-Tovim, Member

COMPENSATION – Whether person requires ongoing treatment for compensable injury – Incapacity for work – Compensation for medical expenses – Intervening act – Psychological sequelae – Determinations under review set aside.

[Mortimer and Comcare](#) (Compensation) [2018] AATA 3783 (10 October 2018); Deputy President I Hanger AM QC

COMPENSATION – whether Mr Mortimer continues to suffer the effects of an injury which arose out of, or in the course of, his employment – whether Mr Mortimer continues to suffer the effects of a disease which was contributed to, to a significant degree, by his employment with the Commonwealth – aggravation of lumbar sprain resolved as at the date of the reviewable decision – no further liability to pay compensation under section 16 or 19 of the Safety Rehabilitation and Compensation Act 1988 – reviewable decision affirmed

[Neville and Comcare](#) (Compensation) [2018] AATA 3738 (5 October 2018); Senior Member DJ Morris

WORKERS’ COMPENSATION – claim for ‘repetitive strain injury’ – whether Applicant has suffered injury – no confirmed diagnosis – section 5B of Act not satisfied – therefore section 14 of Act not satisfied – not necessary to consider causation – no compensable condition – decision affirmed

[Stewart and Comcare](#) (Compensation) [2018] AATA 3685 (2 October 2018); Senior Member L Kirk

COMPENSATION – whether the Applicant suffers an ‘ailment’, or an ‘aggravation’ of an ‘ailment’ as defined in s 4 of the Safety Rehabilitation and Compensation Act 1988 (the SRC Act) – whether this was contributed to, to a significant degree, by his employment with the Commonwealth, such that he has a ‘disease’ under s 5B of the SRC Act – whether the Applicant’s ‘disease’ was suffered as a result of a ‘reasonable administrative action’ taken in a reasonable manner with respect to the Applicant’s employment – whether meeting on 15 January 2016 was ‘administrative action’ ‘in respect of the Applicant’s employment’ – adjustment disorder with anxious mood – reviewable decision set aside

[Weston and Cleanaway Operations Pty Ltd](#) (Compensation) [2018] AATA 3740 (5 October 2018); Deputy President Boyle

COMPENSATION – not presently liable under s 16 and s19 of the SRC Act – left shoulder injury – jurisdiction – whether the decisions are reviewable decisions – the Tribunal has jurisdiction – whether the proposed surgery is reasonable medical treatment – the decisions under review are set aside and substituted

## Migration

[DKXY and Minister for Home Affairs](#) (Migration) [2018] AATA 3779 (10 October 2018); Senior Member K Raif

MIGRATION – Class CD Subclass 851 Resolution of status visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – protection of the Australian community – expectations of the Australian community – international non-refoulement obligations – Ministerial Direction No 75 – protection claims – strength nature and duration of ties – hardship in the event of removal – North Korea – decision affirmed

[HJCS and Minister for Home Affairs](#) (Migration) [2018] AATA 3784 (11 October 2018); The Hon. Matthew Groom, Senior Member

MIGRATION – temporary protection visa refusal – failure to pass the character test – whether discretion to refuse visa should be exercised – risk of reoffending – expectations of the Australian community – international non-refoulement obligations – decision under review set aside

[KHHG and Minister for Home Affairs](#) (Migration) [2018] AATA 3811 (12 October 2018); Senior Member D J Morris

MIGRATION – refusal of bridging visa – consideration of character test – domestic violence – guilty plea entered to offence but sentence pending – risk of applicant engaging in criminal conduct in Australia – admissions in evidence – misleading information provided to departmental officials – assessment of risk – applicant fails character test – consideration of ministerial direction – primary considerations – other considerations – any other relevant matter – decision affirmed

[Kumeroa and Minister for Home Affairs](#) (Migration) [2018] AATA 3744 (10 September 2018); Deputy President Rayment QC

MIGRATION – Special Category (Temporary) (Class TY) (Subclass 444) visa cancellation – applicant fails to pass the character test – consideration of the protection of the Australian community not in applicant's favour – some risk present to the Australian community should the applicant commit further offences or engage in other serious conduct – best interests of applicant's child served by revocation of applicant's visa cancellation – expectations of the Australian community is a deeming provision favouring the affirmation of the reviewable decision – no international non-refoulement obligations – minimal ties with Australia – impact on victims – impact of applicant's depression – reviewable decision affirmed

[Nguyen and Minister for Home Affairs](#) (Migration) [2018] AATA 3726 (4 October 2018); Deputy President JW Constance

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – drug trafficking – whether the discretion to revoke the cancellation should be exercised – Direction No. 65 – primary considerations – protection of the Australian community from criminal or other serious conduct – nature and seriousness of conduct – risk to the Australian community – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties to Australia – impediments if removed from Australia – decision set aside

[XYDJ and Minister for Home Affairs](#) (Migration) [2018] AATA 3790 (6 September 2018); K Parker, Member

MIGRATION – applicant originally granted student visa and travelled from Hong Kong to Australia to undertake student exchange program – allegations made by fellow exchange student – Police laid charges against applicant for two counts of rape – no evidence of prior criminal record – criminal proceedings filed against applicant – applicant entered plea of not guilty and released on bail – Department obtained consent from applicant to remove him from Australia following cancellation of student visa – bail revoked and applicant taken into remand – no committal proceeding – criminal proceeding listed for trial in September 2018 – whether risk that the applicant would engage in criminal conduct in Australia – no witness statements filed by either party in this application – no witnesses called to give evidence by either party at the hearing due to pending criminal trial – Minister sought to rely on documentary evidence arising from Police investigation and file held by the Department of Public Prosecution – credibility of allegations – inconsistencies in allegations made by complainant – consideration of forensic biology results and expert report by examining doctor – insufficient evidence to find there is a risk that applicant would engage in criminal conduct if allowed to remain in Australia – applicant passes character test – discretion to refuse visa under s 501(1) of the Migration Act 1958 (Cth) not enlivened – decision set aside and matter remitted for reconsideration with direction that applicant passes character test

[ZJFK and Minister for Home Affairs](#) (Migration) [2018] AATA 3774 (10 October 2018); Mr A. Maryniak, QC, Member

MIGRATION – refusal of protection visa – applicant is a citizen of Vietnam – applicant does not pass character test in s 501(6)(d)(i) of Migration Act – whether discretion to refuse visa should be exercised – risk of re-offending – international non-refoulement obligations – decision under review set aside

[Zyaran and Minister for Home Affairs](#) (Migration) [2018] AATA 3785 (11 October 2018); Deputy President J W Constance

MIGRATION - mandatory cancellation of visa - failure to pass character test - substantial criminal record - whether the discretion to revoke the cancellation should be exercised - Ministerial Direction No. 65 - primary considerations - protection of the Australian community from criminal or other serious conduct - nature and seriousness of conduct - robbery - assault of an officer in the execution of duty - assault of taxi driver - property offences - possession or use of a prohibited weapon without a permit - nature of future harm - likelihood of engaging in further criminal or other serious conduct - expectations of the Australian community - risk to the Australian community - impediments if removed from Australia - decision affirmed

## **Practice and Procedure**

[Oztech Trade Training College Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3741 (9 October 2018); Senior Member A Poljak

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – registered training organisation – decision to cancel registration – merits of substantive matter – consequences if stay refused – stay application granted

[Roszko and Secretary, Department of Health](#) (Social services second review) [2018] AATA 3786 (11 October 2018); Senior Member B J Illingworth

PRACTICE AND PROCEDURE – Dismissal application – Jurisdiction – s 42A(4) Administrative Appeals Tribunal Act 1975 – Whether decision reviewable – Assessment of entitlement to aged pension – Whether aged care accommodation fee overpayment reviewable – Application for review dismissed.

## **Social Security**

[Broadhurst and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3704 (3 October 2018); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – Refusal – Mental Health condition – Lower Limb condition – Hypertension condition – Hypercholesterolaemia condition – Respiratory Disorder condition – Right Calf Pain condition – whether impairments are of 20 points or more under the Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

[Cotter and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3780 (12 October 2018); Senior Member B J Illingworth

SOCIAL SECURITY – Claim for Disability Support Pension – Physical, intellectual or psychiatric impairment – Whether an impairment rating of 20 points or more exists under the Impairment Tables – Whether fully diagnosed, fully treated and stabilised – Job Capacity Assessment Report considered – Medical reports considered – Decision under review affirmed

[Dixon and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3742 (3 October 2018); Ms A Burke, Member

CHILD SUPPORT – care percentage determination finding applicant had 50 per cent care of child and other party had 50 per cent – pattern of care not agreed by the parties – lack of clear evidence of permanent change in care arrangement – decision under review affirmed

[Dunn and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3777 (12 October 2018); Deputy President I Hanger QC

SOCIAL SECURITY – Whether the applicant qualified to receive disability support pension at time of application – physical, intellectual or psychiatric impairment- diagnosed condition that has been investigated, treated and stabilised – impairment rating of 20 points- decision under review affirmed

[Huynh and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3778 (12 October 2018); Senior Member B J Illingworth

SOCIAL SECURITY – Claim for Disability Support Pension – Physical, intellectual or psychiatric impairment – Multiple Impairments – Whether an impairment rating of 20 points or more exists under the Impairment Tables – Whether other conditions fully diagnosed, fully treated and stabilised within the qualification period – Decision under review affirmed



[Kalik and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3745 (9 October 2018); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether applicant qualifies for the disability support pension – multiple medical impairments – whether applicant has permanent medical impairments which can be rated at 20 points or more under the Impairment Tables – whether applicant's medical impairments are fully diagnosed, fully treated, fully stabilised and likely to persist for more than two years – decision under review affirmed

[Lindblom and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3735 (5 October 2018); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – Cancellation – Degenerative Osteoarthritis of the Lumbar Spine – Upper Limb condition – Angina condition – whether impairments are of 20 points or more under the Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

[Mews and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3734 (5 October 2018); C Edwardes, Member

Social security – disability support pension – medical conditions – heart and diabetes primary conditions – impairment tables – qualification period – continuing inability to work – program of support – decision under review affirmed

[O'Donnell and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3700 (4 October 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – family tax benefit – lodge income tax return before end of first income year after relevant income year unless special circumstances – whether special circumstances exist – decision affirmed

[Payne and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3789 (24 September 2018); Senior Member M Griffin QC

SOCIAL SECURITY – disability support pension – whether applicant qualifies for a disability support pension – multiple medical impairments – whether applicant has permanent medical impairments which can be rated at 20 points or more under the Impairment Tables – whether applicant's medical impairments are fully diagnosed, treated, stabilised and likely to persist for more than two years – decision under review affirmed

[Sambell and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3732 (8 October 2018); Senior Member DJ Morris

SOCIAL SECURITY – age pension – assets test – disposal of property – whether disposal should be disregarded – hardship test – whether severe financial hardship would result – discretion not enlivened – decision affirmed

[Tyson and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3781 (10 October 2018); Senior Member L Kirk

SOCIAL SECURITY – reduction of Applicant’s Newstart allowance – whether Applicant’s and former spouse’s company was at the relevant time a “designated private company” and a “controlled private company” – whether Applicant was “attributable stakeholder” – whether Applicant’s “income attribution percentage” in the company should be reduced – whether Applicant should be attributed with 50% of profit derived from company in relevant period – whether Applicant should be attributed with deemed income from shareholder loans - applicable derivation and attribution periods considered – reviewable decision affirmed

## **Taxation**

[Douglass and Commissioner of Taxation](#) (Taxation) [2018] AATA 3729 (3 October 2018); Mr PW Taylor SC, Senior Member

TAXATION – review of objection decisions – whether Applicant engaged by employer to produce a result – whether the Applicant’s partnership business satisfied the “results test” and was therefore a personal services business – relevance of “custom or practice” to “results test” criteria – criterion for producing a result not statutorily defined – concept of “working for a result” distinguished from “income for producing a result” – Applicant’s conduct with respect to reporting income satisfies criterion of recklessness – 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
<b>Andrwas and Minister for Home Affairs</b>	<a href="#">[2018] AATA 1965</a>
<b>BNHW and Minister for Home Affairs</b>	<a href="#">[2018] AATA 2578</a>
<b>Dharma and Minister for Home Affairs</b>	<a href="#">[2018] AATA 2757</a>
<b>Flores and Minister for Home Affairs</b>	<a href="#">[2018] AATA 1264</a>
<b>GQVS and Minister for Home Affairs</b>	<a href="#">[2018] AATA 2562</a>
<b>HMYH and Minister for Home Affairs</b>	<a href="#">[2018] AATA 1868</a>
<b>JNMK and Minister for Immigration and Border Protection</b>	<a href="#">[2018] AATA 971</a>
<b>Moreton Resources Ltd and Innovation and Science Australia</b>	<a href="#">[2018] AATA 3378</a>
<b>NBCM and Minister for Home Affairs</b>	<a href="#">[2018] AATA 2387</a>
<b>QKVH and Minister for Immigration and Border Protection</b>	<a href="#">[2018] AATA 1855</a>
<b>Tran and Minister for Immigration and Border Protection</b>	<a href="#">[2018] AATA 2093</a>
<b>ZZRP and Comcare</b>	<a href="#">[2018] AATA 2240</a>

## Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

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**Minister for Immigration and Border  
Protection v Egan**

[\[2017\] AATA 2705](#)

[\[2018\] FCAFC 169](#)

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