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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.

Citizenship

[Onyema and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 3883 (16 October 2018); Ms A Burke, Member

CITIZENSHIP – citizenship by descent – Applicant born outside of Australia – whether a parent of the Applicant was an Australian citizen at the time of the Applicant's birth – meaning of parent – not limited to biological parent – ordinary meaning of parent – parent's conduct before, at the time of and after the birth – decision set aside and remitted for reconsideration

Compensation

[Hickey and Australian Postal Corporation](#) (Compensation) [2018] AATA 3930 (18 October 2018); Ms LM Gallagher, Member

COMPENSATION – Commonwealth employee – depression – whether liable under section 14 – whether depression contributed to, to a significant degree, by employment – whether depression suffered as a result of reasonable administrative action taken in a reasonable manner – decision under review affirmed

COMPENSATION – Commonwealth employee – L5/S1 disc-prolapse on the left with a sequale of soft tissue injury right foot – whether no present liability under sections 16 and 19 – no jurisdiction to review determination

[Laviano and Comcare](#) (Compensation) [2018] AATA 3912 (11 September 2018); Mrs JC Kelly, Senior Member

WORKERS' COMPENSATION – Applicant suffered from an adjustment disorder/anxiety/depression following meeting and email from supervisor – content of meeting and email relate to supervisor's concern that the Applicant recorded members of public and staff without consent – whether ailment was suffered as a result of reasonable administrative action taken in a reasonable manner – decision affirmed

[Terbizan and Comcare](#) (Compensation) [2018] AATA 3862 (15 October 2018); Deputy President P Britten-Jones and Member A Ward and Member M O'Loughlin

COMPENSATION – Adjustment disorder – Temporary role discontinued – Notification of discontinuance given by letter – Whether adjustment disorder suffered as a result of administrative action – Whether administrative action in respect of the employment of the applicant – Whether administrative action reasonable – Whether administrative action taken in a reasonable manner – Decision under review affirmed

[The Estate of the Late Mr Vaughan White and Military Rehabilitation and Compensation](#)

[Commission](#) (Compensation) [2018] AATA 3882 (16 October 2018); Deputy President J Sosso and Dr G Maynard, Member

COMPENSATION – compensation claim by wife of former member of the Australian Army – veteran deceased – smoking – motor neuron disease – was smoking habit contributed, to a significant degree, by his defence service – link between smoking and onset of motor neuron disease – epidemiology – link between smoking and onset of veteran's motor neurone disease – decision under review affirmed

[Tocade and Comcare](#) (Compensation) [2018] AATA 3863 (15 October 2018); Deputy President Rayment QC

COMPENSATION – workers compensation - back and neck injury – whether the applicant has entitlement to compensation for medical expenses and incapacity payments – conflicting medical evidence – reviewable decision is affirmed

Industrial Law

[Greatrex and Secretary, Department of Jobs and Small Business](#) [2018] AATA 3850 (12 October 2018); Ms K Millar, Member

FAIR ENTITLEMENTS GUARANTEE – Claim for advance under Fair Entitlements Guarantee Act – Requirements for an effective claim – Whether person is an employee or independent contractor – Insolvency event – Decision under review affirmed

Migration

[CFHQ and Minister for Home Affairs](#) (Migration) [2018] AATA 3858 (12 October 2018); Deputy President J Redfern and Senior Member K Raif

MIGRATION – application for Safe Haven Enterprise Visa (SHEV) (Class XE) – visa refusal – applicant has been convicted of offences that were committed while in immigration detention – failure to pass character test in s 501(6) of the Migration Act 1958 – whether the discretion to refuse to grant the visa should be exercised – consideration of primary considerations – expectations of the Australian community – consideration of other considerations – non-refoulement obligations – discretion to refuse should not be exercised – decision set aside and substituted

[HMFZ and Minister for Home Affairs](#) (Migration) [2018] AATA 3861 (11 October 2018); Senior Member C Puplick AM

MIGRATION – revocation of visa cancellation – Ministerial Direction No. 65 applied – primary considerations considered – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – whether Applicant owed non-refoulement obligations – strength, nature and duration of ties – impact on victims – extent of impediments if removed – decision under review affirmed

[KNYX and Minister for Home Affairs](#) (Migration) [2018] AATA 3886 (16 October 2018); Senior Member M Griffin QC

MIGRATION – Revocation of visa cancellation – Ministerial Direction No. 65 applied – primary considerations – protection of Australian community - best interests of minor children in Australia – expectations of Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments Applicant may face if he is removed – decision under review affirmed

[Kostopoulos and Minister for Home Affairs](#) (Migration) [2018] AATA 3859 (15 October 2018); Senior Member C Puplick AM

MIGRATION – mandatory visa cancellation – character test – discretion to revoke mandatory visa cancellation – substantial criminal record – history of drug use – participation in a criminal group and supply of prohibited drugs – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties – Applicant cares for frail, elderly mother – extent of impediments if removed – Applicant’s medical treatment regime would be compromised if removed from Australia – decision set aside and substituted

[WQRJ and Minister for Home Affairs](#) (Migration) [2018] AATA 3854 (15 October 2018); Senior Member A Poljak

MIGRATION – mandatory cancellation – character grounds – substantial criminal record – offences involving domestic violence – repeated driving offences – Direction 65 – whether another reason cancellation should be revoked – protection of the Australian community – nature and seriousness of the conduct – the risk conduct may be repeated – best interests of minor children in Australia – expectations of Australian community – decision affirmed

[YTZR and Minister for Home Affairs](#) (Migration) [2018] AATA 3924 (17 October 2018); Mr R West, Member

MIGRATION – refusal of application for Safe Haven (Enterprise) Class XE visa – criminal offences – mental illness – character test – meaning of ‘risk’ of engaging in criminal conduct

National Disability Insurance Scheme

[Allen and National Disability Insurance Agency](#) [2018] AATA 3851 (15 October 2018); Professor R McCallum AO, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – Hypermobility Ehlers-Danlos Syndrome – communication – social interaction – learning – mobility – self-care – self management – whether applicant satisfies the early intervention requirements – whether early intervention support most appropriately funded through the NDIS – decision affirmed

[Medcalf and National Disability Insurance Agency](#) [2018] AATA 3893 (16 October 2018); Dr I O'Connell, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – whether the proposed additional supports or increased level of supports are reasonable and necessary – multiple supports in dispute – assistive technology including suction pump, nebuliser, generator, Blueeys, hand gel, peri foam, disinfectant, syringes booster pad, gloves and visalax – home modifications – improved daily living – support coordination – sustaining informal supports, including offsite respite care overnight and accommodation for the applicant's parents – decision varied

PRACTICE AND PROCEDURE – agreement reached between parties in relation to part of the proceedings – effect given to agreement between the parties pursuant to s 42C(3) of the Administrative Appeals Tribunal Act 1975 (Cth)

Passports

[WWKJ and Minister for Foreign Affairs](#) [2018] AATA 3894 (25 September 2018); Deputy President S Boyle and Senior Member R Cameron and Brigadier A G Warner, Member

NATIONAL SECURITY – adverse security assessment – request for Minister to cancel Australian passport – ASIO Act – conduct that might prejudice the security of Australia or a foreign country – politically motivated violence – standard of satisfaction required – meaning of “likely” – Determination No. 2 – interpretation of Determination No. 2 – decisions under review affirmed

Practice and Procedure

[All Australian Training Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3663 (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 – prejudice to respondent and other parties – merits of substantive application – extension of time refused

[Benham and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3852 (15 October 2018); Mr M Hyman, Member

PRACTICE AND PROCEDURE – cancellation of disability support pension – application for a stay of decision – principles governing a stay – prospects of success – prejudice to the respondent – recovery of overpayments – financial hardship – public interest – whether the appeal might be rendered nugatory – stay not granted in respect of arrears but granted in respect of ongoing payments

[Gluschke and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3926 (18 October 2018); Ms S Taglieri SC, Member

PRACTICE AND PROCEDURE – application for extension of time – principles relevant to the grant of an extension of time – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Sunrise Institute of Australia Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 3935 (15 October 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – decision to reject registration of training organisation – decision to cancel Applicant’s registration – prospects of success- consequences for Applicant – public interest- consequences for Respondent – whether review would be nugatory – other matters – stay application refused

Social Security

[Badita and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3884 (16 October 2018); Dr M Evans, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the applicant has an impairment rating of 20 points or more under Impairment Table 12 – blindness in right eye – Wyburn Mason Syndrome – AAT Tier 1 decision affirmed

[Brown and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3856 (12 October 2018); Mr C Edwardes, Member

Social Security – disability support pension – medical conditions – osteoarthritis – fibromyalgia – depression – shoulder and arm – qualification period – fully diagnosed – not fully treated and stabilised – impairment tables – no participation in program of support – decision under review affirmed

[Bushby and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3936 (18 October 2018); Mr C Edwardes, Member

Carer allowance – temporal element – only date of claim is relevant – hearing on papers by consent – Adult Disability Assessment Determination 1999 – score of 30 required – failure to achieve score of 30 – decision affirmed

[Ghattas and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3937 (19 October 2018); Ms A Burke, Member

SOCIAL SECURITY – disability support pension – whether qualified – New Zealand citizen – residency requirements – International Agreement – spinal, brain and mental health disorders are fully diagnosed, treated and stabilised - whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken - whether severely disabled – decision affirmed

[Godfrey and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3857 (12 October 2018); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – mental health condition – whether mental health condition fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Impey; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 3914 (17 October 2018); Senior Member PJ Clauson

AGE PENSION – eligible for age pension – whether the respondent be paid the age pension at the single rate or partnered rate – whether there is a special reason to exercise the discretion to not treat the respondent as being a member of a couple – factors in determining whether a person’s relationship is a de facto relationship

[Kostidis and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3934 (3 September 2018); Dr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension – insufficient evidence – section 94(1)(b) not satisfied – section 94(1)(c) not satisfied – decision affirmed

[Lawrence and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3853 (12 October 2018); Mr C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – mental health – back pain – migraine – qualification period – impairment tables – no program of support – decision affirmed

[Plant and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3860 (15 October 2018); Ms K Parker, Member

SOCIAL SECURITY – claim for disability support pension – whether the applicant has physical, intellectual or psychiatric impairments –diabetes mellitus type II – Charcot foot – haemochromatosis – retinopathy – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised – whether the impairments attracted 20 points or more under Impairment Tables – interpretation of “without assistance” in Table 3 – function of executive policy in decision-making process of the Tribunal – decision affirmed

[Shafqat and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3910 (16 October 2018); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – eligibility – whether applicant satisfied s 94(1)(b) of Social Security Act 1991 (Cth) – impairment tables – whether conditions were fully diagnosed, treated and stabilised – which medical condition can be given an impairment rating – bilateral deep vein thrombosis – depression and PTSD – chronic pain

[Wendy Halliday as the Administrator of the Estate of the Late Ashley Pauling; Secretary, Department of Social Services and](#) (Social services second review) [2018] AATA 3865 (11 October 2018); Deputy President BJ McCabe and Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – lump sum preclusion period – reviewable decision – whether special circumstances exist – death of applicant – administrator of estate – financial hardship – economic loss – decision set aside and substituted

[ZGQY and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 3855 (16 October 2018); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – mental health condition – whether applicant’s condition attracted 20 points or more under the Impairment Tables during the relevant period – set aside and substituted

Taxation

[S M Ho & K W Loh & T T Low & W W Orr and Commissioner of Taxation](#) (Taxation) [2018] AATA 3911 (16 October 2018); Deputy President FD O'Loughlin

GOODS AND SERVICES TAX – sale of property – subdivision of property – whether property is the supply of a going concern – whether margin of sale made correctly – whether default assessment made correctly – whether sale of property was an input taxed supply – whether shortfall penalty correctly imposed – whether default assessment penalty correctly imposed – estoppel – decision varied

[Watson and Commissioner of Taxation](#) (Taxation) [2018] AATA 3915 (16 October 2018); Deputy President SA Forgie

TAXATION – DIVISION 293 TAX – applicant had “same rank, status and precedence as a Judge of the Court” being the Federal Court in the years of income – whether applicant not required to pay tax by reason of being “a justice or judge of a court created by the Parliament” within the meaning of s 293-190 of the Income Tax Assessment Act 1997 – decisions affirmed

Trade and Commerce

[Perth Martial Arts Academy and Australian Securities and Investments Commission](#) [2018] AATA 3664 (28 September 2018); Dr M Evans, Senior Member

BUSINESS NAME REGISTRATION – objection to registration of business name – whether business names are “identical” or “nearly identical” – whether business name available for registration – whether Perth Martial Arts Academy and Perth Martial Arts Centre identical or nearly identical – decision under review affirmed

Veterans' Affairs

[Radford and Repatriation Commission](#) [2018] AATA 3913 (27 September 2018); Deputy President AG Melick AO SC

VETERANS' AFFAIRS – service pension – rate of service pension – automatic termination or automatic reduction of pension – decision 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
Hutchison and Australian Securities and Investments Commission	[2018] AATA 3520

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
EWG17 v Minister for Immigration and Border Protection	[2017] AATA 1557	[2018] FCA 1536
K & S Freighters Pty Ltd v McQueen-Thomson	[2016] AATA 510	[2018] FCA 1518
Linfox Australia Pty Ltd v O'Loughlin	[2016] AATA 606	[2018] FCAFC 173
Somba v Minister for Home Affairs and Anor	[2018] AATA 1626	[2018] FCA 1537



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