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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

[Adams and Mackay](#) (Child support) [2018] AATA 3987 (27 August 2018); P Glass, Member

Child support – Departure determination – Cross applications for review – Income, property, financial resources and earning capacity of both parents – Business income – Decision under review set aside and substituted

[Baldwin and Garner](#) (Child support) [2018] AATA 3996 (30 August 2018); P Jensen, Member

Child support – Date of effect of an objection decision in relation to a care percentage decision under section 87AA – Late objection – The applicant was not prevented from lodging his objection on time – Decision under review affirmed

[Lawson and Child Support Registrar](#) (Child support) [2018] AATA 3999 (30 August 2018); F Hewson, Member

Child support – Refusal of an extension of time to object – Reasonable explanation for most of the delay – Objection has merit – Extension of time should be granted – Decision under review set aside and substituted

[Mclaughlin and Mclaughlin](#) (Child support) [2018] AATA 3983 (30 August 2018); P Jensen, Member

Child support – Non-agency payments – Whether payments made for school fees should be credited – Half of the payments should be credited in lieu of child support liability – Decision under review varied

[Watson and Barker](#) (Child support) [2018] AATA 3986 (4 September 2018); P Jensen, Member

Child support – Percentage of care – Days in the child support period to which the new determination of percentages of care apply – Start date correctly determined – Decision under review affirmed

[YKGQ and Child Support Registrar](#) (Child support second review) [2018] AATA 4048 (26 October 2018); Mr C Edwardes, Member

CHILD SUPPORT – care determination – court order – reasonable action for compliance – assessment of actual care – pattern of care and point in time – percentages of care – medical reports – special circumstances – later care changes – decision under review affirmed

Citizenship

[Tsang and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4073 (31 October 2018); Senior Member BJ Illingworth

CITIZENSHIP - citizenship by conferral - whether Applicant is likely to reside or to continue to reside in Australia – whether Applicant is likely to maintain a close and continuing relationship with Australia – whether Applicant has sufficient ties to the Australian community – where residing outside Australia due to mental health reasons – decision under review affirmed

Compensation

[Agius and Comcare](#) (Compensation) [2018] AATA 4075 (30 October 2018); Mr A Maryniak QC, Member

COMPENSATION – medical treatment – ongoing acupuncture and massage treatment — whether treatment is in relation to the accepted injury – reasonableness of ongoing treatment – decision affirmed

[HNGN and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 4096 (2 November 2018); Dr M Evans, Senior Member

VETERANS' AFFAIRS – Veterans' entitlements – Military Rehabilitation and Compensation Act – whether Applicant suffers from posttraumatic stress disorder – peacetime injury – perception of “experiencing a severe stressor” – decision under review affirmed

[Singleton and Comcare](#) (Compensation) [2018] AATA 4088 (1 November 2018); Senior Member L Kirk

COMPENSATION – whether the Applicant suffers from Chronic Pain Syndrome (CPS) – whether the Applicant suffers a permanent impairment resulting from CPS – the acceptance of an ‘injury’, as defined in ss 5A and 5B of the Safety, Rehabilitation and Compensation Act 1988 (the SRC Act), both precedes and defines the ambit of Comcare’s duty to consider compensation for injuries resulting in permanent impairment under s 24 of the SRC Act – on the basis of the medical evidence, the Applicant’s CPS is not determined to be an ‘injury’ for the purposes of the SRC Act – reviewable decision affirmed

[Wager and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 4074 (31 October 2018); Dr P McDermott RFD, Deputy President

COMPENSATION – whether injury occurred while performing military service – whether injury arose out of or in the course of the applicant’s defence service – injury did not occur while at work or on a journey to work – decision under review affirmed

Migration

[2 FRESH PTY LTD ATF CAFE 21 TRUST](#) (Migration) [2018] AATA 3920 (14 September 2018); W Shum, Member

MIGRATION – nominating employer – regional sponsored migration scheme – temporary residence transition nomination stream – nominee employed as a full time Café manager – adverse information – previously sanctioned for failure to comply with sponsorship undertaking – currently approved as a standard business sponsor following the sanction – salary package within the range of salaries for the occupation – evidence of training plans provided – satisfactory compliance with workplace relations laws – decision under review set aside

[Adut and Minister for Home Affairs](#) (Migration) [2018] AATA 4089 (31 October 2018); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – Class XB Subclass 202 Global Special Humanitarian visa – revocation of visa cancellation – failure to pass good character test – 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

[Fasi and Minister for Home Affairs](#) (Migration) [2018] AATA 4049 (29 October 2018); Mr PW Taylor SC,s Senior Member

IMMIGRATION AND CITIZENSHIP – mandatory visa cancellation – resident return visa – failure to pass character test – substantial criminal record – Ministerial Direction no. 65 applied – whether another reason why cancellation decision should be revoked – protection of the Australian community – bipolar affective disorder – mental health legislation – limited harm associated with offending – expectations of Australian community – best interests of minor children – strength, nature and duration of ties to Australia – impact on victims – extent of impediments if removed – removal likely to involve destitution and untreated mental illness – decision set aside and substituted

[Kizhakkeniyil Prabhakaran](#) (Migration) [2018] AATA 3876 (5 September 2018); S Lee, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – internationally recognised record of exceptional and outstanding achievement as a painter and a Carnatic musician – applicant established a music school in Australia – prominent exhibitions of work – local community recognition of the applicant's painting collection – time of application criteria – decision under review affirmed

[LHNC and Minister for Home Affairs](#) (Migration) [2018] AATA 4076 (31 October 2018); Senior Member A Poljak

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – Direction 65 – protection of the Australian community – seriousness and nature of the relevant conduct – escalation of criminal offending – the risk conduct may be repeated – expectations of Australian community – ties to Australian community – extent of impediments if removed – decision affirmed

[Malcolm](#) (Migration) [2018] AATA 3820 (5 September 2018); K McNamara, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – position of Registered Nurse (Community Health) – competent English – Occupational English Test results – decision under review remitted

[Myung](#) (Migration) [2018] AATA 4063 (24 September 2018); D Barker, Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 500 (Student) – genuine temporary entrant – enrolled in multiple unrelated courses – evidence of course completion – significant gaps in study between course enrolments – freelance and casual work in Australia – no family in Australia – strong family ties and financial assets in home country – use of the student visa program to maintain residency in Australia – decision under review affirmed

[SZSS and Minister for Home Affairs](#) (Migration) [2018] AATA 4079 (30 October 2018); Ms 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 armed robbery, drug-related, driving-related and dishonesty offences – seriousness of applicant’s offences – consideration of mitigating circumstances – applicant acting under influence of alcohol and prohibited substances – applicant experienced family issues involving his ex-partner and access to his eldest son – where Australian community would expect non-revocation – applicant has lived in Australia for the past 20 years – applicant arrived in Australia as a nine year child – best interests of two sons who are Australian citizens living in Australia – risk of the applicant reoffending – extent to which applicant will face impediments when settling in New Zealand – whether international non-refoulement obligations were triggered – decision affirmed

[Tonga](#) (Migration) [2018] AATA 3764 (3 September 2018); P Maishman, Member

Migration – Partner (Residence) (Class BS) – Subclass 801 (Spouse) – Genuine relationship – Consistent oral evidence about each other’s background and family – Sponsor shares income with applicant – Joint responsibility for care of children – Statutory declarations provided confirming relationship between the applicant and sponsor – Decision under review affirmed

Practice and Procedure

[Access Group Training Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4080 (30 October 2018); M Hyman, Member

PRACTICE AND PROCEDURE – extension of time – vocational education and training - cancellation of registration of registered training organisation and refusal of application to withdraw registration - governing principles – explanation for delay – prospects of success – prejudice – fairness – consequences of cancellation – extension of time granted

EE&C Pty Ltd as Trustee for the Tarcisio Cremasco Family Trust and Commissioner of Taxation (Taxation) [2018] AATA 4093 (30 October 2018); Deputy President SA Forgie

TAXATION – PRACTICE AND PROCEDURE – where parties entered into Deed of Settlement – where decision made under s 42C of the Administrative Appeals Tribunal Act 1975 – whether applicant waived right to object – whether power of Tribunal exhausted – no valid objection lodged – no objection decision made – Commissioner not deemed to have made a decision – Tribunal has no jurisdiction

Khan and National Australia Bank Limited (Compensation) [2018] AATA 4094 (2 November 2018); Senior Member A Poljak

PRACTICE AND PROCEDURE – application for dismissal of substantive application – whether Tribunal satisfied that Applicant has failed to proceed with the application within a reasonable time – whether substantive application has no reasonable prospects of success – Applicant failed to proceed with claim in timely manner – substantive application dismissed

Murdoch and Secretary, Department of Social Services (Social services second review) [2018] AATA 4095 (2 November 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

PKVC and Minister for Home Affairs (Citizenship) [2018] AATA 4045 (25 October 2018); Deputy President Rayment QC

PRACTICE AND PROCEDURE – Directions – whether Tribunal has power to direct applicant to attend a medical examination – general power sourced from s 33 – whether Tribunal should exercise discretion to make Direction – evidence from clinical psychologist necessary to oppose Applicant's case – Directions made for Applicant to attend a medical examination

Scholes and Decision Maker (Freedom of information) [2018] AATA 4091 (9 October 2018); Deputy President SA Forgie

PRACTICE AND PROCEDURE – JURISDICTION – application for review of decisions relating to requests for access to documents – where no IC review application made and therefore no IC decision made – no jurisdiction to review decisions of which review sought – applications dismissed

Subramaniam and Secretary, Department of Social Services (Social services second review) [2018] AATA 4077 (31 October 2018); Senior Member BJ Illingworth

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

Refugee

[1713353](#) (Refugee) [2018] AATA 4011 (27 August 2018); A Murphy, Member

REFUGEE – cancellation – protection visa – Iran – incorrect information in the visa application – nationality – stateless – race – Faili Kurd – religion – Christian convert – one child has Australian citizenship – best interests of the child – contribution to Australian community – non-refoulement obligations – decision under review set aside

[1507725](#) (Refugee) [2018] AATA 3775 (11 September 2018); B Darcy, Member

Refugee – Protection visa – El Salvador – Particular social group – Teacher – Perception of being wealthy returnee – Single woman – Gang violence – M-8 and MS-13 gangs – Victim of physical attack – Insecurity in El Salvador – State protection – Risk of harm shared by members of the general population – Delay in seeking protection – Ministerial intervention considered – Decision under review affirmed

[1614605](#) (Refugee) [2018] AATA 3923 (18 September 2018); D Dragovic, Senior Member

REFUGEE – Protection visa – Pakistan – Federal Circuit Court remittal – religion – shia – particular social group – noha reciter – released noha album – mental illness sufferer – terrorist attack on applicant's home – family members murdered – fear of sectarian violence – credibility concerns – fraudulent documentation – decision under review affirmed

[1514823](#) (Refugee) [2018] AATA 3846 (19 September 2018); J Pennell, Member

Refugee – Protection visa – Iran – Imputed political opinion – Accused of being a spy – Opposed to the Iranian regime – Particular social group – Asylum seeker – De facto relationship with a Christian woman – Contractor for Sepah or Islamic Revolutionary Guard – Breached security conditions – Detained by Sepah – Association with 2009 protests – Breach of Sharia law – Decision under review affirmed

[1605023](#) (Refugee) [2018] AATA 3885 (28 September 2018); L Symons, Member

REFUGEE – Protection visa – China – Secondary applicant – No protection claims made – Applicant included on wife's application for protection – Member of same family unit – Original application withdrawn – Intention to collect outstanding wages and money – Decision under review affirmed

Social Security

[Fenton and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4046 (19 October 2018); Ms S Taglieri SC, Member

SOCIAL SECURITY – disability support pension – whether fully diagnosed, treated and stabilised – whether 20 points or more under the impairment tables – whether continuing inability to work – decision under review affirmed

[Jankulovski and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4047 (26 October 2018); Mr A Maryniak QC, Member

SOCIAL SECURITY – entitlement to age pension – value of applicant's assets – whether applicant to be attributed with assets of any private companies and trusts – decision under review affirmed

Veterans' Affairs

[Sisley and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 4078 (31 October 2018); Deputy President Dr P McDermott RFD

VETERANS' AFFAIRS – application for special rate of pension – conditions accepted as war-caused – whether applicant is entitled to intermediate or special rate of pension – whether the applicant prevented from undertaking remunerative work – whether alone test in s 24(1)(c) of the Veterans' Entitlements Act 1986 (Cth) is met – whether ameliorating provisions of the Act apply – alone test is not met – ameliorating provisions are not met – 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 finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|---------------------------------|---------------------------------|
| Singh v Minister for Home Affairs & Anor | [2018] AATA 430 | [2018] FCA 1596 |



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