



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.

## Child Support

[FVMZ and Child Support Registrar](#) (Child support) [2018] AATA 4200 (23 October 2018); Deputy President AG Melick AO SC

CHILD SUPPORT – substantive decision a refusal to grant an 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 – decision under review affirmed

## Citizenship

[Ahmadi and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4189 (8 November 2018); Ms A Burke, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether satisfied of identity of applicant – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review set aside and remitted

[Anton and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4187 (6 November 2018); Dr M Evans, Senior Member

CITIZENSHIP – good character – considerations to be taken into account when assessing character – whether subsequent conduct of the Applicant shows he has reformed – time at which the tribunal must be satisfied of good character – Applicant involved in riot in immigration detention in 2009 – no subsequent criminal offences – minor traffic offence in 2012 – reviewable decision set aside and remitted with a direction that the Applicant satisfies the character test under s 21(2)(h) of the Australian Citizenship Act 2007 (Cth)

[Rao and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4168 (6 November 2018); Senior Member K Raif

CITIZENSHIP – eligibility – citizenship by conferral – general residence requirement – whether applicant was a permanent resident during period of absence – whether decision-maker should exercise its discretion to treat period of absence from Australia as a period in which the applicant was present in Australia for the purpose of satisfying the general residence requirements – whether applicant can rely on more than one deeming provision – whether Applicant satisfies the special residence or defence service requirements – decision under review affirmed

[Zimelis and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4201 (9 November 2018); Deputy President Rayment QC

CITIZENSHIP – citizenship by conferral – residence requirements – whether the applicant had a close and continuing association with Australia – spouse and father to Australian citizen – annual visits to Australia – active search for employment in Australia – many positive relations with other Australian citizens – Ministerial discretion should be exercised – reviewable decision set aside and remitted to the respondent with the direction that the applicant satisfies ss 22(9), 21(2)(c) and (g) of the Australian Citizenship Act 2007

## Compensation

[Anderson and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 4188 (8 November 2018); Deputy President Boyle

COMPENSATION – whether there is a permanent impairment – whether there is non-economic loss – obstructive sleep apnoea – deviated septum – applicant suffered broken nose in the course of his defence service – whether the applicant’s obstructive sleep apnoea is contributed to, to a significant degree, by the applicant’s employment by the Commonwealth – the reviewable decision is affirmed

[Austin and Commonwealth Bank of Australia](#) (Compensation) [2018] AATA 4170 (6 November 2018); Deputy President JW Constance

COMPENSATION – liability to compensate for permanent impairment arising from the compensable injury – liability to compensate for expenses incurred in respect of, and loss of income arising from, the compensable injury – whether injury resulted in suffering an impairment which is permanent – degree of impairment – decision set aside

## Customs

[Mayo Hardware Pty Ltd and Comptroller-General of Customs](#) [2018] AATA 4205 (9 November 2018); Deputy President Rayment QC

CUSTOMS – tariff classification – disposable aluminium trays – whether goods are entitled to Tariff Concession Order – definition of tableware – ordinary sense of the word – subject goods found to be tableware – reviewable decision set aside and remitted

## Migration

[FCFY and Minister for Home Affairs](#) (Migration) [2018] 4184 AATA (8 November 2018); Dr L Bygrave, Member

MIGRATION – Class BF Transitional (Permanent) visa – mandatory cancellation – non-revocation – failure to pass character test – substantial criminal record – Ministerial Direction No. 65 – protection of the Australian community – nature and seriousness of conduct to date – risk to the Australian community if conduct repeated – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

[FSKY and Minister for Home Affairs](#) (Migration) [2018] AATA 4183 (8 November 2018); Mr A. Maryniak QC, Member

MIGRATION – cancellation of spouse visa – applicant has substantial criminal record and does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – two prior warnings – risk of applicant engaging in criminal conduct in Australia – consideration of ministerial direction – primary considerations – other considerations – decision affirmed

[Le and Minister for Home Affairs](#) (Migration) [2018] AATA 4126 (5 November 2018); Ms S Burford, Member

Migration – decision not to revoke mandatory cancellation of visa – two-day rule – character test – substantial criminal record – Ministerial Direction no. 65 – primary and other considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – nature and seriousness of criminal offending – risk of engaging in future criminal conduct – strength, nature and duration of ties to Australia – extent of impediments if returned to Vietnam – ‘statelessness’ and Vietnamese nationality – risk of indefinite detention – decision under review affirmed

[MLQP and Minister for Home Affairs](#) (Migration) [2018] AATA 4123 (31 October 2018); Senior Member The Hon. M Groom

MIGRATION – refusal to grant Safe Haven Enterprise visa – consideration of character test - primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of Australian community – applicant does not pass the character test – discretion – non-refoulement obligations – decision under review set aside and substituted

[PZZC and Minister for Home Affairs](#) (Migration) [2018] AATA 4125 (2 November 2018); Ms A Burke, Member

MIGRATION – visa refusal – applicant is a stateless Palestinian born in Syria – applicant applied for a Safe Haven Enterprise (Class XE) visa – applicant does not pass character test in s 501(6)(a) – applicant not of good character on account of substantial criminal record – whether discretion to refuse visa should be exercised – applicant does not present unacceptable risk of re-offending – best interests of minor children in Australia – international non-refoulement obligations – decision under review set aside

[Ruangsantikornkul and Minister for Home Affairs](#) (Migration) [2018] AATA 4203 (9 November 2018); Dr L Bygrave, Member

MIGRATION – revocation of visa cancellation – applicant does not pass character test – whether another reason why the original cancellation decision should be revoked – Ministerial Direction No. 65 applied – primary considerations – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – decision under review affirmed

[Smith and Minister for Home Affairs](#) (Migration) [2018] AATA 4173 (7 November 2018); Senior Member C Puplick AM

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – mandatory cancellation – non–revocation – failure to pass the character test – Ministerial Direction No 65 – criminal convictions – driving offences – drug offences – dishonesty offences – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties – impact on Australian business interests – extent of impediments if removed – decision set aside

[ZRRD and Minister for Home Affairs](#) (Migration) [2018] AATA 4185 (7 November 2018); Senior Member The Hon. M Groom

MIGRATION – Bridging E (Class WE) refusal under s 501 – whether the applicant passes the character test – where the applicant has a history of family violence offences – applicant does not pass the character test – whether the discretion should be exercised in the applicant’s favour – factors against grant outweigh factors for grant – decision under review affirmed

## **Practice and Procedure**

[Faulks and BIS Industries Ltd](#) (Compensation) [2018] AATA 4128 (5 November 2018); Mr M Hyman, Member

PRACTICE AND PROCEDURE - compensation – jurisdiction – normal weekly earnings – where earlier applications dismissed for failure to proceed – whether material relating to earlier period may be drawn on in later application – estoppel principles – distinction between matters settled on their merits or by consent and matters dismissed on technical grounds – matter not yet considered and determined by the tribunal - tribunal’s jurisdiction extends to earnings pattern established before the dismissal of earlier applications

[Iqini and Secretary, Department of Education](#) [2018] AATA 4190 (7 November 2018); Senior Member DJ Morris

PRACTICE AND PROCEDURE – power of the Tribunal – whether there is reviewable decision – no inherent review power – enactment must empower Tribunal – discretion apparently exercised by a tertiary institution – no reviewable decision – application dismissed – written reasons requested

[Institute of Training Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4127 (5 November 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – decision to cancel registration – whether remedial action taken – prospects of success – consequences for Applicant – public interest – consequences for ASQA – whether review would be rendered nugatory – interests of students – principles of good government – public interest best served by not allowing the Applicant to continue to operate – stay application refused

[Kennedy and Comcare](#) (Compensation) [2018] AATA 4171 (6 November 2018); Senior Member L Kirk

PRACTICE AND PROCEDURE – ss 42B(1)(c) and 42B(2) of the Administrative Appeals Tribunal Act 1975 – dismissal of application for abuse of process – the Applicant’s current applications are attempts to relitigate matters already finally determined – the Applicant must not, without the leave of the Tribunal, make any further application to the Tribunal in relation to the question of whether he is entitled to compensation for a psychological ailment or aggravation arising from his employment by the Commonwealth in 2011 or 2012 – applications dismissed

[Mavris and Commissioner of Taxation](#) (Taxation) [2018] AATA 1825 (31 October 2018); Ms G Lazanas, Senior Member

PRACTICE AND PROCEDURE – Jurisdiction – whether Tribunal had jurisdiction to make decision – death of applicant after hearing and before publication of decision – jurisdiction to make decision

## **Professions and Trades**

[Kids Vision Family Day Care Pty Ltd and Secretary, Department of Education and Training](#) [2018] AATA 4121 (1 November 2018); Senior Member DJ Morris

CHILD CARE – BENEFITS AND REBATES – cancellation of Applicant’s approval as a child care service – Applicant no longer eligible for child care benefit or child care rebate – substantial non-compliance with regulatory framework – what sanction should be applied – decision affirmed

## **Social Security**

[Farmer and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4124 (2 November 2018); Mr C Edwardes, Member

SOCIAL SECURITY – disability support pension – mental illness – lower leg injury – tumour – mental illness and leg injury fully diagnosed, treated and stabilised – tumour fully diagnosed – 10 impairment points – continuing inability to work – no participation in program of support – decision under review affirmed

[Gerges and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4122 (5 November 2018); Mr M Hyman, Member

SOCIAL SECURITY – disability support pension – amputated right thumb – full tears of supraspinatus tendons – uncontrolled diabetes mellitus – lumbar condition – mental health – whether conditions fully treated and fully stabilised – rating for severity – Table 2 – decision under review affirmed

[Malone and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4202 (8 November 2018); Mr G Hallwood, Member

SOCIAL SECURITY – Entitlement to rent assistance – Notification of decision – Start date – Whether Centrelink required to inform claimant of potential entitlement – Whether arrears should be paid

[Negash and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 4204 (9 November 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – overpayment – debt to the Commonwealth – lump sum workers compensation benefit – fortnightly compensation payments – reporting obligations – failure to notify of change in circumstances – whether debt can be written off or waived – whether special circumstances – financial hardship – no special circumstances found – 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 finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ham v Tax Practitioners Board</b>	<a href="#">[2017] AATA 1642</a>	<a href="#">[2018] FCA 1652</a>

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# Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

## New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles, which will commence on 26 November 2018:

**Human T-cell lymphotropic virus type-1 infection (Balance of Probabilities) – No. 97 of 2018**

<https://www.legislation.gov.au/Details/F2018L01480>

**Human T-cell lymphotropic virus type-1 infection (Reasonable Hypothesis) – No. 96 of 2018**

<https://www.legislation.gov.au/Details/F2018L01478>

**Concussion (Balance of Probabilities) – No. 98 of 2018**

<https://www.legislation.gov.au/Details/F2018L01493>

**Concussion (Reasonable Hypothesis) – No. 92 of 2018**

<https://www.legislation.gov.au/Details/F2018L01492>

**Moderate To Severe Traumatic Brain Injury (Balance of Probabilities) – No. 95 of 2018**

<https://www.legislation.gov.au/Details/F2018L01488>

**Moderate To Severe Traumatic Brain Injury (Reasonable Hypothesis) – No. 94 of 2018**

<https://www.legislation.gov.au/Details/F2018L01487>

**Non-Hodgkin Lymphoma (Balance of Probabilities) – No. 91 of 2018**

<https://www.legislation.gov.au/Details/F2018L01490>

**Non-Hodgkin Lymphoma (Reasonable Hypothesis) – No. 90 of 2018**

<https://www.legislation.gov.au/Details/F2018L01489>

## Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made amendments to the following Statements of Principles. This amendment commenced on **21 June 2018**:

**Motor Neurone Disease – No. 99 of 2018**

<https://www.legislation.gov.au/Details/F2018L01503>

The following amendment statements of principles take effect from **26 November 2018**:

**Migraine (Reasonable Hypothesis) – No. 98 of 2018**

<https://www.legislation.gov.au/Details/F2018L01499>

**Statements of Principles to be repealed**

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority will be repealed on **26 November 2018**:

**Human T-cell lymphotropic virus type-1 - No. 8 of 2010**

<https://www.legislation.gov.au/Details/F2010L00015>

**Human T-cell lymphotropic virus type-1 – No. 7 of 2010**

<https://www.legislation.gov.au/Details/F2010L00014>

**Concussion – No. 65 of 2012**

<https://www.legislation.gov.au/Details/F2012L01810>

**Concussion – No. 64 of 2012**

<https://www.legislation.gov.au/Details/F2012L01809>

**Moderate To Severe Traumatic Brain Injury – No. 63 of 2012**

<https://www.legislation.gov.au/Details/F2012L01805>

**Moderate To Severe Traumatic Brain Injury – No. 62 of 2012**

<https://www.legislation.gov.au/Details/F2012L01804>

**Non-Hodgkin's Lymphoma – No. 29 of 2010**

<https://www.legislation.gov.au/Details/F2014C01085>

**Non-Hodgkin's Lymphoma – No. 28 of 2010**

<https://www.legislation.gov.au/Details/F2017C00834>



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