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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.

Citizenship

[Giura and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4222 (13 November 2018); Ms DK Grigg, Member

CITIZENSHIP – refusal of approval to grant citizenship – whether satisfied of applicant's identity – applicant's purported use of two different identities – decision under review affirmed

[Navab Esfahani and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4221 (13 November 2018); Senior Member K Raif

CITIZENSHIP – application for Australian citizenship by conferral – application refused – whether the applicant is of good character – assault occasioning actual bodily harm – stalking – common assault – providing false or misleading information – failure to disclose convictions – length of time since applicant committed offences – whether applicant shows genuine remorse – decision affirmed

[Traboulsi and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4253 (15 November 2018); Senior Member C Puplick AM

CITIZENSHIP – refusal – whether applicant of good character – criminal record – possession of prohibited drug – domestic violence – stalk/intimidate intend fear of physical/mental harm – damage property – use carriage service to menace/ harass/ offend – assault occasioning actual bodily harm – whether applicant of good character – meaning of good character – seriousness of offence – acceptance of responsibility – steps taken to remediate behaviour – time elapsed since return to community – enduring moral qualities – likelihood of reoffending – application remitted with direction

[WMJK and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4255 (15 November 2018); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship – whether applicant of good character – number of false representations – non-disclosure – decision affirmed

Compensation

[Kowal and Comcare](#) (Compensation) [2018] AATA 4218 (13 November 2018); Mr R West, Member

COMPENSATION – post traumatic stress disorder – threatening phone call – continuing incapacity – decision set aside – order that compensation be paid pursuant to s. 19 of the Safety, Rehabilitation and Compensation Act – costs reserved

[Linardi and Comcare](#) (Compensation) [2018] AATA 4252 (14 November 2018); Ms S Taglieri SC, Member & Dr R Walters, Member

COMPENSATION – liability for previously accepted injury – entitlement to medical expenses and incapacity payments – nature of original compensable injury – whether effects of compensable injury are continuing – whether incapacity and treatment results from the compensable injury – chondral injury to the medial femoral condyle – decision under review set aside and substituted

[Pedrosa-Hart and Comcare](#) (Compensation) [2018] AATA 4225 (13 November 2018); Deputy President Rayment QC

COMPENSATION – workers' compensation – compensation for incapacity under ss 19 – 21 of the Safety, Rehabilitation and Compensation Act 1988 – compensation for medical expenses under s 16 of the Act – compensation for permanent impairment and non-economic loss under ss 24 and 27 of the Act – aggravation of adjustment reaction with mixed emotional features or major depression – whether the disease went into remission and returned at a later time – the disease suffered by the applicant currently is a recurrence of the same disease as suffered by her previously – whether the employment made a contribution to a significant degree to the disease – contribution made by the employment was to a significant degree – applicant entitled to compensation for disease – applicant entitled to compensation for medical expenses – applicant's permanent impairment found as 15% and entitled to non-economic loss – reviewable decisions set aside and remitted

Migration

[Paerau and Minister for Home Affairs](#) (Migration) [2018] AATA 4257 (15 November 2018); Senior Member T Tavoularis

MIGRATION – refusal of application for a bridging visa – expedited matter – where grant of visa refused under s 501(1) because Applicant did not pass the character test and was serving a full-time term of imprisonment – whether discretion in s 501(1) to refuse to grant a visa should be exercised – considerations in Direction No 65 – decision under review affirmed

[Tala and Minister for Home Affairs](#) (Migration) [2018] AATA 4207 (12 November 2018); Senior Member Chris 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 – International non-refoulement obligations – strength, nature and duration of ties – Impact on Australian business interests – impact on victims – extent of impediments if removed – decision under review affirmed

[Tran and Minister for Home Affairs](#) (Migration) [2018] AATA 4214 (9 November 2018); Senior Member M Griffin QC

MIGRATION – Revocation of visa cancellation – Applicant failed to pass the character test – whether there is another reason why the decision-maker should exercise its discretion to revoke the original visa cancellation decision – Ministerial Direction No. 65 applied – primary considerations – protection of Australian community from criminal or other serious conduct – best interests of minor children in Australia – expectations of Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – health considerations of Applicant's wife – decision under review affirmed

[**XDJD and Minister for Immigration and Border Protection**](#) (Migration) [2018] AATA 4226 (5 November 2018); Senior Member R Cameron

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – serious criminal offending – offences involving violence – risk of harm if applicant re-offends – unacceptable risk of applicant reoffending – where Australian community would expect non-revocation – remitted from the Federal Court of Australia – decision affirmed

Practice and Procedure

[**AIMT Pty Ltd and Australian Skills Quality Authority**](#) [2018] AATA 4259 (8 November 2018); Senior Member M Griffin QC

PRACTICE AND PROCEDURE – application for dismissal – NVR registered training organisations – decision of Australian Skills Quality Authority to cancel registration – whether applications have reasonable prospects of success – whether Applicant has failed within a reasonable time to proceed with the applications or comply with a direction – applications dismissed

[**Greenfield Education Pty Ltd and Australian Skills Quality Authority**](#) [2018] AATA 4210 (9 November 2018); Senior Member A Poljak

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – registered training organisation – decision to cancel registration – prospects of success of substantive matter – consequences if stay refused – decision already in effect – public interest – stay application refused

[**Lee and Secretary, Department of Social Services**](#) (Social services second review) [2018] AATA 4219 (13 November 2018); Ms 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

[**McKenzie and Civil Aviation Safety Authority**](#) [2018] AATA 4258 (14 November 2018); Mr Hyman, Member

PRACTICE AND PROCEDURE – stay application – civil aviation - decision to suspend a class 2 medical certificate – dural arteriovenous fistula - neurological procedure – complex case management – considerations governing a stay - prospects of success – hardship – whether hearing would be nugatory – public safety – stay refused

[**QHGX and Child Support Registrar**](#) (Child support second review) [2018] AATA 4217 (12 November 2018); Mr M Hyman, Member

PRACTICE AND PROCEDURE – extension of time – child support – percentage of care determination – considerations regarding applications for extensions of time – explanation of the delay – whether the applicant rested on his rights – prospects of success – prejudice to former partner – relative utility of an extension – extension refused

[Todd and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4208 (9 November 2018); Mr M Hyman, Member

PRACTICE AND PROCEDURE – extension of time application – family assistance debts – principles governing extension of time applications – explanation of delay – where applicant rested on her rights – prospects of success – other considerations – extension of time refused

[Weinrichova and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4254 (13 November 2018); Ms DK Grigg, Member

PRACTICE AND PROCEDURE – dismissed for non-appearance – application for reinstatement – where no corroborated reason for non-appearance – consideration of the merits – application for reinstatement refused

Social Security

[FISCHER and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4274 (12 November 2018); Dr I Alexander, Member

SOCIAL SECURITY – eligibility for Age Pension – assets test cancellation decision based on income derived from BAT Superannuation Fund – whether income stream from applicant’s partner’s account-based pension in self-managed superannuation fund is an asset test exempt income stream – whether the applicant’s combined assets exceed the allowable limit – decision under review affirmed

[HYHS and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4224 (13 November 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – applicant paid lump sum under NSW Government’s Claims Assessment and Resolution Service – whether lump sum preclusion period calculated correctly – application of 50% rule – preclusion period calculated incorrectly – whether special circumstances exist to justify reduction of preclusion period – decision set aside and remitted

[Monty and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4273 (15 November 2018); Ms A Burke, Member

SOCIAL SECURITY – Newstart allowance – overpayment – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – no special circumstances – decision under review affirmed

[Pickering and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4223 (13 November 2018); Mr C Edwardes, Member

SOCIAL SECURITY – disability support pension – qualification period – psychiatric condition – chronic back condition – fully diagnosed, treated and stabilised – New Zealand agreement – severely disabled – continuing inability to work rating – decision affirmed

[Sudak and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4248 (14 September 2018); Senior Member DJ Morris

SOCIAL SECURITY – Disability Support Pension (DSP) – portability – absence from Australia for more than thirteen weeks – DSP cancelled – circumstances where period can be extended – International Agreement between Australia and Poland – exceptions where discretion can be exercised not applicable – decision affirmed – Tribunal to provide written reasons to parties

Veterans' Affairs

[Bosworth and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements)
[2018] AATA 4256 (14 November 2018); Ms A Burke, Member

VETERANS' AFFAIRS – whether claimed condition arose out of war-service – Statement of Principles concerning Hashimoto's thyroiditis – whether condition caused by excessive salt intake – whether reasonable hypothesis connecting condition with war-service established – reasonable hypothesis not established – claimed condition not war-caused – decision under review affirmed

Appeals

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Appeals lodged

CASE NAME	AAT REFERENCE
DKXY and Minister for Home Affairs	[2018] AATA 3779
Stewart and Comcare	[2018] AATA 3685

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comptroller General of Customs v Zappia	[2017] AATA 202	[2018] HCA 54 [2018] HCATrans 051 [2017] FCAFC 147
Mentink v Secretary, Department of Social Services	[2014] AATA 249	[2018] FCA 1660
Ronaki v Minister for Home Affairs	[2018] AATA 427	[2018] FCA 1678
Turanga v Minister for Home Affairs	[2018] AATA 871	[2018] FCA 1696



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