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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

[Chow and Chow](#) (Child support) [2018] AATA 4161 (17 September 2018); S Cullimore, Member

CHILD SUPPORT – percentage of care – change in the likely pattern of care – interpretation of court orders – decision to revoke the existing determination of percentage of care and make a new determination – decision under review set aside and substituted

[Fischer and Tonks](#) (Child support) [2018] AATA 4151 (18 September 2018); W Kennedy, Member

CHILD SUPPORT – acceptance of an application for an administrative assessment from a non-parent carer – whether the application should have been accepted – non-parent is an eligible carer – application was correctly accepted – decision under review affirmed

[Jebson and Child Support Registrar](#) (Child Support) [2018] AATA 4162 (25 September 2018); S Letch, Member

CHILD SUPPORT – refusal of an extension of time to object – no reasonable explanation for the delay – objection not devoid of merit – extension of time to object should not be granted – decision under review affirmed

[Docherty and Lovatt](#) (Child support) [2018] AATA 4156 (2 October 2018); R Anderson, Member

CHILD SUPPORT – departure determination – income, property, financial resources and earning capacity of the parents – necessary commitments for self-support – costs of education of the children – no ground for departure exists – refusal to make a departure determination – decision under review affirmed

[Biddle and Child Support Registrar](#) (Child support) [2018] AATA 4152 (3 October 2018); J Thomson, Member

CHILD SUPPORT – percentage of care – change in the likely pattern of care – decision to revoke and make a new determination – decision under review set aside and substituted

Citizenship

[PXLS and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4272 (15 November 2018); Dr L Bygrave, Member

CITIZENSHIP – refusal of citizenship – general eligibility – applicant spent significant periods outside Australia – whether applicant is likely to reside or continue to reside in Australia – serious intention to reside in Australia – whether applicant maintain a close and continuing association with Australia – association supported by wide range of documents – Department timeframe for processing application not within scope of Tribunal’s review – decision set aside and remitted

[Vidal-Fernandez and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4355 (22 November 2018); Senior Member A Younes

CITIZENSHIP – eligibility – citizenship by conferral – residence requirement not satisfied – overseas absence from Australia greater than 12 months – whether applicant meets the special residence requirement – whether applicant meets the definition of a scientist as contemplated by the legislative instrument IMMI 13/056 – whether applicant engaged in particular kinds of work requiring regular travel outside Australia – decision under review affirmed

Compensation

[Destro and Telstra Corporation Limited](#) (Compensation) [2018] AATA 4278 (16 November 2018); Deputy President P Britten-Jones

WORKERS’ COMPENSATION – NWE and AE amounts – Whether AE amount should be actual weekly earnings or average earnings per week – Whether AE amount should deduct GST or expenses – Whether applicant failed to seek suitable employment – Decision under review set aside and remitted

[Gait and Comcare](#) (Compensation) [2018] AATA 4282 (16 November 2018); L Kirk , Senior Member and Dr I Alexander

COMPENSATION – workers compensation – neck injury – whether Applicant suffered an injury or disease – whether claimed injury arose out of, or in the course of, employment – whether employment contributed to a significant degree – expert medical evidence considered – pre-existing history of neck pain and degenerative disease of the cervical spine – decision under review affirmed

[Hutchinson and Comcare](#) (Compensation) [2018] AATA 4357 (23 November 2018); Deputy President Boyle

WORKERS’ COMPENSATION – Commonwealth Employee – Safety, Rehabilitation and Compensation Act – DSM-IV and DSM-V – whether Applicant suffered an injury – whether there is a need for an “accepted injury” – need for claim for the injury to have been made – Posttraumatic Stress Disorder – Major Depressive Disorder – mixed subjective and objective test for traumatic event – whether injury contributed to in a significant degree by employment – contribution of stress of compensation proceedings and other litigation – decisions the subject of both applications affirmed

[Lim and Comcare](#) (Compensation) [2018] AATA 4354 (21 November 2018); Deputy President G Humphries

COMPENSATION – whether Dr Lim would have suffered the adjustment reaction with depressant anxiety if the performance appraisal on 31 January 2011 had not occurred – reviewable decision affirmed

PRACTICE AND PROCEDURE – whether the Tribunal should admit Dr Lim’s transcript of consultation with Dr Shaikh into evidence – whether the Listening Devices Act 1992 (Act) was breached – whether the Full Court’s remittal to the Tribunal was a full or partial remittal – whether the phrase ‘according to law’ has any special connotations

Migration

[1827501](#) (Migration) [2018] AATA 4309 (30 September 2018); R Gagliardi, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – multiple visa applications – unlawful status – migrant agent’s advice – awareness of visa status – fear of harm in home country – assistance from family overseas – paid nominal sum for labour – wife’s employment – living in a fixed address – financial support by wife – migrant agent’s offer of security – applicant’s sense of loyalty towards the agent – decision under review affirmed

[Barber and Minister for Home Affairs](#) (Migration) [2018] AATA 4304 (20 November 2018); Senior Member Antoinette Younes

MIGRATION – decision not to revoke section 501 visa cancellation – absorbed person visa – failure to pass character test – whether another reason why original decision should be revoked – Ministerial Direction No. 65 applied – protection of the Australian community – nature and seriousness of the conduct – long history of serious and repeated offending – risk to 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 – impact on victims – extent of impediments if removed – decision not to revoke the cancellation of the applicant’s absorbed person visa affirmed

[CHAU](#) (Migration) [2018] AATA 4131 (12 September 2018); P Hunter, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) visa – enrolled in similar English courses numerous times – no evidence of successful completion of courses – decided to undertake additional studies as a means to maintain ongoing residency – evasive answers to Tribunal questions – unable to answer about course – breach of working rights on previous student visa – vague answers about employment in Australia – decision under review affirmed

[FYBR and Minister for Home Affairs](#) (Migration) [2018] AATA 4281 (5 November 2018); Mrs JC Kelly, Senior Member

Migration – refuse to grant Safe Haven Enterprise visa (SHEV) under s 501(1) – whether Applicant failed to pass s 501(6)(e) character test – convicted of a sexually based offence involving a child – whether to exercise discretion to refuse to grant the SHEV – primary considerations - protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community - expectations of the Australian community – other considerations – international non-refoulement obligations – indefinite detention – decision affirmed

[General Real Estate Investment \(Australia\) Pty Ltd](#) (Migration) [2018] AATA 4321 (5 October 2018); S Norman, Member

MIGRATION – Employer Nomination – approval of nomination – capacity to pay full time position – parent company’s financial support – losses by nominating business – downturn in Australian property market – owing interest and loans – decision under review affirmed

[GWSC and Minister for Home Affairs](#) (Migration) [2018] AATA 4353 (22 November 2018); Senior Member D J Morris

MIGRATION – mandatory cancellation of visa – serious drug offences – further offending while on bail – applicant has substantial criminal record and does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – consideration of Ministerial Direction – primary considerations – other considerations – any other reason – decision under review affirmed

[Haque and Minister for Home Affairs](#) (Migration) [2018] AATA 4305 (21 November 2018); Senior Member C Puplick AM

MIGRATION – visa refusal – character test – criminal record – dishonestly obtain financial advantage by deception - primary and other considerations under Ministerial Direction No. 65 – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – other considerations - Impact on family - set aside and remitted

[Lee](#) (Migration) [2018] AATA 4197 (13 September 2018); S Lee, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visa – Subclass 858 (Distinguished Talent) – internationally recognised record of achievement – clarinet – voluminous record of achievements – emerging talent – achievements in international competition – contribution to the church – letter of recommendation – current employment – decision under review remitted

[Patel and Migration Agents Registration Authority](#) (Migration) [2018] AATA 4277 (16 November 2018); Senior Member M Griffin QC

MIGRATION – suspension of registration as a migration agent – whether the agent is a person of integrity – whether the agent is a fit and proper person to provide immigration assistance – whether the agent is honest – whether the agent has the knowledge of the migration scheme and the ability to fulfil the position of a migration agent – whether the agent dealt with his or her client competently, diligently and fairly – whether agent took all reasonable steps to maintain the reputation and integrity of the migration advice profession – decision affirmed

[Singh and Minister for Home Affairs](#) (Migration) [2018] AATA 4302 (20 November 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 – strength, nature and duration of ties – impact on victims – extent of impediments if removed – decision under review affirmed

[Singh](#) (Migration) [2018] AATA 4322 (18 September 2018); K Synon, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 572 – Genuine temporary entrant – 8 years in Australia – Unsatisfactory course progress and study achievement – Decision under review affirmed

[Te Hau and Minister for Immigration and Border Protection](#) (Migration) [2018] AATA 4283 (16 November 2018); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory visa cancellation decision – non-expedited matter – where Applicant is a New Zealand citizen – where Applicant’s visa cancelled under s 501(3A) because Applicant did not pass character test – whether there is a reason discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 65 – risk of re-offending – risk of harm to Australian community – minor children – expectations of the Australian community – ties to Australia – extent of impediments if removed – decision under review

[XCHQ and Minister for Home Affairs](#) (Migration) [2018] AATA 4280 (19 November 2018); Senior Member L Kirk

MIGRATION - mandatory cancellation of visa – substantial criminal record - discretion to revoke cancellation of visa - whether there is another reason why the mandatory cancellation should be revoked - Ministerial Direction No. 65 - protection of the Australian community - nature and seriousness of conduct - possession of prohibited drug - possession of unauthorised firearm - assault - driving offences - resist officer in execution of duty - offences in prison - risk to the Australian community should conduct be repeated - best interests of minor children - expectations of the Australian community - strength, nature and duration of ties to Australia - extent of impediments if removed from Australia - decision set aside

National Disability Insurance Scheme

[McPherson and National Disability Insurance Agency](#) [2018] AATA 4303 (20 November 2018); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – muscular dystrophy – anxiety/depression – whether NDIA should fund a private motor vehicle – applicant seeking to access community independently – difficult to use public transport or accessible taxis – no current driver’s licence – impact on financial sustainability of the NDIS – whether funding a private motor vehicle is consistent with the Supports for Participants Rules/Operational Guideline – whether a private motor vehicle is a reasonable and necessary support within the context of section 34(1) – decision affirmed

Refugee

[1708572](#) (Refugee) [2018] AATA 4172 (10 September 2018); C Smolicz, Member (Presiding) and P Britten-Jones, Deputy President

Refugee – protection visa – Pakistan – Federal Circuit Court remittal – Irregular Maritime Arrival – race – Pashtun ethnicity and Turi tribal affiliation – religion – Shia Muslim – imputed anti-Taliban political opinion – being opposed to the Taliban by virtue of his Turi tribal affiliation – membership of a particular social group – failed asylum seeker from a western country – relocation not reasonable – effective state protection not available – decision under review remitted for reconsideration

[1512035](#) (Refugee) [2018] AATA 4343 (12 September 2018); M Sripathy, Member

REFUGEE – Protection visas – Bangladesh – particular social group – separated women – defacto relationship – victim of child sexual abuse – children born out of wedlock – physical assault – family violence – fear or torture – honour crimes – fear of Islamic extremists – credibility issues – decision under review affirmed

[1711063](#) (Refugee) [2018] AATA 4146 (22 October 2018); M Foster, Member

REFUGEE – Protection visa – Fiji – political opinion – fears he will be attacked by the regime for assisting a political group – passed messages to the group’s family whilst in jail – assaulted by the military – credibility issues – incorrect answers provided on application form – failure to disclose criminal record in Fiji – false information about siblings – remained as an unlawful citizen after previous bridging visa was cancelled – decision under review affirmed

[1819013](#) (Refugee) [2018] AATA 4215 (24 October 2018); R Shanahan, Member

REFUGEE – cancellation – Protection visa – Iraq – incorrect answers – genuine fear of harm – extended period of residence in Iraq since obtaining a protection visa – searching for an organ donor – Tribunal does not accept that the applicant was detained and tortured – strong ties to home country and family – travelled on a valid Iraqi passport – limited contribution to Australian society – applicant has not worked in Australia – recipient of welfare payments – decision under review affirmed

PRACTICE AND PROCEDURE – valid s438 certificate

[1816091](#) (Refugee) [2018] AATA 4251 (29 October 2018); A Murphy, Member

REFUGEE – protection visa – Vietnam – societal discrimination – land dispute with the authorities – parents reprimanded for anti-government views – discontinued studies due to financial hardship – credibility issues – inconsistent evidence – Tribunal questioned whether the applicant ceased studies due to his protection claims – no well-founded fear of persecution – decision under review affirmed

Social Security

[Ielati and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4276 (19 November 2018); Dr M Evans, Senior Member

SOCIAL SECURITY – overpayment of Newstart allowance – Applicant not eligible because exceeded the asset limit – Applicant made attempts to correct record of his asset before grant of Newstart allowance – whether debt should be waived or written off – whether debt attributable solely to administrative error by the Commonwealth – whether debtor received payments in good faith – whether special circumstances – whether there should be write off of debt – role of AAT in good government – AAT Tier 1 Decision affirmed

[Monger and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4356 (22 November 2018); D K Grigg, Member

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

[Sorrenti and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4301 (19 November 2018); Senior Member D J Morris

SOCIAL SECURITY – age pension – request to be treated as not a member of a couple – discretion available to Secretary – special reasons required – special reasons must distinguish applicant from others in category of age pension recipients – discretion not enlivened – decision of Social Services and Child Support Division affirmed

[Watkins and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4306 (20 November 2018); Ms A Burke, Member

SOCIAL SECURITY – Age Pension allowance — overpayment– debt due to the Commonwealth – whether recovery of debt should be written off or waived – whether debt attributable solely to error made by Centrelink – no “special circumstances” – applicant now deceased - decision under review remitted for consideration

[Yaacoub and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4279 (19 November 2018); Senior Member A Poljak

SOCIAL SECURITY – special benefit – qualification for payment – newly arrived resident’s waiting period – whether substantial change in circumstances beyond the applicant’s control after they first entered Australia – decision under review affirmed

Taxation

[Ransley and Commissioner of Taxation](#) (Taxation) [2018] AATA 4359 (21 November 2018); Justice Jagot, Deputy President

TAXATION – tax treatment of net profits realised from sale and exchange of shares – whether net profits assessable as ordinary income or on capital account – appeal to Court and application for review to Tribunal – concurrent hearing – applicant involved in business operation or commercial transaction – shares held and sold on revenue account – profits assessable as ordinary income – application for review and appeal to be dismissed

TAXATION – administrative penalties – recklessness – whether taxpayer’s position reasonably arguable – safe harbour exemption inapplicable – penalty upheld

Trade and Commerce

[Troozi Pty Ltd and Australian Trade and Investment Commission](#) [2018] AATA 4360 (31 August 2018); Mrs J C Kelly, Senior Member

TRADE AND COMMERCE – industry assistance – export market development grants – eligible services – eligible expenses – whether eligible promotional activity was for an approved promotional purpose – online dating services – free membership – fee not to be charged until critical mass of membership reached – eligible promotional activity must be directed to selling of service during the grant year – decision affirmed

Veterans' Affairs

[Holyoake and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 4300 (19 November 2018); Dr P McDermott RFD, Deputy President

VETERANS’ AFFAIRS – claim for defence-caused conditions – claim for an increase in disability pension – standard of proof s 120(4) of the Veterans’ Entitlements Act 1986 – relevant Statements of Principles – conditions not connected with relevant service – decision under review affirmed

[Mulvaney and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 4358 (22 November 2018); L M Gallagher, Member

VETERANS' AFFAIRS – veterans' entitlements – Veterans' Entitlements Act 1986 (Cth) – defence service – motor bike accident – whether Applicant exposed to a traumatic event – whether Applicant suffers from post-traumatic stress disorder – whether Applicant suffers from alcohol use disorder – veracity and reliability of lay evidence – 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
Douglass and Commissioner of Taxation	[2018] AATA 3729
Hickey and Australian Postal Corporation	[2018] AATA 3930
VKTT and Minister for Immigration and Border Protection	[2018] AATA 3377
Wytrwal and Minister for Home Affairs	[2018] AATA 3486
ZTGP and Minister for Home Affairs	[2018] AATA 3518

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Khalil v Minister for Home Affairs & Anor	[2018] AATA 311	[2018] FCA 1712
National Disability Insurance Agency v SSBV	[2017] AATA 2174	[2018] FCA 1021 [2018] FCAFC 197



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