



Administrative  
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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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto: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

[Ahmed and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4458 (30 November 2018); Senior Member C Puplick AM

CITIZENSHIP – application for conferral of Australian citizenship – refusal of citizenship application on grounds applicant does not satisfy the good character requirement - whether applicant of good character – criminal record – multiple traffic offences – sufficient time had not elapsed – applicant found not to be of good character for the purposes of citizenship legislation – decision affirmed

[Arsenova and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4382 (23 November 2018); Senior Member M Griffin QC

CITIZENSHIP – refusal of citizenship – general eligibility — whether Applicant is likely to reside or continue to reside in Australia – whether applicant maintain a close and continuing association with Australia – Applicant spent significant periods outside Australia – Applicant was not a permanent resident as defined by section 5 of the Citizenship Act – decision affirmed

[Etreby and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4448 (29 November 2018); Senior Member K Raif

CITIZENSHIP – application for Australian citizenship by conferral – permanent resident – refusal of citizenship – good character – criminal convictions – other conduct – application of Citizenship Policy – decision affirmed

[Galesloot and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4450 (29 November 2018); Senior Member K Raif

CITIZENSHIP – conferral of Australian citizenship – general residence requirement – Ministerial discretion for spouses and de facto partners of an Australian citizen – Citizenship Policy – close and continuing association with Australia – evidence that the applicant migrated to and established a home in Australia prior to the period overseas – applicant a spouse of Australian citizen – Australian citizen children – return visits to Australia – ownership of property in Australia – intention to reside in Australia – set aside and remitted

[Kassem and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4383 (26 November 2018); Senior Member C Puplick AM

CITIZENSHIP – Applicants Australian citizenship revoked by the Minister – failure to take pledge – Applicants permanent visa cancelled under character grounds – guilty of criminal offences – failed to satisfy permanent residency requirement for citizenship application – applicant not deemed to be person of good character – decision under review affirmed

## Compensation

[Croxon and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 4427 (27 November 2018); Deputy President Boyle

VETERANS' APPEALS – Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – Post-Traumatic Stress Disorder – whether Applicant suffers a permanent condition – Guide to the Assessment of the Degree of Permanent Impairment – whole person impairment rating – whether the permanent condition is likely to continue indefinitely – activities of daily living – need for supervision and direction – decision under review affirmed

[Hamblin and Comcare](#) (Compensation) [2018] AATA 4451 (28 November 2018); Ms A Burke, Member

COMPENSATION – household services – mobility – cleaning – accepted condition – partner with an accepted condition – reduced household services – ceased household services – whether entitled to household services – aggravation of recurrent disc prolapse – lower back injury – reasonable standard of home maintenance – decision set aside

[Hennessey-Milne and Comcare](#) (Compensation) [2018] AATA 4453 (28 November 2018); Deputy President J Sosso

COMPENSATION – appropriate diagnosis - underlying personality issues – ongoing adjustment disorders – whether Applicant suffered an ailment or aggravation of an existing ailment – whether applicant suffered a psychiatric condition caused by, or materially contributed to, by his employment – New South Wales Police Force – Department of Education and Training – decision affirmed

## Education and Research

[CVSH and Secretary, Department of Education](#) [2018] AATA 4447 (28 November 2018); Dr M Evans, Senior Member

HIGHER EDUCATION – FEE-HELP assistance – application for remission of FEE-HELP debt – whether special circumstances existed – whether circumstances that did not make their full impact until on or after the census date – reviewable decision affirmed

## Health

[TFS Manufacturing Pty Ltd and Minister for Health](#) [2018] AATA 4456 (29 November 2018); Justice DG Thomas, President and Deputy President SA Forgie and Senior Member A Poljak

THERAPEUTIC GOODS – cancellation of entry on Australian Register of Therapeutic Goods – whether failure to comply with condition of entry – whether had sufficient information to substantiate compliance with essential principles 2, 6 and 14 – whether discretion to cancel entry should have been exercised – decision affirmed

## Migration

[BPVS and Minister for Home Affairs](#) [2018] AATA 4449 (23 November 2018); Deputy President  
The Hon. D Cowdroy OAM QC

MIGRATION – refusal to grant Protection (Class XA) visa – failure to pass the character test – previous criminal offences – whether there is a risk to the Australian community of the applicant committing further offences or engaging in other serious conduct – whether the nature of the character concerns or offences are such that the Australian community would expect that the applicant should not be granted a visa – Ministerial Direction No. 65 applied – primary considerations – protection of Australian community from criminal or other serious conduct – expectations of Australian community – other considerations – non-refoulement obligations owed to applicant under International law – decision under review affirmed

[Chen and Minister for Home Affairs](#) (Migration) [2018] AATA 4459 (30 November 2018); Senior Member L Kirk

MIGRATION – section 501 visa cancellation – Criminal Justice Stay visa – failure to pass character test – substantial criminal record – supply commercial quantity of prohibited drug – whether another reason why visa cancellation should be revoked – application of Direction 65 – protection of the Australian community – best interests of minor children affected by the decision – expectations of the Australian community – other considerations – decision affirmed

[GCLV and Minister for Home Affairs](#) (Migration) [2018] AATA 4460 (30 November 2018); Dr L Bygrave, Member

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 – common assault – shoplifting – possession of prohibited drug – supply of prohibited drug – larceny – unlawful entry onto land – break and enter – take and drive conveyance – driving offences – risk to the Australian community should further offences be committed or other serious conduct engaged in – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – strength, nature and duration of ties to Australia – extent of impediments if removed from Australia – decision affirmed

[HBDV and Minister for Home Affairs](#) (Migration) [2018] AATA 4409 (23 November 2018); Senior Member R Pintos-Lopez

MIGRATION – visa refusal pursuant to 501(1) – whether the applicant passes the character test – significant social support – consideration of expert psychological evidence – applicant passes the character test – decision set aside and remitted

[SYLN and Minister for Home Affairs](#) (Migration) [2018] AATA 4408 (23 November 2018); Deputy President Rayment QC

MIGRATION – best interests of infant children require that they be reunited with father – non-refoulement obligations owed in relation to applicant – consideration of s 197C of Migration Act – practical consequence of affirming decision is that applicant will likely remain in indefinite detention – good government – decision under review set aside

[Tran and Minister for Home Affairs](#) [2018] AATA 3028 (29 November 2018); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – where visa was cancelled under s 501(3A) – applicant did not pass character test – 12 month imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 65 – applicant committed drug offences – applicant committed offences against the personal and property rights of others – applicant committed offences indicating refusal to submit to lawful authority – decision under review affirmed

[Vaokakala and Minister for Home Affairs](#) [2018] AATA 4452 (30 November 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 – the risk conduct may be repeated – expectations of Australian community – strength, nature and duration of ties to Australia – extent of impediments if removed – decision affirmed

## **National Disability Insurance Scheme**

[Sing and National Disability Insurance Agency](#) [2018] AATA 4411 (26 November 2018); Mrs JC Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant relies on wheelchair for mobility - Applicant participates in competitive wheelchair tennis – supports sought sports/exercise physiologist to attend gym sessions and tennis coaching – whether supports relate to Applicant’s disability as required by National Disability Insurance Scheme (Supports for Participants) Rules 2013 rule 5.1(b) – whether supports are reasonable and necessary pursuant to subsections 34(1) of the National Disability Insurance Act 2013 – whether supports represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support – decision affirmed

## **Practice and Procedure**

[Kender and Australian Securities and Investments Commission](#) [2018] AATA 4445 (28 November 2018); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – application to stay decision of Australian Securities and Investments Commission – decision prohibited applicant from managing corporations for a period of 3 years – prospects of success – consequence for the applicant of the refusal of a stay – the public interest – consequences for the respondent in carrying out its functions – whether the application would be rendered nugatory if a stay were granted – length of time that the ban has been in place – time until the hearing of the application – stay application granted subject to undertakings of the Applicant

## **Social Security**

[Gorgees and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4444 (27 November 2018); Deputy President I Hanger QC

SOCIAL SECURITY – disability support pension – mental health condition – lumbar spine condition – cervical spine and neck condition – left shoulder condition – hearing condition – abdominal condition – migraines – s 94(1) not satisfied – insufficient medical evidence – decision affirmed

[Lloyd and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4428 (19 November 2018); Senior Member PJ Clauson

SOCIAL SECURITY – recovery of debt – overpayment of family tax benefit – overpayment of schoolkids bonus – whether debt to be written off – whether debt to be waived – Applicant consented to paying back debt in full – 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

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CASE NAME	AAT REFERENCE
<b>Heales and Comcare</b>	<a href="#">[2018] AATA 3788</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>AIT18 v Australian Information Commissioner and Anor</b>	<a href="#">[2017] AATA 1560</a>	<a href="#">[2018] FCAFC 192</a>
<b>Minister for Home Affairs v Zadeh (No 2)</b>	<a href="#">[2018] AATA 2145</a>	<a href="#">[2018] FCA 1828</a>

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