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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.

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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

[Duffy and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4476 (1 November 2018); Mrs JC Kelly, Senior Member

CITIZENSHIP – refusal of citizenship – Applicant will be spending significant period outside of Australia – whether Applicant is likely to reside or continue to reside in Australia – whether Applicant is likely to maintain a close and continuing association with Australia – Applicant has spent lengthy periods in Australia and has developed close ties – set aside and remitted

[Waraich and Minister for Immigration and Border Protection](#) (Citizenship) [2018] AATA 4524 (5 December 2018); Dr D Cremean, Senior Member

CITIZENSHIP – decision to refuse application for citizenship by conferral – good character test – convictions for false and misleading statement – public interest – decision set aside and substituted

Compensation

[Katterns and Military Rehabilitation and Compensation Commission](#) (Compensation) [2018] AATA 4462 (30 November 2018); Deputy President I R Molloy

COMPENSATION – Service Injury or Disease – Medical Evidence – Reviewable Decisions Affirmed

Migration

[BBFD and Minister for Home Affairs](#) (Migration) [2018] AATA 4479 (3 December 2018); Senior Member T Tavoularis

MIGRATION – refusal of protection visa pursuant to s 501(1) – applicant does not pass the character test – considerations in Ministerial Direction N0. 65 – whether there is another reason for the discretion to refuse to grant the visa to not be applied – offences committed in New Zealand – offences committed in Australia – decision under review affirmed

[Karan and Minister for Home Affairs](#) (Migration) [2018] AATA 4480 (4 December 2018); Senior Member C Puplick AM

MIGRATION – visa refusal – character test – criminal record – multiple offences – violence offence – threatening offence – dishonesty offences – drug offences – traffic offences – property offences – 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 – ties to Australia – extent of impediments if removed – affirmed

[ToTK and Minister for Home Affairs](#) (Migration) [2018] AATA 4483 (3 December 2018); Senior Member Mr PW Taylor SC

IMMIGRATION AND CITIZENSHIP – mandatory visa cancellation – Refugee 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 – community expectation – Australian ties – whether applicant will face hardship upon return to home country – risk of persecution on the basis of religion – likelihood of indefinite immigration detention – decision set aside and substituted

Practice and Procedure

[Kadeh and Migration Agents Registration Authority](#) (Migration) [2018] AATA 4461 (30 November 2018); Senior Member L Kirk

PRACTICE AND PROCEDURE – application for stay order – prospects of success – consequences of refusal of a stay – public interest – consequences for the respondent in carrying out its functions depending upon whether a stay is granted – whether application for review would be rendered nugatory if a stay were not granted – utility in granting stay order – application for stay order refused – application for confidentiality order – financial harm – reputational harm – public interest – application for confidentiality order refused

Social Security

[Ausilio and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4463 (13 November 2018); K Parker, Member

SOCIAL SECURITY – Applicant seeking reconciliation of family tax benefits in order to receive supplement – request for extension of time to lodge Applicant's tax return – whether special circumstances prevented Applicant from lodging tax return before the deadline – decision affirmed

[LXML and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4465 (30 November 2018); C Edwardes, Member

SOCIAL SECURITY – failure to lodge tax returns – FTB entitlement – lump sum claims – whether special circumstances prevented applicant making claim – prescribed time – decision affirmed

[Popovski and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4477 (4 December 2018); Senior Member A Poljak

SOCIAL SECURITY – disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's conditions were fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[Puls and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4464 (26 October 2018); K Parker, Member

SOCIAL SECURITY – request for extension of time to lodge application out of time – substantive application relates to a claim for disability support pension – whether reasonable explanation for the two-month delay – consideration of merits of success in the substantive application – Applicant underwent surgeries and other treatment to treat his primary condition after the relevant qualification period – conditions not fully treated and fully stabilised at time of qualification period – Tribunal refused to grant extension of time

[Ong; Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4410 (26 November 2018); Senior Member BJ Illingworth

SOCIAL SECURITY – Claim for Disability Support Pension – Physical, intellectual or psychiatric impairment – Multiple impairments – Whether a combined impairment rating of 20 points or more exists under the Impairment Tables – Whether fully diagnosed, fully treated and stabilised – Job Capacity Assessment Report considered – Medical reports considered – Decision under review set aside and substituted

[Sharman and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4482 (3 December 2018); Mr A Maryniak QC, Member

SOCIAL SECURITY – claim for disability support pension – assessment of impairments – 20 point requirement not satisfied – 10 points assigned for impairment from spinal condition – other claimed conditions given no impairment points or not fully diagnosed, treated and stabilised – decision affirmed

Taxation

[McMullen and Commissioner of Taxation](#) (Taxation) [2018] AATA 4481 (4 December 2018); Senior Member T Tavoularis

TAXATION – objection to income tax assessment – whether third party payments should be included in assessment of Applicant's income – onus of proof – where insufficient evidence was adduced to establish 'reasonable explanation' for third party payments – decision under review affirmed

[Queensland Maintenance Services Pty Ltd \(In Liquidation\) and Commissioner of Taxation](#) (Taxation) [2018] AATA 4525 (5 December 2018); Deputy President IR Molloy

TAXATION LAW – allowable deductions – short fall penalties – whether renovation compensation invoices are an allowable deduction – whether renovation services involved liquidated damages – whether management fee expenses are an allowable deduction – the operation of the Management Agreement – whether there were management fees for actual management of childcare centres – whether loss or outgoing is capital or capital in nature – whether shortfall amounts resulted from recklessness

Veterans' Affairs

[Thomson and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 4478 (27 November 2018); Deputy President Britten-Jones

VETERANS' ENTITLEMENTS – Entitlement to pension – Whether injury was defence-caused – Whether injury resulted from an accident occurring whilst person was travelling during defence service other than in the course of duty for the purpose of performing a duty – Whether the accident would not have occurred but for a person rendering defence service – Decision under review affirmed

[Thompson and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 4526 (6 December 2018); Deputy President J Sosso

VETERANS' AFFAIRS – claim for war widow's pension – veteran deceased – hypothesis connecting the death of the veteran with his war service – hypertension and ischaemic heart disease – Statement of Principles does not uphold a hypothesis that the veteran's death is related to service – 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
Lim v Comcare	[2018] AATA 4354

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugtniet v Secretary, Department of Social Services (No. 2)	[2017] AATA 577	[2017] FCA 1227 [2018] FCA 1767



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