



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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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Bulletin News

End of year arrangements

All our offices, with the exception of Canberra and Hobart, will be open from Thursday 27 December 2018 to Monday 31 December 2018. We are not open on public holidays.

We will continue to respond to telephone enquiries and accept applications, fee payments and submissions over the counter on the days that we are open.

We recommend that you consider lodging your application or documents using our [online lodgement facilities](#) or [by email](#) to ensure that you lodge within statutory timeframes.

If you intend to send any documents by post, please be aware there may be delays in postal delivery during this period.

Please contact us on 1800 228 333 if you have any questions.

Last edition for 2018 and First edition for 2019

This edition of the Bulletin is the last edition for 2018.

The first edition of the Bulletin for 2019 will be on **7 January 2019**.

We wish you all a safe and happy Christmas season.

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.

Compensation

[Hutchinson and Comcare](#) (Compensation) [2018] AATA 4600 (20 November 2018); Brigadier A G Warner, Member

REHABILITATION SAFETY AND COMPENSATION – whether time should be extended for review of Comcare decision – length of delay – explanation for delay – awareness of appeal rights – conduct of applicant – prejudice – merits of substantive application – decision under review affirmed

[Morehead and Australian Postal Corporation](#) (Compensation) [2018] AATA 4535 (5 December 2018); Dr D Cremean, Senior Member

COMPENSATION – right wrist injury – carpal tunnel syndrome-injury or injury (other than a disease) – ailment or aggravation of an ailment – decision under review set aside and substituted

[Walton and Australian Postal Corporation](#) (Compensation) [2018] AATA 4585 (12 December 2018); Ms A Burke, Member

WORKER'S COMPENSATION – postal worker – denial of liability – whether primary injury exists or is work related – whether second psychology injury exists or is work related - whether there is incapacity leading to entitlement to medical expenses and incapacity payment – conflicting medical evidence - decision set aside

Education and research

[Koala Family Day Care Pty Ltd and Secretary, Department of Education](#) [2018] AATA 4538 (6 December 2018); Senior Member R Cameron and The Hon. M Groom, Senior Member

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 over prolonged period – concession of breaches - appropriate sanction under A New Tax System (Family Assistance) (Administration) Act 1999 – decision affirmed

Migration

[Downing and Minister for Home Affairs](#) (Migration) [2018] AATA 4592 (12 December 2018); S Burford, Member

Migration – decision not to revoke mandatory cancellation of visa – two-day rule – character test – substantial criminal record – methylamphetamine – 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 – impact on Australian business interests – extent of impediments if returned to United Kingdom – decision under review affirmed

[HWYY and Minister for Home Affairs](#) (Migration) [2018] AATA 4602 (13 December 2018); Dr M Evans, Senior Member

Migration – decision not to revoke mandatory cancellation of visa – character test – substantial criminal record – Ministerial Direction no. 65 – primary and other considerations – international non-refoulement obligations – 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 – Applicant in Australia since three months old and has not returned to New Zealand - extent of impediments if returned to New Zealand – decision under review affirmed

[KLKN and Minister for Home Affairs](#) (Migration) [2018] AATA 4603 (14 December 2018); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – Ministerial Direction no. 65 – primary and other considerations – international non-refoulement obligations – 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 South Sudan – convictions as a juvenile – whether Applicant stateless – two-day rule – decision under review affirmed

[RKHW and Minister for Home Affairs](#) (Migration) [2018] AATA 4577 (11 December 2018); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa – applicant has substantial criminal record and does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – persistent breaches of family violence intervention orders – drug related offences – best interest of minor children – strong ties to Australia – decision set aside and substituted

Practice and Procedure

[Elliott and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4576 (7 November 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – application for dismissal of application for review – no reasonable prospect of success – social security – application for disability support pension – applicant applied for review more than 13 weeks after date of reviewable decision – if successful, date of effect of Tribunal's decision would be the date of application for review – applicant already in receipt of disability support pension as at date of application for review – application dismissed

[Hughes and National Disability Insurance Agency](#) [2018] AATA 4572 (10 December 2018); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – Jurisdiction – whether the Tribunal has jurisdiction to determine application – whether the NDIA made a decision – decision made as a consequence of decision-making process – exercise of power to review applicant's eligibility – Tribunal has jurisdiction to hear application

[Mantra Training and Development Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4586 (12 December 2018); M Hyman, Member

PRACTICE AND PROCEDURE – stay – proposal to attach conditions to stay previously granted – consequences for the public and students in the absence of the conditions sought – consequences for the applicant if the conditions were imposed – whether the tribunal has the power to grant the conditions sought – tribunal has the power – competing considerations best addressed through an expedited hearing – whether the matter might benefit from alternative dispute resolution

[Naylor and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4574 (10 December 2018); Brigadier AG Warner, Member

PRACTICE AND PROCEDURE – Secretary's request to dismiss the Applicant's application for review of decision of the Social Security and Child Support Division of the Administrative Appeals Tribunal – whether applicant fails within a reasonable time to proceed with the application – substantive application has poor prospects of success – application for review dismissed

[Sheehan and Secretary, Department of Jobs and Small Business](#) (Social services second review) [2018] AATA 4533 (6 December 2018); Dr L Bygrave, Member

EXTENSION OF TIME – principles to be applied – whether application for extension of time is reasonable in all the circumstances – whether the applicant rested on his rights – merits of substantive matter – no show no pay failure under Social Security (Administration) Act 1999 – no likely prospect of success – extension of time refused

[Stafford and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4601 (14 December 2018); K Parker, Member

EXTENSION OF TIME APPLICATION – whether reasonable in all the circumstances to grant the extension of time – explanation for the delay – merits of the substantive application – application refused

Social Security

[Barnes and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4594 (14 December 2018); Senior Member A Poljak

SOCIAL SECURITY – disability support pension – suspension of payment – maximum portability period – whether portability period should be extended – whether applicant unable to return to Australia because of event which occurred or began during period of absence – serious illness of an extreme or emergency nature – treatment or recovery that could be undertaken in Australia – decision under review affirmed

[Burmas and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4536 (6 December 2018); C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – migraine – fibromyalgia – depression/anxiety – gastroenterological – qualification period – impairment tables – no program of support – decision affirmed

[Carthew and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4583 (12 December 2018); The Hon. Matthew Groom, Senior Member

SOCIAL SECURITY – mobility allowance – cancellation – whether applicant meets qualification for mobility allowance – whether applicant was involved in more than

32 hours of specified activities over a four week period – applicant no longer undertaking vocational training – applicant no longer undertaking voluntary work – grace period lapsed – decision affirmed

[Hansen and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4537 (12 November 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – fibromyalgia – spinal condition – mental health – program of support – whether applicant's conditions rated at 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – decision affirmed

[Ioapo and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4534 (26 November 2018); Senior Member D J Morris

SOCIAL SERVICES – Disability Support Pension – whether qualified – whether impairments fully diagnosed, fully treated and fully stabilised – several medical conditions – no condition fully treated or fully stabilised in claim period – not qualified for benefit – decision affirmed – written reasons requested – power of Tribunal to consider submissions after decision made

Veterans' Affairs

[Brackin and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 4584 (11 December 2018); Deputy President J Sosso

VETERANS' ENTITLEMENTS – war caused disease – Statement of Principles for anxiety disorder – life threatening event – clinical onset – hypothesis upheld - remitted to the Commission

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
BPVS and Minister for Home Affairs	[2018] AATA 4449
Dinkha and Minister for Home Affairs	[2018] AATA 3037
LHNC and Minister for Home Affairs	[2018] AATA 4076
Ransley and Commissioner of Taxation	[2018] AATA 4359

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ali v Minister for Home Affairs	[2018] AATA 2512	[2018] FCA 1895
Andrwas v Minister for Home Affairs	[2018] AATA 1965	[2018] FCA 1996
CFA18 v Minister for Home Affairs	[2018] AATA 671	[2018] FCA 1798
HZCP v Minister for Immigration and Border Protection	[2017] AATA 775	[2018] FCA 1803
Minister for Home Affairs v HSKJ	[2017] AATA 1802	[2018] FCA 1013 [2018] FCAFC 217
Murphy v Minister for Home Affairs	[2018] AATA 750	[2018] FCA 1924
PXYJ v Minister for Immigration and Border Protection	[2017] AATA 1961	[2018] FCA 927 [2018] FCAFC 193
Rodchompoo v Minister for Home Affairs	[2016] AATA 872	[2018] FCA 965

		[2018] FCAFC 215
Stevens v Repatriation Commission	[2017] AATA 2419	[2018] FCA 1866
Twentyman v Secretary, Department of Social Services	[2018] AATA 110	[2018] FCA 1892
Vaofusi v Minister for Immigration and Border Protection	[2017] AATA 2585	[2018] FCA 1939
Vo v Minister for Home Affairs	[2018] AATA 1305	[2018] FCA 1840



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