



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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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

[**BZKP and Minister for Immigration and Border Protection**](#) (Citizenship) [2018] AATA 1828 (29 March 2018); Senior Member Britten-Jones

IMMIGRATION AND CITIZENSHIP – Application for review of decision to refuse to grant application for citizenship – Whether applicant of good character – In November 2018 Delegate for the Minister for Immigration and Citizenship granted applicant a protection visa, being a permanent visa – Whether applicant met requirements of section 22(2)(h) of the Australian Citizenship Act 2007 – Assessing character for purposes of Citizenship Act as per Citizenship Policy 2016 – Decision set aside

Compensation

[**Bhat and Comcare**](#) (Compensation) [2018] AATA 2094 (5 July 2018); Senior Member A Poljak

COMPENSATION – workers compensation – chronic back pain – section 16 claim – physiotherapy treatment – treatment provides temporary alleviation not permanent improvement – no other medical treatment recommended – section 19 claim – incapacity for work – applicant fit for normal work duties – decisions under review affirmed

[**Gregory and Comcare**](#) (Compensation) [2018] AATA 2075 (3 July 2018); Ms S Taglieri SC, Member and Dr R Walters, Member

COMPENSATION – liability for previously accepted injury – entitlement to medical expenses and incapacity payments – whether effects of compensable injury are continuing – whether incapacity and treatment results from the compensable injury – disc prolapse and degenerative changes in lumbar spine – decision under review set aside and remitted

[**Mozsny and Comcare**](#) (Compensation) [2018] AATA 1966 (4 June 2018); Deputy President JW Constance

COMPENSATION – injury arising out of or in the course of employment – injury to left knee – weekend social function – decision affirmed

[**Ofori and Comcare**](#) (Compensation) [2018] AATA 2113 (5 July 2018); M Hyman, Member

WORKERS' COMPENSATION – pain in the left foot – diagnosis of the foot condition uncertain – whether an injury (other than a disease) or an ailment – whether liability excluded because of a wilfully false representation – whether contributed to by employment to a significant degree – decision under review affirmed

Corporations

The Sharemarket College Pty Ltd and Australian Securities and Investments Commission

[2018] AATA 1969 (28 June 2018); Deputy President BJ McCabe

CORPORATIONS – cancellation of Australian Financial Services Licence – whether breaches of conditions of Australian Financial Services Licence – banning order from providing financial services – breaches of financial services laws – telemarketing – email marketing – where systemic failures in compliance regime – ill-health mitigating factor

Migration

Andrwas and Minister for Home Affairs (Migration) [2018] AATA 1965 (2 July 2018); Senior Member A Poljak

IMMIGRATION – visa cancellation – character grounds – substantial criminal record – fraud and dishonesty – cancellation decision not revoked – whether another reason cancellation should be revoked – decision affirmed

Dang and Minister for Home Affairs (Migration) [2018] AATA 2095 (4 July 2018); Senior Member R Cameron

MIGRATION - application for revocation of mandatory cancellation of visa – where applicant fails character test - where applicant warned visa may be cancelled – drug related offences – risk of harm if applicant re-offends - unacceptable risk of applicant reoffending - where Australian community would expect non-revocation - decision affirmed

Lam and Minister for Home Affairs (Migration) [2018] AATA 2005 (2 July 2018); Ms A Burke, Member

MIGRATION — Vietnamese citizen – non-revocation of mandatory cancellation of visa – 12 month term of imprisonment – applicant does not pass character test in s 501(6)(a) – applicant an unacceptable risk to the Australian community – strong ties to Australia – impediments if applicant removed – decision under review affirmed

Lim and Minister for Home Affairs (Migration) [2018] AATA 2111 (5 July 2018); Deputy President J W Constance and Dr L Bygrave, Member

MIGRATION – application for a Bridging E visa – whether the applicant is of good character – whether discretion should be exercised to revoke the refusal of the visa – Ministerial Direction No 65 – protection of the Australian community – nature and seriousness of conduct – risk to Australian community should the applicant commit further offences or engage in other serious conduct – expectations of the Australian community – Interpol red notice – allegations of fraud – whether applicant intends to stay in Australia – decision affirmed

QSBL and Minister for Home Affairs (Migration) [2018] AATA 2074 (2 July 2018); Dr M Evans, Senior Member

Migration – decision not to revoke mandatory cancellation of visa – two-day rule – 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 – step-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 Sudan – mental health – decision under review affirmed

RGYW and Minister for Home Affairs (Migration) [2018] AATA 2076 (3 July 2018); K Parker, Member

MIGRATION – application for revocation of mandatory cancellation of visa – applicant held special category visa under s 32 of Migration Act 1958 (Cth) – whether applicant also held absorbed person visa under s 34 of the Act – effect of s 501F of the Act – whether applicant passes character test – whether another reason to revoke decision to cancel visa – extensive history of criminal offending resulting in imprisonment – offences predominately property crimes and did not involve violence – repetition of criminal offending – whether applicant's offences and conduct were serious – consideration of mitigating circumstances – applicant suffered from multiple mental health conditions and heroin addiction – applicant was homeless in Australia for significant periods – applicant suffered abuse as a child – where Australian community would expect non-revocation – applicant has been a long-term resident in Australia since the age of five – applicant's current de facto partner is an Australian citizen and lives in Australia – de facto partner committed to providing a stable home for the applicant – other family members resident in Australia – applicant received three formal written warnings that his visa may be cancelled – unacceptable risk of applicant reoffending – applicant may find it difficult to establish a new life in New Zealand – whether applicant likely to suffer harm that would trigger international non-refoulement obligations - decision affirmed

PRACTICE AND PROCEDURE – requirements of s 500(6J) of the Migration Act 1958 – further documentary submission made by self-represented applicant after hearing concluded – meaning of "holds a hearing" – whether to re-open case to receive further submission

Sharma and Minister for Immigration and Border Protection (Migration) [2018] AATA 2110 (5 July 2018); Dr D Cremeann, Senior Member

MIGRATION – visa cancellation — offences against child — plea of guilty — character test — best interests of minor children — community expectations — decision set aside

Shin and Minister for Home Affairs (Migration) [2018] AATA 2108 (5 July 2018); Deputy President J W Constance and Dr L Bygrave, Member

MIGRATION – application for a Bridging E visa – whether the applicant is of good character – whether discretion should be exercised to revoke the refusal of the visa – Ministerial Direction No 65 – protection of the Australian community – nature and seriousness of conduct – risk to Australian community should the applicant commit further offences or engage in other serious conduct – expectations of the Australian community – Interpol red notice – allegations of fraud – whether applicant intends to stay in Australia – decision affirmed

Staveley and Minister for Home Affairs (Migration) [2018] AATA 2096 (4 July 2018); L M Gallagher, Member

IMMIGRATION – Class TY Subclass 444 (temporary) visa – non-revocation of mandatory cancellation of visa – applicant did not pass character test and had served term of imprisonment – visa mandatorily cancelled under subsection 501(3A) Migration Act 1958 (Cth) – whether discretion in subsection 501CA(4) to revoke mandatory visa cancellation should be exercised – Direction No. 65 – primary and other relevant considerations – protection of the Australian community from criminal or other serious conduct – nature and seriousness of the conduct – risk to the Australian community should further offences be committed – best interests of minor children - expectations of the Australian community - other relevant considerations – impact on victims - strength, nature and duration of ties to Australia – extent of impediments if removed from Australia - discretion should not be exercised to revoke visa cancellation - decision under review affirmed

Tran and Minister for Immigration and Border Protection (Migration) [2018] AATA 2093 (28 June 2018); Senior Member A Younes

MIGRATION - Class BC Subclass 100 Partner (Migrant) Visa - mandatory cancellation - non-revocation - failure to pass the character test - Ministerial Direction 65 - serious criminal convictions - protection of the Australian community - best interests of minor children - expectations of the Australian community - international non-refoulement obligations - strength nature and duration of ties - impact on victims - extent of impediments if removed - decision affirmed

Practice and Procedure

Bringolf and Secretary, Department of Human Services (Freedom of information) [2018] AATA 2004 (28 June 2018); Senior Member A. Nikolic AM CSC

PRACTICE AND PROCEDURE – dismissal of application for review – whether Tribunal satisfied that application is an abuse of process – appropriate to exercise discretion to dismiss application pursuant to section 42B(1)(c) of AAT Act

FFVQ and National Disability Insurance Agency [2018] AATA 1968 (2 July 2018); Deputy President G Humphries

National Disability Insurance Scheme – Jurisdiction – Statement of supports is not to be conflated with a plan – Plan is not a decision to which the relevant proceeding relates – Tribunal lacks jurisdiction to stay the operation of the National Disability Support Agency's plan

Jetstar Airways Pty Ltd and Civil Aviation Safety Authority (Freedom of information) [2018] AATA 2097 (5 July 2018); Deputy President B W Rayment

Freedom of Information – request to access interim documents under the Freedom of Information Act by affected third party – argued that documents are exempt documents under the Freedom of Information Act – access granted for transparency and expediency of proceedings

Mantra Training and Development Pty Ltd and Australian Skills Quality Authority [2018] AATA 1967 (29 June 2018); M Hyman, Member

PRACTICE AND PROCEDURE – extension of time – principles governing grant or refusal – explanation of delay – where the applicant had lodged an application to the tribunal but withdrawn it – availability of internal review by ASQA – opaque and misleading documentation – underlying merits of the application – prejudice to applicant and respondent – extension of time granted

Mulla Zahi and Minister for Immigration and Border Protection (Citizenship) [2018] AATA 1833 (23 May 2018); Dr L Bygrave, Member

CITIZENSHIP – application for extension of time to lodge application for review of decision by Minister to refuse application for Australian citizenship – reasonable reason for delay – Tribunal must consider merits of the substantive application – Applicant failed citizenship test multiple times – limited prospects of success for substantive application – application for extension of time refused

Oliver and Comcare (Compensation) [2018] AATA 1964 (29 June 2018); Deputy President G Humphries

PRACTICE AND PROCEDURE – s 42B of the Administrative Appeals Tribunal Act 1975 – dismissal of proceedings if there are no reasonable prospects of success – Tribunal entitled to assess the strength of case based on material before it – Tribunal not satisfied that the Applicant has evidence of sufficient quality and weight to succeed at a hearing – Application dismissed

PRACTICE AND PROCEDURE – release from an implied undertaking

Rahimi and Secretary, Department of Social Services (Social services second review) [2018] AATA 2109 (5 July 2018); Senior Member B J Illingworth

PRACTICE AND PROCEDURE – Application for extension of time – Application for Disability Support Pension – Consideration of principles which apply to extensions of time – Extent of delay – Whether there is a persuasive explanation for the delay – Whether Applicant rested on his rights – Whether there is merit in substantive application – Extension of time refused

Social Security

Di Fiore and Secretary, Department of Social Services (Social services second review) [2018] AATA 2090 (4 July 2018); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – unlimited portability – whether applicant has a severe impairment – intellectual disability – whether applicant will have severe impairment for at least the next five years – whether severe impairment would prevent applicant from performing any work independently of a program of support within the next five years – decision affirmed

Eyit and Secretary, Department of Social Services (Social services second review) [2018] AATA 2091 (4 July 2018); Dr B Ng, Member

SOCIAL SECURITY – disability support pension – impairment tables – insufficient points under tables – decision affirmed

Hosseini and Secretary, Department of Social Services (Social services second review) [2018] AATA 1840 (18 May 2018); G Hallwood, Member

Social Security – Carer payment – Requirement of “constant care” – Decision affirmed

Mongta and Secretary, Department of Social Services (Social services second review) [2018] AATA 2092 (4 July 2018); Ms A Burke, Member

SOCIAL SECURITY – disability support pension – whether qualified – spinal and mental health conditions – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision set aside

[MZNK and Secretary, Department of Social Services](#) (Social services second review) [2018]

AATA 2003 (2 July 2018); Dr I Alexander, Member

Social Security – Centrelink – Parenting payment debt – Austudy payment debt – Whether there is any basis in law to write off or waive the Applicant's Centrelink debt – Whether a proportion of the Applicant's Centrelink debt can be attributed to administrative error by Centrelink – Severe financial hardship – Special circumstances – Administrative error – Decision under review remitted for reconsideration

[Sullivan and Secretary, Department of Social Services](#) (Social services second review) [2018]

AATA 1963 (29 June 2018); Senior Member N A Manetta and A Ward, Member

SOCIAL SECURITY - age pension - whether applicant meets the age pension eligibility requirements - whether applicant resident in Australia when he lodged his application for a pension - decision under review affirmed

[Teleahiva and Secretary, Department of Social Services](#) (Social services second review) [2018]

AATA 2107 (6 July 2018); Senior Member C Puplick AM

Social Security – Disability Support Pension – Whether the Applicant is entitled to any back-payments of Disability Support Pension – Impairment Tables – Moderate mental health functional impairment – Fully diagnosed and fully treated – Fully stabilised – Decision under review is affirmed

[Terry and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 2112 (6 July 2018); Senior Member P Clauson

SOCIAL SECURITY – Disability Support Pension – Cancellation – Upper Limb condition – Spinal condition – psoriasis condition - whether impairments are of 20 points of more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

Taxation

[Rus and Commissioner of Taxation](#) (Taxation) [2018] AATA 1854 (14 May 2018); Deputy President FD O'Loughlin and Senior Member L Hespe

CGT small business concessions - active asset - whether the whole of a parcel of land of which only a minor proportion is used in a business is an active asset - ability of Tribunal to rely upon further facts - whether mortgaging such land to secure borrowings used in a business is use of an asset in a business – decision affirmed

Veterans' Affairs

[Henriksen and Repatriation Commission](#) (Veterans' entitlements) [2018] AATA 2002 (3 July 2018); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – claim for an increase in disability pension – claim for defence-caused condition of cervical spondylosis – standard of proof s 120(4) of the Act – relevant Statement of Principles – diagnosis of cervical spondylosis accepted – clinical onset of cervical spondylosis not within 25 years of trauma – heavy lifting of 120,000 kilograms did not occur in the ten year period before the clinical onset – 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
Shi and Secretary, Department of Social Services	[2018] AATA 1627

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Hutchison v Australian Securities and Investments Commission	[2018] AATA 760	[2018] FCA 1002
Rodchompo v Minister for Immigration and Border Protection	[2016] AATA 872	[2018] FCA 965

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles, which take effect from **23 July 2018**:

Bipolar disorder (Balance of Probabilities) – No. 54 of 2018

<https://www.legislation.gov.au/Details/F2018L00869>

Bipolar disorder (Reasonable Hypothesis) – No. 53 of 2018

<https://www.legislation.gov.au/Details/F2018L00867>

Cluster headache (Balance of Probabilities) – No. 58 of 2018

<https://www.legislation.gov.au/Details/F2018L00903>

Cluster headache (Reasonable Hypothesis) – No. 57 of 2018

<https://www.legislation.gov.au/Details/F2018L00902>

Knee bursitis (Balance of Probabilities) – No. 66 of 2018

<https://www.legislation.gov.au/Details/F2018L00882>

Knee bursitis (Reasonable Hypothesis) – No. 65 of 2018

<https://www.legislation.gov.au/Details/F2018L00872>

Localised sclerosis (Balance of Probabilities) – No. 62 of 2018

<https://www.legislation.gov.au/Details/F2018L00884>

Localised sclerosis (Reasonable Hypothesis) – No. 61 of 2018

<https://www.legislation.gov.au/Details/F2018L00883>

Macular degeneration (Balance of Probabilities) – No. 60 of 2018

<https://www.legislation.gov.au/Details/F2018L00886>

Macular degeneration (Reasonable Hypothesis) – No. 59 of 2018

<https://www.legislation.gov.au/Details/F2018L00885>

Olecranon bursitis (Balance of Probabilities) – No. 64 of 2018

<https://www.legislation.gov.au/Details/F2018L00855>

Olecranon bursitis (Reasonable Hypothesis) – No. 63 of 2018

<https://www.legislation.gov.au/Details/F2018L00854>

Panic disorder (Balance of Probabilities) – No. 56 of 2018

<https://www.legislation.gov.au/Details/F2018L00931>

Panic disorder (Reasonable Hypothesis) – No. 55 of 2018

<https://www.legislation.gov.au/Details/F2018L00929>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made amendments to the following Statements of Principles. The amendments take effect on **23 July 2018**:

Lumbar spondylosis – No. 67 of 2018

<https://www.legislation.gov.au/Details/F2018L00856>

Lumbar spondylosis – No. 68 of 2018

<https://www.legislation.gov.au/Details/F2018L00857>

Thoracic spondylosis – No. 69 of 2018

<https://www.legislation.gov.au/Details/F2018L00913>

Thoracic spondylosis – No. 70 of 2018

<https://www.legislation.gov.au/Details/F2018L00915>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority will be revoked on **23 July 2018**:

Bipolar disorder – No. 28 of 2009

<https://www.legislation.gov.au/Details/F2009L01595>

Bipolar disorder – No. 27 of 2009

<https://www.legislation.gov.au/Details/F2009L01594>

Cluster headache – No. 21 of 2010

<https://www.legislation.gov.au/Details/F2010L01037>

Cluster headache – No. 20 of 2010

<https://www.legislation.gov.au/Details/F2010L01036>

Localised sclerosis – No. 67 of 2009

<https://www.legislation.gov.au/Details/F2009L03230>

Localised sclerosis – No. 66 of 2009

<https://www.legislation.gov.au/Details/F2009L03229>

Macular degeneration – No. 14 of 2009

<https://www.legislation.gov.au/Details/F2009L01581>

Macular degeneration – No. 13 of 2009

<https://www.legislation.gov.au/Details/F2012C00634>

Panic disorder – No. 69 of 2009

<https://www.legislation.gov.au/Details/F2016C00976>

Panic disorder – No. 68 of 2009

<https://www.legislation.gov.au/Details/F2016C00975>



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