



Administrative
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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, Small Business Taxation, 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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The Review

The **AAT Review** is AAT's monthly e-newsletter which will allow you to keep up to date with recent news and help you get to know more about the Tribunal. It also includes short, plain English summaries of a range of the Tribunal's recent decisions.

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Contents

AAT Recent Decisions	3
Compensation	3
Education and Research	3
Freedom of Information	4
Migration.....	4
National Disability Insurance Scheme.....	5
Practice and Procedure.....	5
Professions and Trades	6
Refugee.....	6
Social Services.....	7
Appeals	9
Appeals lodged.....	9
Appeals finalised	9

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, Small Business Taxation, 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

[BKSF and Comcare](#) [2019] AATA 4893 (14 November 2019); Senior Member R Cameron

WORKERS COMPENSATION – Comcare – anxiety and depression – whether significantly contributed to by employment – somatic symptoms disorder – incapacity payments and medical expenses – applicant completely recovered from injuries – chronic pain diagnosis – conflicting diagnoses – Comcare not liable – decisions under review affirmed

[Williamson and Comcare](#) (Compensation) [2019] AATA 4774 (18 November 2019); Deputy President The Hon. John Pascoe AC CVO

COMPENSATION – injury – where applicant suffered from pain in hip – whether applicant suffered from an ailment – where no clear diagnosis evident – decision affirmed

[YNCJ and Comcare](#) (Compensation) [2019] AATA 4795 (1 November 2019); Dr M Evans, Senior Member

Workers' Compensation – Commonwealth employee – whether liability should be accepted under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – psychological injuries secondary to accepted knee injury – appropriate diagnosis of Applicant's psychological conditions – whether a disease – whether an injury other than a disease – whether an ailment – causation – whether contributed to, to a significant degree, by employment – employer's reliance on Facebook photographs – whether Applicant made wilful and false representations that she did not previously suffer from a psychological condition – *Briginshaw v Briginshaw* – *Briginshaw* standard – Reviewable Decision set aside – substituted with a new decision that Respondent is liable to pay compensation to the Applicant under s 14

Education and Research

[Wheatley and Secretary, Department of Education and Training](#) [2019] AATA 4896 (21 November 2019); Senior Member D O'Donovan

HIGHER EDUCATION – withdrawal after the census date – special circumstances – were circumstances beyond the person's control – did illness not make its full impact on the student until after the census date – did the condition make it impracticable for the student to complete the requirements for the unit in the period during which she undertook the unit – the impact of the condition was apparent prior to the census dates – decision not to refund affirmed

Freedom of Information

[Baker and Australian Securities and Investments Commission](#) (Freedom of information) [2019] AATA 4898 (21 November 2019); Mr A Maryniak QC, Member

FREEDOM OF INFORMATION – request for access to documents – legal professional privilege – conditional exceptions claimed – public interest – decision affirmed

Migration

[Arain](#) (Migration) [2019] AATA 4438 (8 October 2019); F Russo, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) –genuine intention to stay in Australia temporarily – applicant’s circumstances in Pakistan and Australia – enrolment in and completion or cancellation of multiple courses – current enrolment at lower level – continuation of studies despite visa refusal – value of studies to applicant’s career objectives – applications for permanent visas – intention to maintain ongoing residence in Australia – decision under review affirmed

[Chandra and Minister for Home Affairs](#) (Migration) [2019] AATA 4894 (19 November 2019); Senior Member T Tavoularis and Member S Evans

MIGRATION – Non-revocation of mandatory cancellation – Class UK Subclass 820 Partner visa – where Applicant does not pass the character test – sentenced to 12 months imprisonment – whether there is another reason to revoke the cancellation of the Applicant’s visa – application of Ministerial Direction 79 – decision under review affirmed

[CLRJ and Minister for Home Affairs](#) (Migration) [2019] AATA 4892 (4 November 2019); Senior Member D O’Donovan

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – substantial criminal record under s 501(7) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – minor children – strength nature and duration of ties – impediments to applicant if removed – decision under review set-aside

[Khan](#) (Migration) [2019] AATA 4443 (9 October 2019); R Gagliardi, Member

MIGRATION –Visitor (Class FA) visa – Subclass 600 (Visitor) Sponsored Family stream – genuine intention to stay temporarily in Australia – visiting critically ill relative and supporting family – travelling as a large family group in school holidays – successful business and established, comfortable lifestyle in Pakistan – intends to comply with the conditions imposed – decision under review remitted

[Kim and Minister for Home Affairs](#) (Migration) [2019] AATA 4895 (23 October 2019); Deputy President JW Constance

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – Direction No. 79 – primary considerations – protection of Australian community from criminal or other serious conduct – nature and seriousness of conduct – risk to Australian community – best interests of minor children – expectations of Australian community – other considerations – strength, nature and duration of ties to Australia – impediments if removed from Australia – risk to Australian community unacceptable – decision under review affirmed

[Kumar](#) (Migration) [2019] AATA 4610 (21 October 2019); B Cullen, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – English language proficiency – minimum required score – subsequent test not completed within relevant timeframe – ‘time of application’ criteria – decision under review affirmed

[Singh](#) (Migration) [2019] AATA 4738 (29 October 2019); F Russo, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – ground for cancellation – enrolment – not enrolled in a registered course – consideration of discretion – satisfactory course progress – compelling reason for remaining in Australia – circumstances giving rise to non-compliance – fees dispute with course provider – prevented from enrolling for outstanding fees – attribution of responsibility for breach – decision under review set aside

[Suo](#) (Migration) [2019] AATA 4448 (25 September 2019); S Baker, Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 892 (State/Territory Sponsored Business Owner) – business and personal assets – unsecured personal loan to an individual – Departmental policy – Australian Accounting Standards Board (AASB) standards – chose in action – probability of realisation of income – decision under review remitted

National Disability Insurance Scheme

[Arnel and National Disability Insurance Agency](#) [2019] AATA 4778 (18 November 2019); Senior Member R Cameron

NATIONAL DISABILITY INSURANCE SCHEME – access - Complex Regional Pain Syndrome – whether impairments result in substantially reduced functional capacity – mobility – self-care – social interaction – decision set aside and substituted

[Hoolachan and National Disability Insurance Agency](#) [2019] AATA 4798 (19 November 2019); Senior Member F Meagher

NATIONAL DISABILITY INSURANCE SCHEME – Whether supports are reasonable and necessary – Transport – Consumables – Physiotherapy – Gym membership – Special shoes – Medical alert (life buzzer) – Wheelchair rent – Leg amputation, peripheral vascular disease and lymphoedema – Decision under review varied

Practice and Procedure

[Sheehy and Board of Professional Engineers of Queensland](#) [2019] AATA 4794 (19 November 2019); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – transfer of an application between registries of the Tribunal – relevant factors – interests of parties – efficient administration of justice – application to be transferred to the Brisbane registry

[Van Dieren and Australian Securities and Investments Commission](#) [2019] AATA 4777 (15 November 2019); Deputy President Boyle

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – relevant considerations – prospects of success – consequences for the Applicant of a refusal of stay – public interest – consequences for the Respondent in carrying out its functions – whether the application for review would be rendered nugatory – stay application refused – Tribunal does not have power to order any stay on publication by way of a media release where there has not been a stay granted – order that the hearing of the application be expedited

Professions and Trades

[Barnes and Victorian Building Authority](#) [2019] AATA 4796 (31 October 2019); Mr A Maryniak QC, Member

MUTUAL RECOGNITION – application Mutual Recognition Act 1992 – registered building surveyor in Tasmania – refusal of registration as building surveyor in Victoria – application of mutual recognition principles – whether activities substantially the same – decision under review affirmed

[Nouh Family Day Care Pty Ltd and Secretary, Department of Education](#) [2019] AATA 4797 (19 November 2019); Ms A Burke AO, Member

CHILD CARE – family assistance law – child care benefit – cancellation of approval as an approved child care service – breach of conditions of provider approval – over charging fees in excess of hourly rate – child swapping – claiming sessions of care for children 14 years older or at secondary school – overseas educators – late reporting and enrolments – overlapping sessions – absences before and after care – exceeding educator to child ratios – appropriate sanction – decision affirmed

[Strachan and Victorian Building Authority](#) [2019] AATA 4891 (18 November 2019); Senior Member CJ Furnell

MUTUAL RECOGNITION – application of Mutual Recognition Act 1992 – registered builder in Tasmania – refusal of registration as builder in Victoria – postponement of registration – effect of Andriotis – misapplication of good character test – effect of notification under section 19 Mutual Recognition Act 1992 – entitlement to registration – decisions under review set aside and substituted

Refugee

[1905471](#) (Refugee) [2019] AATA 4601 (4 July 2019); F Simmons, Member

REFUGEE – protection visa – Sri Lanka – religion – Muslim – interreligious relationship – particular social group – Muslim women in an interreligious relationship – victim of family violence – physical assault – fear of killing – gender-based violence – intervention by religious leaders – exclusion from the Mosque – genuine and ongoing relationship – threat of forced marriage – decision under review remitted

PRACTICE AND PROCEDURE – whether grant of the visa prevented by s 91WA – loss of passport – reasonable explanation for destruction or disposal of documentary evidence of identity – applicant's identity accepted as claimed – applicant did not attempt to conceal identity in the visa application process – acts by a third party which involve destroying or removing documents from the applicant's possession

[1606694](#) (Refugee) [2019] AATA 4477 (8 July 2019); L Symons, Member

REFUGEE – protection visa – South Korea – fear of ostracism after long absence from home country – age discrimination – unlawful non-citizen – applicant daughter returned to South Korea – family members in South Korea – experience in running own business – decision under review affirmed

[1613527](#) (Refugee) [2019] AATA 4552 (10 July 2019); S Clarey, Member

REFUGEE – protection visa – India – religion – Catholic Christian – particular social group – single men – Anglo-Indian men – fear of degrading treatment – desertion by ex-wife – stigma of marital status – decision under review affirmed

[1604251](#) (Refugee) [2019] AATA 4675 (11 July 2019); S Hoffman, Member

REFUGEE – protection visa – Saudi Arabia – religion – Shia Muslim – Christian convert – Sharia law – status of women in Saudi Arabia – right to practice religions other than Islam – apostasy – relationship with father-in-law – fear of losing custody of son – disobedience laws of Saudi Arabia – third country protection – right to enter and reside in Gulf Cooperation Council countries – cultural and political links between Gulf Cooperation Council countries – forcible return from Gulf Cooperation Council country to Saudi Arabia – decision under review remitted

[1711633](#) (Refugee) [2019] AATA 3435 (15 August 2019); N Lamont, Member

REFUGEE – protection visa – Mexico – threat to personal safety – affluent professionals – kidnapping and extortion – rampant gang crimes – relocation unreasonable – decision remitted

Social Services

[Govedarica and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4793 (19 November 2019); Ms A Burke AO Member

SOCIAL SECURITY – application for disability support pension – whether qualified – spinal condition; mental health condition and right hand condition (finger amputation) – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review set aside

[Henry and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4775 (18 November 2019); Mr S Evans, Member

SOCIAL SECURITY – parenting payment (partnered) – partner's income above allowable limit – employment income and deemed income – coding error resulted in approval – payment later cancelled – whether decision to cancel payment was correct – decision affirmed

[Ramirez and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4776 (15 November 2019); Ms M East, Member

SOCIAL SECURITY – Practice and procedure – stay application with respect to AAT Tier 1 decision – Disability Support Pension – relevant factors – financial hardship – applicant's ability to repay debt – whether stay order would secure effectiveness of hearing – stay order not granted for arrears but granted for ongoing payments

[Soliman and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4799 (19 November 2019); Senior Member L Kirk

SOCIAL SECURITY – Applicant in receipt of lump sum compensation payment – whether Applicant precluded from receiving disability support pension due to compensation payment – preclusion period – income cut-out amount to be determined at the date the final payment of compensation was received – whether special circumstances warrant exercise of discretion to treat whole or part of the lump sum compensation amount as having not been made or not liable to be made – Applicant claimed special circumstances due to need to pay for private health insurance and children’s school fees and would otherwise face financial hardship – circumstances neither individually or in combination establish special circumstances – decision varied

Superannuation

[Toowong Pastures Pty Ltd as Trustee for the DB Family Trust trading as KBE Contracting Australia Pty Ltd and Commissioner of Taxation](#) [2019] AATA 4897 (20 November 2019); Dr M Evans, Senior Member

SUPERANNUATION – Superannuation Guarantee Charge – whether Applicant liable for superannuation guarantee shortfall – whether worker an employee of the Applicant or independent contractor– contract of service or contract for services – factors to be taken into account – common law meaning of “employee” considered – Reviewable Decision 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, Small Business Taxation, 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
Al-Ahmed and Minister for Home Affairs	[2019] AATA 2707
Cho and Minister for Home Affairs	[2019] AATA 4422
GYTW and Minister for Home Affairs	[2019] AATA 4149
Kim and Minister for Home Affairs	[2019] AATA 4895
Pavey and Minister for Home Affairs	[2019] AATA 4198
Seddon and Minister for Home Affairs	[2019] AATA 4361
Zaghloul and Commissioner of Taxation	[2019] AATA 3351

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
LPGJ v Minister for Home Affairs	[2018] AATA 1075	[2019] FCA 1893
Minister for Home Affairs v NBCM	[2018] AATA 2387	[2019] FCA 1013 [2019] FCAFC 199



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