



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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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.

Bankruptcy

[CXTB and Inspector-General in Bankruptcy](#) [2019] AATA 5194 (27 November 2019); Senior Member R Cameron

BANKRUPTCY – contribution liability under s 139W – whether worker's compensation is excluded from income assessment – the meaning of income under s 139L – what defines the character of income – definition of income should be construed according to ordinary concepts and usages – whether cashed out annual leave excluded from income assessment – worker's compensation and cashed out annual constitute income – decision under review affirmed

[James and Inspector-General in Bankruptcy](#) [2019] AATA 5171 (3 December 2019); D K Grigg, Member

BANKRUPTCY – extent of scope and power to amend National Personal Insolvency Index – whether statement of affairs filed with official receiver – whether trustee validly appointed – whether trustee agent of official receiver — decision under review affirmed

Citizenship

[Sankey and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2019] AATA 5180 (4 December 2019); Deputy President B W Rayment OAM QC

CITIZENSHIP – citizenship by conferral – refusal to approve application for citizenship – not of good character – previous drug and sex offences – applicant imprisoned – where applicant suffered from brain injury at time of offending – first time offending by applicant – no further offending since – where applicant had long and subsequent period of good character – decision set aside and remitted with direction that applicant is of good character

Compensation

[Hooley and Comcare](#) (Compensation) [2019] AATA 5176 (29 November 2019); Senior Member T Tavoularis

COMPENSATION – review of entitlement to medical expenses and incapacity payments - Applicant was an IT consultant employed by CSIRO – where Comcare accepted liability to pay compensation for injuries diagnosed as “adjustment disorder with disturbance of emotions” and aggravation of “obsessive-compulsive disorder” – whether Applicant continues to suffer from the effects of accepted conditions – whether injury(s) suffered during course of employment contributes to ongoing incapacity for work - decision under review affirmed.

[Murden and Australian National University](#) (Compensation) [2019] AATA 5163 (2 December 2019); W Frost, Member

WORKERS COMPENSATION – where the Respondent refused a request for an extension of time – application for extension of time five years after determination – explanation for the delay - whether the Respondent is prejudiced by delay – decision under review affirmed

PRACTICE AND PROCEDURE – jurisdiction – whether the Applicant made a new claim for compensation or a request for reconsideration of a determination – whether the Tribunal has jurisdiction to consider a new claim – reviewable decision found to be refusal to grant an extension of time

[Slip and Comcare](#) (Compensation) [2019] AATA 5192 (4 December 2019); Dr I Alexander, Senior Member

COMPENSATION – workers compensation – medial collateral ligament strain left knee – tear of left knee ligament – tear of medial cartilage or meniscus of knee (right) – osteoarthritis localised multiple sites (right) – chronic limp – whether employment contributed to claimed secondary ailments in a material degree – decision under review affirmed

Education and Research

[Cogninet Resource Corner Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 5165 (29 November 2019); Senior Member D J Morris

VOCATIONAL EDUCATION AND TRAINING – rejection of application for initial registration as a registered training organisation (RTO) – refusal to register applicant to provide a course to overseas students – evidence regarding proposed site of organisation to conduct training and assessment – evidence regarding training and assessors – suitability of proposed CEO – decisions under review affirmed

[Lehtonen and Secretary, Department of Education and Training](#) [2019] AATA 5167 (29 November 2019); Senior Member R. Pintos-Lopez

EDUCATION – VET FEE-HELP balance – re-crediting of VET FEE-HELP – special circumstances of severe atopic dermatitis and anxiety and/or depression symptoms – insufficient evidence of full impact of symptoms occurring on or after census date – application lodged after application period – decision under review affirmed

[The Centre for People Development and Australian Skills Quality Authority](#) [2019] AATA 5193 (15 November 2019); Deputy President Britten-Jones

VOCATIONAL EDUCATION AND TRAINING – whether the applicant should be allowed to apply for renewal within a shorter period than 90 days – explanation for delay – prospects of success – prejudice to applicant and respondent – consequences for applicant if shorter period not granted – whether applicant rested on its rights – decision under review set aside and substituted with a decision that the applicant was entitled to make an application for renewal within a shorter period than 90 days.

Migration

[CQBW and Minister for Home Affairs](#) (Migration) [2019] AATA 5177 (28 November 2019); T Eteuati, Member

MIGRATION – refusal of application for Bridging visa under section 501(1) – Applicant failed to pass the character test under section 501(6)(a) - whether the discretion to refuse to grant the Bridging visa should be exercised – consideration of non-refoulement obligations, harm and hardship - application of Direction No. 79 – decision under review affirmed

[GCXD and Minister for Home Affairs](#) (Migration) [2019] AATA 5162 (2 December 2019); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of applicant's visa – citizen of Malaysia – applicant has substantial criminal record – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – Ministerial Direction No. 79 applied – decision under review set aside and substituted

[KYMM and Minister for Home Affairs](#) (Migration) [2019] AATA 5174 (28 November 2019); Senior Member D J Morris

MIGRATION – mandatory cancellation of visa because of substantial criminal record – Refugee and Humanitarian (Class XB) Subclass 202 Global Special Humanitarian visa – character test – the applicant's offending history – place of birth and age of applicant – citizenship of applicant – consideration of Direction No. 79 – primary considerations – protection of Australian community – expectations of Australian community – international non-refoulement obligations – strength, nature and duration of ties to Australia – other considerations – extent of impediments if removed – other matters – citizenship of Applicant – decision under review affirmed

[Patterson and Minister for Home Affairs](#) (Migration) [2019] AATA 5175 (29 November 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant failed to 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 considerations in Ministerial Direction No 79 – no other reason to revoke cancellation decision – decision under review affirmed

[Sach and Minister for Home Affairs](#) (Migration) [2019] AATA 5173 (28 November 2019); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – substantial criminal record – another reason why the cancellation decision should be revoked – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – other consideration – indefinite detention – strength, nature and duration of ties – extent of impediments if removed – decision set aside and substituted

[ZKFQ and Minister for Home Affairs](#) (Migration) [2019] AATA 5168 (3 December 2019); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of the Applicant's Class XA Subclass 866 Protection visa – s 501(3A) – s 501CA – Applicant failed to pass the character test – sentenced to a term of imprisonment of 12 months or more – Applicant supplied a commercial quantity of a prohibited drug – whether there is another reason why the cancellation should be revoked – application of Ministerial Direction No 79 – Applicant's involvement in offence is ameliorated by circumstances of involvement – Applicant co-operated with law enforcement after arrest – consideration of best interests of minor children in Australia – Applicant may be subject to severe punishment or death penalty should he be removed – reviewable decision set aside and substituted

Practice and Procedure

[Makarov and Minister for Home Affairs](#) (Citizenship) [2019] AATA 5161 (2 December 2019); Deputy President The Hon. John Pascoe AC CVO

EXTENSION OF TIME – revocation of applicant's Australian citizenship – where original decision made twelve years prior to application for review – where applicant has been incarcerated – principles to be applied - where substantive application has reasonable prospects of success - where delay causes prejudice to the respondent – public interest – extension of time refused

[Ristevski and Tax Practitioners Board](#) [2019] AATA 5196 (3 December 2019); Senior Member P W Taylor SC

PRACTICE AND PROCEDURE – application for stay of decision – decision to terminate tax agent registration – prior undisclosed disqualification under the Superannuation Industry (Supervision) Act 1993 (Cth) – non-compliance with taxation laws (personal and corporate lodgement defaults, corporate tax debts) – Board findings of misleading statements about fitness and taxation law compliance in renewal applications and Annual Declarations – meaning of “personal affairs” in Tax Agent Services Act 2009 (Cth) – asserted misleading information provided in response to Board investigation (disavowal of status as a director of companies with taxation law defaults) – disputed competency of tax agent services (disallowed expense claims in client tax returns) – disputed propriety of conduct in response to client complaints to the Board

Considerations relevant to determining application for stay – nature of the statutory scheme – arguable imprecision of some material Board findings – questionable prospects of success of substantive review application in relation to some Board findings – public interest – applicant's personal circumstances – interests of employees, clients and licensor of business name – stay granted, subject to conditions requiring disclosure

[Sanwa Pty Ltd and Comptroller-General of Customs](#) [2019] AATA 5166 (31 October 2019); Dr P McDermott RFD, Deputy President

PRACTICE AND PROCEDURE – JOINDER – application to be added as a party – whether party has an indirect interest in the decision under review – whether discretion should be exercised to add an applicant as a party to the proceeding – proper administration of anti-dumping measures – consistent interpretation of statute – application granted.

Social Services

[Tralonga and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5191 (3 December 2019); Senior Member B Pola

SOCIAL SECURITY – disability support pension – DSP – Whether medical conditions fully diagnosed, fully treated and fully stabilised – Whether 20 points or more under the Impairment Tables during the Relevant Period – Decision under review affirmed

Taxation

[GSJW and Commissioner of Taxation](#) (Taxation) [2019] AATA 5170 (3 December 2019); Dr M Evans, Senior Member

TAXATION – application for review of an objection decision – whether to grant release of tax liabilities – whether Applicant would suffer serious financial hardship if required to satisfy his eligible tax liabilities – poor compliance due to medical condition known as Attention Deficit Hyperactivity Disorder (ADHD) – income/outgoings test – assets/liabilities test – other relevant factors - whether Applicant paid debts ahead of meeting taxation obligations – whether Applicant acquired assets ahead of meeting taxation obligations – whether a poor compliance history – Reviewable Decision set aside and substituted with a new decision granting partial release

[HFTS and Commissioner of Taxation](#) (Taxation) [2019] AATA 5164 (2 December 2019); Mr P W Taylor SC, Senior Member and Mr N Gaudion, Member

TAXATION – objection to income taxation assessment – objection to penalty assessment – nature of unexplained deposits – whether the deposits were loans – whether the Commissioner’s assessment was excessive – 14ZZK – whether the applicant could show his actual income – whether a penalty assessment was appropriate – whether the penalty should be remitted – income tax assessment decision affirmed – penalty remitted in part

[THE TRUSTEE FOR THE DALBY FAMILY TRUST and COMMISSIONER OF TAXATION](#)

(Taxation) [2019] AATA 5241 (27 November 2019); Senior Member R Olding

TAXATION – income tax – taxation of trust – discretionary trust – application by Applicant for leave to rely on grounds not in objection – nature and importance of the amendment to the party seeking it – extent of delay and effect a grant of leave would have on the hearing – no explanation given for delay - prejudice to respondent - application for leave refused

Veterans' Affairs

[Sharrett and Repatriation Commission](#) (Veterans’ Entitlements) [2019] AATA 5169 (3 December 2019); Senior Member Katter

VETERANS’ AFFAIRS – disability pension – claim for defence-caused condition – lumbar spondylosis – claim pursuant to the Veterans’ Entitlements Act 1986 (Cth) – 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, 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

No appeal lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

**Sadruga v Minister for Immigration,
Citizenship, Migrant Services and
Multicultural Affairs**

[\[2019\] AATA 119](#)

[\[2019\] FCAFC 219](#)
[\[2019\] FCA 1078](#)



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