



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.

Child Support

[XHRC and Child Support Registrar](#) (Child support second review) [2019] AATA 5396 (13 December 2019); D Mitchell, Member

CHILD SUPPORT – percentage of care – pattern of care of children during the relevant period – decision set aside and substituted

[Bissett and Romney](#) (Child support) [2019] AATA 5016 (28 October 2019); Y Webb, Member

CHILD SUPPORT – particulars of the administrative assessment – review of an estimate of income - whether there is an income amount order – the Registrar not prevented from reviewing the estimate – income not accurately determined - decision under review set aside and sent back with direction for reconsideration

[Fryer and Fryer](#) (Child support) [2019] AATA 5019 (31 October 2019); M Kennedy, Member

CHILD SUPPORT – non-agency payment - whether payments made to the payee were in lieu of child support - intention of both parents – mutual intention not established – payments not to be credited - decision under review affirmed

[Gold and Gold](#) (Child support) [2019] AATA 5121 (29 October 2019); J Thomson, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – a ground for departure not established – decision not to depart - decision under review affirmed

[McGuire and Child Support Registrar](#) (Child support) [2019] AATA 5015 (29 October 2019); P Sperling, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – decision to revoke existing percentage of care determinations and make new determinations - decision under review affirmed

[Scarlett and Shelton](#) (Child support) [2019] AATA 5205 (28 October 2019); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

Citizenship

[Ahmad Khan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2019] AATA 5308 (11 December 2019); Senior Member R Cameron

CITIZENSHIP – refusal to grant Australian Citizenship by conferral – citizenship test exemption – section 21(3)(d) of Australian Citizenship Act – whether applicant had permanent or enduring physical or mental incapacity – applicant must demonstrate permanent or enduring incapacity at time of citizenship application – all treatment from psychiatrists undertaken after time of application – illiteracy does not satisfy permanent or enduring mental incapacity requirement – decision under review affirmed

[HJPB and Minister for Home Affairs](#) (Citizenship) [2019] AATA 5247 (2 December 2019); Brigadier A G Warner, Member

CITIZENSHIP – application for Australian citizenship by conferral – Applicant claims to be stateless – Tribunal declines to consider character - whether Tribunal satisfied of identity – Tribunal not satisfied of identity – decision under review affirmed

[Koka and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2019] AATA 5289 (10 December 2019); Ms A Burke AO, Member

CITIZENSHIP – citizenship by descent – Applicant born outside of Australia – whether a parent of the Applicant was an Australian citizen at the time of the Applicant’s birth – meaning of parent – not limited to biological parent – adopted parent – ordinary meaning of parent – if limited to parent’s conduct before, at the time of and after the birth – decision set aside and remitted for reconsideration

[Madadi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2019] AATA 5399 (13 December 2019); M O’Loughlin, Member

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied Applicant is of good character – restriction on approval of a person becoming an Australian Citizen due to current proceedings for an offence - decision under review affirmed

Compensation

[Flanagan and Comcare](#) (Compensation) [2019] AATA 5242 (6 December 2019); Senior Member M J McGrowdie

Workers Compensation — Determination by Comcare not to accept Applicant’s claim for injury to back as a result of a limp following a bone graft to left hip for a fusion to the cervical spine (the latter being an accepted condition as was the left hip) - Determination by Comcare not to accept Applicant’s claim for an injury to the back as a result of the nature and conditions of her employment - entitlement to compensation for the back

[Hagan and Comcare](#) (Compensation) [2019] AATA 5394 (13 December 2019); Senior Member M J McGrowdie

Workers Compensation — Right sided ulnar nerve condition - work as a meat inspector- whether work contributed to a significant degree - when the condition first appeared-liability for injury and compensation – decision set aside and substituted

[Theacos and Comcare](#) (Compensation) [2019] AATA 5248 (6 December 2019); Deputy President J W Constance

WORKERS' COMPENSATION – application for review of decision affirming determination that Applicant not presently entitled to payments for incapacity and medical expenses in respect of accepted injury – major depression – where Applicant has history of substance use disorder – whether Applicant continues to suffer from accepted injury – whether Tribunal satisfied on the balance of probabilities that Applicant's employment ceased to contribute to a significant degree to accepted injury – decision under review affirmed

Customs and Excise

[Leaver and Minister for Urban Infrastructure and Cities](#) [2019] AATA 5252 (5 December 2019); Deputy President Boyle

MOTOR VEHICLE IMPORTATION – vehicle from United Kingdom – vehicle without identification plate – whether requirements of Regulation 13 met – whether discretion under Regulation 11 should be exercised – Applicant's residency status – period of ownership – period for which applicant overseas prior to application – decision affirmed

Education and Research

[Crisp and Secretary, Department of Education and Training](#) [2019] AATA 5295 (9 December 2019); Deputy President P Britten-Jones

HIGHER EDUCATION — VET FEE-HELP Assistance Scheme — application for remission of VET FEE-HELP debt — Advanced Diploma of Aviation — special circumstances — whether circumstances were beyond the applicant's control — whether circumstances made it impracticable to complete the requirements for the unit during the required time — meaning of 'beyond control' — meaning of 'impracticable to complete' — where necessary to determine 'the requirements for the unit' — where circumstances related to poor delivery of the course and management by the course provider — where circumstances beyond the applicant's control and made it impracticable for the applicant to complete the course requirements in time — decision under review set aside and substituted with a decision that the Applicant's VET FEE-HELP debt be re-credited

Freedom of Information

[Hay; The Australian Statistician, Australian Bureau of Statistics and](#) (Freedom of information) [2019] AATA 5249 (6 December 2019); Deputy President J Sosso

FREEDOM OF INFORMATION – review of Office of the Information Commissioner decision – Freedom of Information Act 1982 (Cth) – s 47F public interest conditional exemptions – personal privacy – ss 11A and 11B whether giving access to material would be contrary to the public interest – decision under review set aside with respect to the outstanding material

Migration

[1729745](#) (Migration) [2019] AATA 5188 (6 September 2019); A Mercer, Member

MIGRATION – Skilled Nominated (Permanent) (Class SN) visa – Subclass 190 Skilled - Nominated – free from disease or condition that may result in threat to public health – adverse Medical Officer of the Commonwealth (MOC) opinion – Public Interest Criterion 4005 – significant cost to the Australian

community – initial MOC opinion invalid – medical condition in the low to moderate phase – positive MOC opinion – exact form or level of the disease or condition suffered by the applicant – decision under review remitted

PRACTICE AND PROCEDURE – where an opinion of MOC is required, Tribunal must take it as correct – Tribunal must be satisfied that MOC has applied correct test in forming its opinion – MOC opinion considered invalid

[1829800](#) (Migration) [2019] AATA 5257 (29 October 2019); A Younes, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information in previous protection visa application – country of citizenship – family composition – education history – activities undertaken to strengthen protection claims – degree of potential hardship – grant of visa based on false claims – integrity of visa program – credibility concerns – non-refoulement obligations – decision under review affirmed

[Bangali-Pessima](#) (Migration) [2019] AATA 5222 (3 September 2019); D Barker, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – health insurance – evidence of adequate arrangements – course end date indicated on Confirmation of Enrolment – ‘period of the applicant’s intended stay’ – decision under review remitted

[Chen](#) (Migration) [2019] AATA 5074 (8 August 2019); M Bourke, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – dependent child of the sponsor – visa applicant over 18 years – providing regular support to the visa applicant – money originally from divorce settlement – substantial reliance – decision under review affirmed

[Hamze and Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs](#) (Migration) [2019] AATA 5312 (12 December 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Lebanon – Class BS Subclass 801 (Spouse) visa – multiple convictions between 2009 and 2018 – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[HPZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2019] AATA 5402 (13 December 2019); Senior Member D J Morris

MIGRATION – refusal of Temporary Protection (Class XD) visa – failure to pass character test – whether there is another reason to grant visa – single offence – nature of offence – offence is serious – Ministerial Direction No. 79 applied – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of Australian community – other considerations – non-refoulement obligations – impact on family members – Direction requirement for decision-maker to look at special circumstances of the case – reviewable decision set aside

PRACTICE AND PROCEDURE – power to summon person to give evidence or produce document – respondent summoned - summons subsequently withdrawn by Tribunal – party requests further summons of same person – refusal to summon person – principle that summons are not issued inter partes – request for written reasons for refusal to issue summons – whether Tribunal has obligation to provide written reason for interlocutory decision – no such obligation – written reasons provided with substantive decision

[HQTQ and Minister for Home Affairs](#) (Migration) [2019] AATA 5291 (9 December 2019); T Eteuati, Member

MIGRATION – mandatory cancellation of Applicant’s visa under s 501(3A) – Applicant failed to pass the character test - whether there is another reason why cancellation decision should be revoked - application of Direction No. 79 – decision under review affirmed

[Mai and Minister for Home Affairs](#) (Migration) [2019] AATA 5310 (11 December 2019); Senior Member The Hon. Matthew Groom

MIGRATION – mandatory cancellation of temporary visa under section 501CA – offence of aggravated burglary-offensive weapon and recklessly cause serious injury – whether mandatory cancellation should be revoked – Ministerial Direction 79 – primary considerations – other considerations – decision affirmed

[MKBL and Minister for Home Affairs](#) (Migration) [2019] AATA 5292 (9 December 2019); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Applicant’s Visa – character test – substantial criminal record – using a carriage service to transmit indecent communications to a person under 16 years of age – used a carriage service to groom a person under 16 years of age – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to United Kingdom – reviewable decision affirmed

[Thaveesuk](#) (Migration) [2019] AATA 5160 (20 November 2019); K Malyon, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – Cook – English language proficiency – specified language test not undertaken – exemptions to English language requirements – five-year full-time study delivered in English – definition of ‘higher education institution’ – vocational education and training (VET) courses – immigration policy – Minister’s public interest powers – exceptional economic benefit – application of relevant legislation leads to unfair or unreasonable results – Ministerial Intervention requested – decision under review affirmed

Practice and Procedure

[Benson and Comcare](#) (Compensation) [2019] AATA 5304 (19 November 2019); W Frost, Member

PRACTICE AND PROCEDURE – jurisdiction – whether a refusal by Comcare to grant an extension of time is a reviewable decision – whether a determination made by Comcare is a reviewable decision – reviewable decision found to be refusal to grant an extension of time – the Tribunal has jurisdiction in relation to the reviewable decision

[Moltoni and Commissioner of Taxation](#) (Taxation) [2019] AATA 5251 (25 November 2019); Senior Member D O’Donovan

TAXATION – PRACTICE AND PROCEDURE – witness availability for hearing – whether or not it is procedurally fair to allow a witness to give evidence via videolink – balance of convenience – interests of parties

Harman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2019] AATA 5294 (10 December 2019); I Fletcher, Member

CITIZENSHIP – prohibition – offences against Australian law – dismissal of application

Wong and Secretary, Department of Health [2019] AATA 5313 (22 October 2019); Dr P

McDermott RFD, Deputy President

STAY – Pharmaceutical Benefits Scheme – Whether a pharmacy should be granted the pharmaceutical benefits scheme – Accepted commercial risk – Refusal of stay application

Refugee

1611161 (Refugee) [2019] AATA 5269 (26 November 2019); G Cullen, Member

REFUGEE – protection visa – Venezuela – political opinion – member of Primera Justicia – anti-Maduro regime – listed on the Tascon list – involvement in protests against the Venezuelan government – credible evidence – unreasonable modification to behaviour – decision under review remitted

1611673 (Refugee) [2019] AATA 5311 (13 November 2019); D Dragovic, Senior Member

REFUGEE – protection visa – Lebanon – capacity to meaningfully participate in hearing – mental health condition – religion – Alawite – tension with neighbouring Sunni suburb – Bab al-Tabbaneh–Jabal Mohsen conflict – political opinion – pro-Syrian regime – relatives’ involvement with the Arab Democratic Party – veracity of country information – current security situation in Jabal Mohsen – possibility of rising extremism in Tripoli – geopolitics of the Middle East region – ability to subsist – availability of mental health services – decision under review affirmed

1616423 (Refugee) [2019] AATA 5297 (15 November 2019); D Barker, Member

REFUGEE – protection visa – China – farm and village land confiscated or sold for property developments – father’s and friend’s role in protests – father arrested and convicted – friend attempted to leave the country and was arrested and convicted – warrant issued for applicant – credibility – inconsistent evidence – documentation – parents’ employment – circumstances of transfer of money to friend – delay in applying for protection – unlawful residence in Australia – decision under review affirmed

1620214 (Refugee) [2019] AATA 5314 (12 February 2019); S Burford, Member

REFUGEE – protection visa – China – religion – Christian church membership and activity – arrest and detention by police – departure on own passport and renewal of passport – unregistered children born out of wedlock – infant child sent to live in China after application for protection – credibility – vague and inconsistent evidence – delay in applying for protection – lengthy unlawful residence in Australia – church membership and activity in Australia – fear not well founded – decision under review affirmed

[1729155](#) (Refugee) [2019] AATA 5354 (26 February 2019); M Hawkins, Member

REFUGEE – protection visa – Vietnam – Federal Circuit Court remittal – jurisdictional error – application to be regarded as Temporary Protection (Class XD) visa – applicant declined hearing invitation – decision made on papers – religion – Catholic – resistance to seizure and demolition of parents' property – failure to respond to summons – father's debt – subject of department's data breach – protection (Class XA) visa decision set aside and substituted with refusal to grant Protection (Class XD) visa

Social Services

[Bazzi and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5395 (10 December 2019); Senior Member Emeritus Professor P A Fairall

SOCIAL SECURITY – Family Tax Benefit debt owed to the Commonwealth – whether applicant was an Australian resident and eligible to receive the benefit in circumstances where applicant was residing in Lebanon – whether debts amounting to \$12,472.34 were correctly calculated – whether all or part of total debt should be written off or waived – decision under review set aside and remitted

[Drury and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5246 (7 November 2019); Senior Member Emeritus Professor P A Fairall

SOCIAL SECURITY – compensation recovery – disability support pension – where applicant received compensation from NSW Dust Diseases Board for asbestos-related disease – where applicant not qualified for, and receiving DSP at date of event that gave rise to entitlement under s 1173 – where DSP reduced dollar for dollar – whether any special circumstances exists to allow for part or all of the periodic payment being treated as not having been made – decision under review is affirmed

[Fisk and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5309 (12 December 2019); R Maguire, Member and P Ranson, Member

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

[JTCV and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5397 (12 December 2019); Dr L Bygrave, Member

SOCIAL SECURITY – family tax benefit – percentage of care – whether pattern of care should be based on hours of care or nights in care – where final court orders – where no basis to enliven the discretion to use the actual number of hours of care to determine pattern of care arrangements – decision set aside and substituted

[Krapf and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5398 (10 December 2019); Dr L Bygrave, Member

SOCIAL SECURITY – start date – age pension – where Applicant lodged a claim for age pension – where claim was subsequently withdrawn – further claim for age pension granted from date of second claim – whether Applicant could be paid age pension from the date of the first claim – where Tribunal satisfied Applicant did not withdraw the claim – where Applicant eligible for age pension from date of initial claim – decision set aside and substituted

[Scharf and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5293 (10 December 2019); Senior Member B Pola

SOCIAL SECURITY – disability support pension – DSP – Impairment - Whether the applicant's medical conditions were fully diagnosed, fully treated and fully stabilised – Where condition does not cause functional impairment – What is reasonable treatment – Whether 20 points or more under the Impairment Tables during the Relevant Period – Decision under review affirmed

[Tellesson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5250 (9 December 2019); Senior Member R Cameron and Dr S Lewinsky, Member

SOCIAL SECURITY – disability support pension – chronic myeloid leukaemia – diabetes mellitus - obstructive sleep apnoea – obesity – whether qualified to receive disability support pension – whether conditions fully diagnosed, treated and stabilised – decision affirmed

[Twining; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 5296 (11 December 2019); Senior Member D Cremean

SOCIAL SECURITY – disability support pension – mental health conditions – migraines whether fully diagnosed, treated and stabilised – whether impairment attracts rating of 20 points or more under the Impairment Tables – whether Respondent has a continuing inability to work – decision set aside

[White and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5245 (6 December 2019); R West, Member

FAMILY ASSISTANCE AND SOCIAL SECURITY – Aged care – residential care subsidy – asset test assessment – when to disregard the value of Applicant's home – carer occupation of home for at least two years prior to assessment – decision affirmed

[Wilkes and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5288 (9 December 2019); M East, Member

SOCIAL SECURITY – peritoneal mesothelioma – compensation part of lump compensation payment is 50% of the payment – when does preclusion period apply? – how is the preclusion period calculated? – waiving of preclusion period – special circumstances – financial hardship – medical condition – decision set aside and remitted

Veterans' Affairs

[Llewellyn and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 5290 (10 December 2019); Deputy President J Sosso

VETERANS' AFFAIRS — Disability pension — Where the veteran is in receipt of the pension at 100% of the general rate — Special rate pension – Whether s 24(1)(b) met – Whether veteran totally and permanently incapacitated as to render the veteran incapable of undertaking remunerative work for periods aggregating more than 8 hours per week – Decision under review affirmed

[Pudney and Repatriation Commission](#) (Veterans' entitlements) AATA 5243 (16 April 2019); M O'Loughlin, Member and L Stephan, Member and R Ormston, Member

VETERANS' AFFAIRS — Pensions, benefits and entitlements — Disability pension — relationship of neck condition to defence service — Statement of Principles concerning cervical spondylosis No 67 of 2014 — Definition of “trauma” — Meaning of “clinical onset” — Relevant definitions not satisfied — Decision under review affirmed

[Rowley and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 5400 (12 December 2019); Senior Member Katter

VETERANS' AFFAIRS – claim for defence-caused conditions – claim for disability pension – standard of proof s 120(4) of the Veterans' Entitlements Act 1986 – reasonable satisfaction to be assessed in accordance with s 120B of the Veterans' Entitlements Act 1986 – relevant Statement of Principles – conditions not connected with relevant service – decision under review affirmed

[Veloskey and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 5244 (6 December 2019); Deputy President The Hon. J Pascoe AC CVO

VETERANS' AFFAIRS – veterans' benefits and entitlements – application for a Gold Card – where applicant did not render Qualifying Service as defined in the Act – 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
HSCK and Minister for Home Affairs	[2019] AATA 4392
WKMZ and Minister for Home Affairs	[2019] AATA 4381

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		



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