



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.

Aviation

[McClymont and Civil Aviation Safety Authority](#) [2019] AATA 5429 (17 December 2019); Ms DK Grigg, Member

CIVIL AVIATION – conditional Class 2 Medical Certificate – medical standards – glaucoma condition – examination of medical evidence – applicant does not meet the relevant medical standard – likelihood of risk to air navigation safety – whether any safety relevant conditions can be imposed on the licence – decision of the respondent affirmed

Child Support

[SHYH and Child Support Registrar](#) (Child support second review) [2019] AATA 5454 (17 December 2019); Mr W Frost, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – date of effect of decision of Social Services and Child Support Division – application to Social Services and Child Support Division lodged out of time – whether there are special circumstances for the late filing of an application to the Social Services and Child Support Division – where there are no special circumstances – where there was an error as to the date an application was received – decision under review varied with respect to date of effect – decision under review otherwise affirmed

Citizenship

[Cangmah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2019] AATA 5406 (13 December 2019); Mr R Maguire, Member

CITIZENSHIP – citizenship by conferral – Australian Citizenship Act 2007 (Cth) – section 24(3) – whether Tribunal satisfied of identity – section 21(2)(h) – whether applicant is of good character – decision under review affirmed

Compensation

[Jamieson and Comcare](#) (Compensation) [2019] AATA 5424 (17 December 2019); Mr S Webb, Member

COMPENSATION – accepted injury – compensation claim for incapacity – meaning of ‘incapacitated for work as a result of an injury’ – causes of incapacity under claim – nature of ‘injury’ and contributory causes – aggravation of adjustment disorder significantly contributed to by employment – ‘disease’ – latent personality trait triggered by employment circumstances – increased susceptibility – increased susceptibility not a disorder or an impairment but a persisting symptom of ‘disease’ – subsequent exposure to perceived stressor triggered recurrence of symptoms causing incapacity – recurrence causally related to accepted ‘injury’ – incapacity for work – causal nexus between incapacity and injury established – decision set aside and substituted

[Mustica and Comcare](#) (Compensation) [2019] AATA 5426 (17 December 2019); Senior Member DJ Morris

COMPENSATION – injury sustained while employee running for bus – whether injury arises out of, or in the course of, employment – injury occurs after employee has completed work for the day and is travelling home – employee was travelling to use staff car park – authorised to use car park – car park not in control of employer – what is a reasonable causal connexion in terms of an injury sustained incidental to employment – decision under review set aside and new decision substituted that injury arose out of employment

[Priestly and Comcare](#) (Compensation) [2019] AATA 5456 (18 December 2019); Mr M Hyman, Member

WORKERS’ COMPENSATION – acute injury to the back – development of chronic pain syndrome – development of secondary psychological condition – whether applicant continues to suffer from the conditions – whether the conditions continue to be caused by employment – whether applicant is “genuine” in reporting symptoms – reasonable medical treatment – incapacity – decision under review set aside and substituted

PRACTICE AND PROCEDURE – whether surveillance material should be admitted – where no notice of surveillance material given to tribunal or applicant prior to the hearing – weight to be given to material if admitted

[Waldron and Comcare](#) (Compensation) [2019] AATA 5455 (18 December 2019); Deputy President J Sosso

COMPENSATION – Where lump sum redemption has been paid under section 30 of the Safety, Rehabilitation and Compensation Act 1988 – Where applicant seeks compensation under section 31 – Whether applicant must be totally incapacitated for suitable employment – Where index injury exacerbated by later employment – Whether compensation payable under section 31 in such circumstances – Decision under review affirmed

[Watterson and Visionstream Pty Ltd](#) (Compensation) [2019] AATA 5457 (18 December 2019); Mr A Ward, Member and Professor D Ben-Tovim, Member

COMPENSATION – workplace injury – exposure to radiation – whether claimed condition arose out of or in the course of employment – liability denied – Safety, Rehabilitation and Compensation Act – decisions under review affirmed

Migration

[Asomua and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2019] AATA 5425 (17 December 2019); Senior Member The Hon. Matthew Groom

MIGRATION – mandatory cancellation of visa under section 501CA – property offences – offences against the person – breaches of apprehended violence order – whether mandatory cancellation should be revoked – Ministerial Direction 79 – primary considerations – other considerations – decision affirmed

[Hughes and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2019] AATA 5427 (17 December 2019); Brigadier AG Warner, Member

MIGRATION – Section 501 visa refusal – sentenced to a term of imprisonment of 12 months or more – whether visa applicant passes character test – whether there is another reason the Tribunal should exercise its discretion to grant the visa – application of Direction No. 79 – weighing of primary and other considerations – protection of Australian community – expectations of the Australian community – impact on family members – decision under review set aside and remitted

[Kura and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2019] AATA 5428 (17 December 2019); Senior Member R Pintos-Lopez

MIGRATION – mandatory cancellation of visa under s 501(3A) of Migration Act – Class TY Special Category (Subclass 444) Temporary visa – failure to pass the character test – whether there is another reason why the cancellation decision should be revoked – Ministerial Direction No. 79 applied – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – time in Australia before offending commenced – other considerations – reviewable decision affirmed – other considerations – strength, nature and duration of ties to Australia – impact on family members – extent of impediments if removed – reviewable decision affirmed

[Uolilo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2019] AATA 5411 (16 December 2019); Deputy President The Hon. J Pascoe AC CVO

MIGRATION – refusal to grant Partner (Migrant) (Class BC) visa – where applicant does not meet character test due to a substantial criminal record – where applicant did not complete his term of imprisonment in Samoa – where applicant did not disclose his criminal record to Australian authorities – whether discretion under section 501(1) of the Act should be exercised to refuse the visa – consideration of Direction no. 79 – protection of the Australian community – expectations of the Australian community – best interests of minor children – other considerations – decision affirmed

National Disability Insurance Scheme

[Bouteris and National Disability Insurance Agency](#) [2019] AATA 5401 (10 December 2019); Dr L

Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – application to dismiss application for review – no reasonable prospects of success – access – age requirements – applicant 70 years old when access request made – whether the applicant meets the access requirements – whether the applicant meets the age requirements – Tribunal has no discretion under the legislation – application dismissed

Practice and Procedure

[Jones and Comcare](#) (Compensation) [2019] AATA 5407 (10 December 2019); Deputy President SA Forgie

PRACTICE AND PROCEDURE – summons – objection to summons – whether summons have the possibility of relevance – fishing expedition – no adjectival relevance – summons set aside

Social Services

[Brodka and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5179 (2 December 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – debt – alleged overpayment of Newstart allowance – whether applicant was a member of a couple – where applicant had sworn affidavit in other proceedings stating that she was member of a couple – nature of relationship – financial aspects of relationship – other factors – decision affirmed

[Hamdan and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5452 (18 December 2019); Mr M Hyman, Member

SOCIAL SECURITY – disability support pension – spinal condition – sinus condition – whether conditions fully diagnosed, fully treated and fully stabilised – decision under review affirmed

[Henry and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4775 (11 December 2019); Ms M East, Member

SOCIAL SECURITY – Family Tax Benefit (FTB) – lodgement of tax return not within time – special circumstances – entitlement to FTB top-up – decision affirmed

[Ivanova and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5423 (26 November 2019); Senior Member Dr D Cremean

SOCIAL SECURITY – age pension – portability – Australian Working Life Residence – absence greater than 26 weeks – decision affirmed

[Penderetskyy and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5178 (2 December 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – debt – alleged overpayment of Newstart allowance – whether applicant was a member of a couple – where applicant had sworn affidavit in other proceedings stating that he was member of a couple – nature of relationship – financial aspects of relationship – other factors – decision affirmed

[Perry and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5405 (16 December 2019); Ms D Mitchell, 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

[Wood and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5404 (13 December 2019); Mr G Hallwood, Member

SOCIAL SECURITY – Austudy – Overpayment debt – Right to recovery – Should debt be written off or waived – Where Applicant enrolled in a Diploma but never progressed in that course – Where Applicant knowingly failed to comply with reporting obligations – Decision under review affirmed

[Xanh and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5451 (18 December 2019); Senior Member Emeritus Professor PA Fairall

SOCIAL SECURITY – disability support pension – whether a member of a couple – s4 Social Security Act 1991 (Cth) – parties legally married – period of cohabitation – whether sole administrative error – special circumstances – decision set aside and remitted

Taxation

[Jarvis-Lavery and Commissioner of Taxation](#) (Taxation) [2019] AATA 5409 (13 December 2019); Deputy President BJ McCabe and Senior Member RJ Olding and PW Ranson

TAXATION – income tax – Goods and Services Tax (GST) – input tax credits – creditable acquisitions – administrative penalties – whether the assessments were excessive – whether the Applicant discharged the burden of proof – 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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Manikantan v Secretary, Department of Jobs and Small Business

[\[2018\] AATA 685](#)

[\[2019\] FCA 2103](#)

PKBV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

[\[2019\] AATA 683](#)

[\[2019\] FCA 2047](#)

Singleton v Comcare

[\[2018\] AATA 4088](#)

[\[2019\] FCA 2104](#)



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