



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 2/2019

14 January 2019

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

[Ahamod and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 7 (8 January 2019); Senior Member BJ Illingworth

CITIZENSHIP – application for citizenship by conferral – application for citizenship refused – whether Tribunal satisfied as to identity – inconsistency in evidence – credibility - threshold requirement not met – decision under review affirmed

[Hammoud and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4752 (11 December 2018); Senior Member K Raif

CITIZENSHIP – application for Australian citizenship by conferral – permanent resident – refusal of citizenship – good character – criminal conviction – domestic violence – application of Citizenship Policy – decision affirmed

[Kazemy and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4728 (14 November 2018); Mrs JC Kelly, Senior Member

CITIZENSHIP – refusal of citizenship – delegate not satisfied that Applicant was of good character as required by section 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – Applicant convicted of “behave in offensive manner in a public place or school” – Applicant's oral evidence inconsistent with contemporaneous police evidence - Tribunal affirms reviewable decision

[Kola and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 9 (9 January 2019); Mr A Maryniak QC, Member

CITIZENSHIP – failure of character test – property offences – drug offences – dishonesty offences – decision affirmed

Compensation

[Fiddian and Comcare](#) (Compensation) [2019] AATA 10 (8 January 2019); Senior Member L Kirk

WORKER'S COMPENSATION – ailment or aggravation of ailment – adjustment disorder with anxiety and depressed mood – whether the Applicant's employment contributed to her ailment to a significant degree – scope of wilful and false representation that an applicant did not previously suffer from a disease – whether nexus between representation and disease the subject of the claim can be established – whether previous representations wilful or false – whether the Applicant's employment contributed to a significant degree to her ongoing ailment – contribution to ailment from rehabilitation process found to be related to the Applicant's employment – decisions set aside

[Muir and Comcare](#) (Compensation) [2019] AATA 13 (9 January 2019); M Hyman, Member

COMPENSATION – osteoarthritis of the foot joints following ankle arthrodesis – whether massage is reasonable medical treatment – whether massage delivered in relation to the compensable condition – whether reasonable in the circumstances – pain relief – availability of alternatives – where applicant sensitive or allergic to opiates used in surgery – decision under review affirmed

[Yasmin and Comcare](#) (Compensation) [2019] AATA 15 (10 January 2019); Dr I Alexander, Member

COMPENSATION – injury – ailment -whether the applicant continued to suffer the effects of the accepted injury – whether applicant is entitled to compensation – s 16 and s 19 Safety, Rehabilitation and Compensation Act 1988 (Cth) – repetitive strain injury – chiari malformation and cervico-thoracic syrinx – compensable injury- affirmed

Freedom of Information

[Francis and Australian Sports Anti-Doping Authority](#) (Freedom of information) [2019] AATA 12 (4 January 2019); Deputy President J Sosso

FREEDOM OF INFORMATION – anti-doping testing of Essendon AFL players’ – dates of testing of six identified Essendon AFL players’ - release of information opposed by Australian Sports Anti-Doping Authority and the AFL – whether disclosure of information would found an action for breach of confidence – s 45 of FOI Act – decision affirmed but for different reasons

Migration

[VFQY and Minister for Home Affairs](#) (Migration) [2019] AATA 11 (9 January 2019); Mr A Maryniak QC, Member

MIGRATION – mandatory cancellation of applicant's visa under s 501(3A) – applicant concedes he does not pass the character test – substantial criminal record – applicant sentenced to more than 12 months imprisonment – whether discretion to revoke mandatory cancellation should be exercised – protection of the Australian community – risk of reoffending – expectations of the Australian community – significant and positive family ties to Australia – extent of impediments if removed to the United Kingdom – decision set aside and substituted

National Disability Insurance Scheme

[Ewin and National Disability Insurance Agency](#) [2018] AATA 4726 (21 December 2018); K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – statement of participant supports – participant has incomplete paraplegia – participant able to drive independently – participant claims funding for costs of travel using his own car for specified travel – public transport on some routes unavailable, inaccessible or impractical – whether supports are day-to-day living costs – whether additional living costs of travel arise solely and directly as a result of disability needs – support that is reasonable to expect participant’s wife or other persons to provide – overarching objectives to maximise the participant’s independence – whether supports represent value for money – consideration of comparable supports – whether support is most appropriately funded under NDIS – intersection with supports to be provided by employer – whether employer should provide comparable support under its flexible workplace or inclusion policies or under relevant anti-discrimination legislation – quantification of travel costs – reviewable decision set aside and substituted with decision of Tribunal

JURISDICTION - participant’s first NDIS plan succeeded by three successive plans – whether effect of decision should be limited to coverage of travel during period of first plan only – whether effect of decision will cover period or periods of successive plans – whether effect of decision covers future period – powers of the Tribunal upon review – new plan comes into effect if Tribunal sets aside decision of reviewer and substitutes it for a decision to set aside the NDIA delegate’s decision to approve the original statement of supports and substitutes it for a decision to approve a new statement of supports

[McFarlane and National Disability Insurance Agency](#) [2018] AATA 4727 (17 December 2018); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – whether applicant meets access criteria – fibromyalgia – chronic pain syndrome – whether applicant meets the disability requirements – whether applicant meets the early intervention requirements – meaning of disability – whether applicant’s impairments permanent – whether impairments result in substantially reduced functional capacity in one or more activities – whether applicant’s impairments affect capacity for social or economic participation – whether applicant likely to require support under the NDIS for his lifetime – benefit of early intervention support – whether support most appropriately funded or provided through NDIS – decision under review affirmed

Practice and Procedure

[Al Ghban; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 8 (8 January 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – Social services second review – decision to set aside the decision under review - application for a stay of decision – stay refused

[Australian International College Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4753 (23 November 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – decision to cancel Applicant's registration – consequences for applicant – financial viability – stay granted with conditions – application for confidentiality order – proceedings should be open and available to public – cancellation decision published on ASQA's website – application for confidentiality order refused

[Australian Vocational Learning Centre Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4725 (21 December 2018); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – request for variation stay order by consent – decision under review to cancel registration – factors to be considered in deciding whether vary conditions of stay order – stay refused

[Davey and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 16 (11 January 2019); Ms S Taglieri SC, Member

PRACTICE AND PROCEDURE – application for extension of time – principles relevant to the grant of an extension of time – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[Whelan and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 6 (9 January 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time – delay of 11 years in lodging application - explanation for delay – whether Applicant rested on her rights - where prejudice would be incurred by respondent and public by allowing extension of time – merits of substantive application – extension of time refused

Social Security

[Cunningham and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5 (7 January 2019); Deputy President J Sosso

SOCIAL SECURITY – disability support pension – Impairment Tables – where Applicant has several conditions – whether conditions are fully diagnosed, treated and stabilised – whether conditions meet requirements for 20 points under the Impairment Tables – decision under review affirmed

[GWML and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4769 (12 November 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – Newstart allowance – application for benefit – whether ordinary waiting period should be waived – whether applicant subject to liquid assets waiting period – severe financial hardship – decision under review affirmed

[Le and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4 (7 January 2019); Deputy President J Sosso

SOCIAL SECURITY – disability support pension – Impairment Tables – where Applicant has several conditions – whether conditions are fully diagnosed, treated and stabilised – whether conditions meet requirements for 20 points under the Impairment Tables – decision under review affirmed

[Morgan and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 17 (10 January 2019); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – cancellation – mental health condition – osteoarthritis of cervical spine condition – lower limb condition - whether impairments are of 20 points or more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

[Swan and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4768 (28 November 2018); Deputy President AG Melick AO SC

SOCIAL SECURITY – claim for disability support pension – whether physical, intellectual or psychiatric impairments – whether fully diagnosed, treated and stabilised – whether impairments attract 20 points or more – decision under review affirmed

[Thurling and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3 (4 January 2019); D K Grigg, Member

SOCIAL SECURITY – Newstart allowance – overpayment – where applicant did not notify of change of circumstances – where no administrative error – where no special circumstances – whether cost effective to recover the debt – whether debt should be written off for a period - decision under review set aside

Taxation

[HKYB and Commissioner of Taxation](#) (Taxation) [2018] AATA 4770 (31 October 2018); The Hon Justice JA Logan RFD, Deputy President and Deputy President BJ McCabe

TAXATION – Goods and Services Tax – taxable supplies – operation of brothel by taxpayer – whether separate supplies of sexual service by sex worker and room hire by brothel operator – payment in gross by client to brothel operator of fully inclusive price and without prior notice of any separate allocation – A New Tax System (Goods and Services Tax) 1999 (Cth), s 9-5. HELD - Single supply of sexual service by brothel operator in its room

TAXATION – shortfall penalties on Goods and Services Tax net amounts – whether conduct of taxpayer and its tax agent resulting in shortfall a failure to take reasonable care or reckless – incongruity between taxpayer’s aspirational business model and its implementation leading to making of single rather than separate supplies – absence of gross indifference to taxation consequences – Taxation Administration Act 1953 (Cth), Sch 1, ss 284-75, 284-80 and 284-90. HELD – failure to align implementation with aspirational business model and related Goods and Services Tax shortfall consequence the result of a failure to take reasonable care by taxpayer and its agent

TAXATION – Pay As You Go remission obligations – operation of brothel – failure by operator to seek Australian Business Number or tax invoices – penalty for failure to withhold PAYG amounts – whether operator obliged to withhold amounts – Taxation Administration Act 1953 (Cth), Sch 1, ss 12-190, 16-30. HELD – operator obliged to withhold amounts and liable to administrative penalties

[Qian and Commissioner of Taxation](#) (Taxation) [2019] AATA 14 (9 January 2019); Mr PW Taylor SC, Senior Member

TAXATION – review of objection decision – eligibility for GST registration – whether Applicant an employee or independent contractor – employment characterisation – “labour hire” arrangement – significant degree of control practical not contractual – significant piece of equipment provided by Applicant – relevance of self-characterisation by parties of relationship – objection decision set aside

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
EE&C Pty Ltd as Trustee for the Tarcisio Cremasco Family Trust and Commissioner of Taxation	[2018] AATA 4093
Karan and Minister for Home Affairs	[2018] AATA 4480

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		

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 **commence on 28 January 2019**:

Chondromalacia patella (Reasonable Hypothesis) – No. 1 of 2019

<https://www.legislation.gov.au/Details/F2018L01834>

Chondromalacia patella (Balance of Probabilities) – No. 2 of 2019

<https://www.legislation.gov.au/Details/F2018L01836>

Dupuytren Disease (Balance of Probabilities) – No. 10 of 2019

<https://www.legislation.gov.au/Details/F2019L00008>

Dupuytren Disease (Reasonable Hypothesis) – No. 9 of 2019

<https://www.legislation.gov.au/Details/F2019L00007>

Human immunodeficiency virus infection (Reasonable Hypothesis) – No. 5 of 2019

<https://www.legislation.gov.au/Details/F2018L01841>

Human immunodeficiency virus infection - (Balance of Probabilities) – No. 6 of 2019

<https://www.legislation.gov.au/Details/F2018L01842>

Hypopituitarism (Reasonable Hypothesis) – No. 11 of 2019

<https://www.legislation.gov.au/Details/F2019L00009>

Hypopituitarism (Balance of Probabilities) – No. 12 of 2019

<https://www.legislation.gov.au/Details/F2019L00012>

Internal derangement of the knee (Reasonable Hypothesis) – No. 7 of 2019

<https://www.legislation.gov.au/Details/F2018L01843>

Internal derangement of the knee (Balance of Probabilities) – No. 8 of 2019

<https://www.legislation.gov.au/Details/F2018L01844>

Iliotibial band syndrome (Reasonable Hypothesis) – No. 3 of 2019

<https://www.legislation.gov.au/Details/F2018L01838>

Iliotibial band syndrome (Balance of Probabilities) – No. 4 of 2019

<https://www.legislation.gov.au/Details/F2018L01839>

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 28 January 2019**:

Sarcoidosis (Balance of Probabilities) – No. 14 of 2019

<https://www.legislation.gov.au/Details/F2019L00004>

Sarcoidosis (Reasonable Hypothesis) – No. 13 of 2019

<https://www.legislation.gov.au/Details/F2019L00003>

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 28 January 2019**:

Chondromalacia patella – No. 79 of 2010

<https://www.legislation.gov.au/Details/F2010L02318>

Chondromalacia patella – No. 80 of 2010

<https://www.legislation.gov.au/Details/F2010L02319>

Dupuytren disease – No. 58 of 2010

<https://www.legislation.gov.au/Details/F2010L01671>

Dupuytren disease – No. 57 of 2010

<https://www.legislation.gov.au/Details/F2010L01676>

Human immunodeficiency virus – No. 5 of 2010

<https://www.legislation.gov.au/Details/F2010L00012>

Human immunodeficiency virus – No. 6 of 2010

<https://www.legislation.gov.au/Details/F2010L00013>

Hypopituitarism – No. 76 of 2009

<https://www.legislation.gov.au/Details/F2013C00177>

Hypopituitarism – No. 77 of 2009

<https://www.legislation.gov.au/Details/F2013C00178>

Iliotibial band syndrome – No. 34 of 2010

<https://www.legislation.gov.au/Details/F2010L01050>

Iliotibial band syndrome – No. 35 of 2010

<https://www.legislation.gov.au/Details/F2010L01051>

Internal derangement of the knee – No. 51 of 2010

<https://www.legislation.gov.au/Details/F2010L01664>

Internal derangement of the knee – No. 52 of 2010

<https://www.legislation.gov.au/Details/F2010L01665>



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