



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 3/2019**

**21 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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Citizenship .....	3
Compensation.....	3
Customs .....	3
Migration.....	3
National Disability Insurance Scheme.....	4
Practice and Procedure.....	5
Social Security .....	5
<b>Appeals.....</b>	<b>6</b>
Appeals lodged .....	6
Appeals finalised.....	6

# 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

[Chan and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 21 (16 January 2019); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship refused – whether applicant had a parent who was an Australian citizen – decision under review set aside and remitted to the respondent

## Compensation

[Uijland and Comcare](#) (Compensation) [2019] AATA 19 (14 January 2019); Deputy President G Humphries

COMPENSATION – normal weekly earnings (NWE) – whether public holiday penalty rate should be included in the calculation of NWE – whether public holiday penalty rate is included in the definition of “A” in s 8(1) of the Safety, Rehabilitation and Compensation Act 1988 – public holiday penalty rate falls outside the meaning of “A” – decision remitted

## Customs

[Church & Dwight \(Australia\) Pty Ltd and Comptroller-General of Customs](#) [2019] AATA 29 (17 January 2019); Deputy President Rayment QC

CUSTOMS – classification of goods – Curash baby wipes – whether goods impregnated with detergent for the purposes of the Customs Tariff Act 1995 (Cth) – whether goods are medicaments and intended for therapeutic or prophylactic use – statutory construction – ordinary meaning of “detergent” applied – decision under review affirmed

## Migration

[BNN and Minister for Home Affairs](#) (Migration) [2019] AATA 27 (14 January 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – Refugee visa – where visa was cancelled under s 501(3A) because Applicant did not pass the character test and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 65 – decision under review affirmed

[GKKS and Minister for Home Affairs](#) (Migration) [2019] AATA 34 (15 January 2019); Senior Member B Stefaniak AM RFD

MIGRATION – mandatory visa cancellation – Refugee visa – failure to pass character test – substantial criminal record – Ministerial Direction no. 65 applied – whether another reason why cancellation decision should be revoked – protection of the Australian community – community expectation – Australian ties – Interim Domestic Violence Order – decision set aside and substituted – Bridging visa – alleged sexual assault – risk of engaging in criminal conduct in Australia

[Letchford and Minister for Home Affairs](#) (Migration) [2019] AATA 26 (14 January 2019); Senior Member DJ Morris

MIGRATION – visa applicant – applicant fails character test under s 501(1) of Migration Act – sexual offending – other offending – discretion exercised on previous occasion to revoke mandatory cancellation of visa – subsequent offending – consideration of ministerial Direction – decision affirmed

[PBPZ and Minister for Home Affairs](#) (Migration) [2019] AATA 18 (14 January 2019); Senior Member R Cameron

MIGRATION – Mandatory cancellation of visa – Whether the mandatory cancellation should be revoked – Consideration of Ministerial Direction no. 65 – Decision set aside and remitted

[Sadruga and Minister for Home Affairs](#) (Migration) [2019] AATA 4787 (14 January 2019); Senior Member A Nikolic AM CSC

MIGRATION – visa refusal – failure to pass the character test – criminal history between 1995 and 2017 – convictions for violent offences – prolonged immigration misconduct – Protection of the Australian Community and Expectations of the Australian community outweigh other considerations weighing in favour of visa approval – decision affirmed

## **National Disability Insurance Scheme**

[Schwass and National Disability Insurance Agency](#) [2019] AATA 28 (17 January 2019); Deputy President G Humphries

NATIONAL DISABILITY INSURANCE AGENCY – access criteria set out in ss 21-25 of the National Disability Insurance Scheme Act 2013 (the Act) – whether morbid obesity is an impairment for the purposes of the Act – whether morbid obesity and osteoarthritis are permanent or likely to be permanent – impairment generally implies a loss of, or damage to, a physical, sensory or mental function – morbid obesity not an impairment – morbid obesity and osteoarthritis not permanent – access criteria not met – reviewable decision affirmed.

## Practice and Procedure

[Erhardt and Australian Securities and Investments Commission](#) [2018] AATA 4785 (21 December 2018); Mr A Maryniak QC, Member

PRACTICE AND PROCEDURE – application for extension of time to apply for review – delay of one month in lodging application – whether reasonable excuse for delay – whether reasonable in all the circumstances to extend time – insufficient evidence to explain delay in lodging application for review – insufficient evidence to explain delay in lodging application for extension of time – application for extension of time dismissed

[Marku and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 20 (14 January 2019); Senior Member BJ Illingworth

PRACTICE AND PROCEDURE – Jurisdiction – Scope of review – Collateral attack – Whether the Tribunal has the power to impugn the identities of the Applicants – Whether Tribunal bound to accept the Applicants' identities – Whether decisions obtained by fraud are not decisions made in the true exercise of the power – Whether the issue of identity is dispositive of the proceedings – Whether there is risk of fragmentation – Whether the issue raised should be reserved for the substantive hearing – Tribunal declines to decide the issue raised

## Social Security

[Bee and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 25 (16 January 2019); Senior Member P Clauson

SOCIAL SECURITY – Disability Support Pension – spinal condition – fibromyalgia condition – mental health condition – inflammatory bowel disease – haemorrhoids condition – whether impairments are of 20 points or more under the Impairment Tables – decision under review affirmed

[Mlinarevic and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 22 (11 January 2019); C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – liver – diabetes and hypertension – thrombophlebitis – spine – knee – impairment tables – continuing inability to work rating – no participation in program of support – decision under review affirmed

[RJZQ and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 23 (15 January 2019); C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – chronic renal failure – past thyroid cancer – heart disease – epilepsy – depression – gout – hypertension – shingles – qualification period – impairment tables – 10 month program of support – decision under review affirmed

[Woolterton and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 24 (15 January 2019); C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – widespread osteoarthritis – groin pain – shoulder pain – elbow pain – qualification period – fully diagnosed – not fully treated and stabilised – impairment tables – no participation in program of support – 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, 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
<b>Kassem and Minister for Home Affairs</b>	<a href="#">[2018] AATA 4383</a>

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>CVN17 v Minister for Immigration and Border Protection</b>	<a href="#">[2017] AATA 228</a>	<a href="#">[2019] FCA 13</a>

---



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).