



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, 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

[Omara and Minister for Home Affairs](#) (Citizenship) [2019] AATA 42 (23 January 2019); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship – where applicant subject of good behaviour bond – Minister prohibited from approving citizenship application – inappropriate to adjourn matter until expiry of bond – no reasonable prospect of success – application dismissed

[Dang and Minister for Home Affairs](#) (Citizenship) [2019] AATA 32 (17 January 2019); Senior Member K Raif

CITIZENSHIP – eligibility – application for Australian citizenship by conferral – permanent resident – refusal of citizenship – unlawful non-citizen for a period of almost twelve years – whether the applicant is of good character – application unable to satisfy good character requirement – decision under review is affirmed

Compensation

[Goldfinch and K & S Freighters Pty Limited](#) (Compensation) [2019] AATA 33 (18 January 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time – Applicant failed to act within the time granted to him by the Tribunal in primary extension of time application – second extension of time application lodged – explanation for delay – whether Applicant rested on rights – where prejudice would be incurred by respondent and public by allowing extension of time – merits of substantive application – extension of time refused

[Wragg and Cleanaway Operations Pty Ltd](#) (Compensation) [2019] AATA 43 (23 January 2019); Senior Member A Poljak

COMPENSATION – workers compensation – elbow injury – section 16 – claim for medical treatment – surgery – whether reasonable in the circumstances – prospect surgery will increase applicant's range of motion and reduce pain – decision under review set aside and substituted – section 19 – incapacity for work – whether applicant fit to perform pre-injury duties – no corroborative evidence of incapacity – decision under review affirmed

Customs

[Woolworths Group Limited and Comptroller-General of Customs](#) [2019] AATA 62 (23 January 2019); Deputy President BJ McCabe

CUSTOMS AND EXISE – classification of goods – cider – definition of cider – whether caramelisation changes apple juice into something different - decision set aside and substituted

Industrial Law

[Roberts and Secretary, Department of Jobs and Small Business](#) [2019] AATA 64 (22 January 2019); Dr M Evans, Senior Member

EMPLOYMENT ENTITLEMENTS – Claim for an advance under Fair Entitlements Guarantee Act 2012 – Whether Applicant an employee or a independent contractor – Unpaid remuneration due to insolvency event – Reasonable steps before the insolvency event – Decision under review set aside

Migration

[MNLR and Minister for Home Affairs](#) (Migration) [2019] AATA 61 (25 January 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of Global Special Humanitarian visa (class XB sub-class 202) – expedited matter – where visa was cancelled under s 501(3A) – applicant does not pass character test – 12 month imprisonment – whether discretion in s 501CA to revoke mandatory cancellation should be exercised – considerations in Direction No 65 – consideration in Direction No 75 – applicant committed serious sexual offence – decision under review affirmed

[NSBB and Minister for Home Affairs](#) (Migration) [2019] AATA 59 (23 January 2019); Ms K Parker, Member

MIGRATION – applicant moved to Australia at the age of 21 and adopted false identity – obtained Australian passport on four occasions using false identity – remained in Australia unlawfully – married Fijian citizen using false identity – Fijian wife moved to Australia using applicant's false identity, took up residence and became Australian citizen – applicant and wife raised two children in Australia now aged 17 and 26 – use of false identity discovered by authorities 28 years after applicant's arrival in Australia – applicant convicted of four federal offences – applicant received a suspended four-month imprisonment term for each offence – whether there is a risk that the applicant will engage in criminal conduct in Australia – no history of other criminal offending – consideration of mitigating circumstances – protection of the Australian community – whether Australian community would expect refusal of visa application– best interests of applicant's daughter who is a minor – impact on family members – applicant's wife has health issues – applicant employed and paid taxes during majority of life in Australia and has not caused personal harm to others – decision set aside

[Sam and Minister for Home Affairs](#) (Migration) [2019] AATA 35 (18 January 2019); Deputy President J W Constance

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – drug trafficking – whether the discretion to revoke the cancellation should be exercised – Direction No. 65 – primary considerations – protection of the Australian community from criminal or other serious conduct – nature and seriousness of conduct – risk to the Australian community – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties to Australia – impediments if removed from Australia – decision set aside

[WSML and Minister for Home Affairs](#) (Migration) [2019] AATA 41 (22 January 2019); Dr M Evans, Senior Member

MIGRATION – cancellation of visa – Applicant concedes he does not pass the character test – substantial criminal record – domestic violence – driving and traffic offences – Applicant living offence free in community for approximately three years and five months – Direction no. 65 – primary and other considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – nature and seriousness of criminal offending – risk of engaging in future criminal conduct – strength, nature and duration of ties to Australia – Applicant of Australian Aboriginal descent – Applicant also of Maori descent – extent of impediments if returned to New Zealand – effect of permanent cancellation of the Applicant's visa – decision under review set aside and a new decision made in substitution for the decision so set aside

Passport

[Singh and Minister for Foreign Affairs](#) [2019] AATA 36 (18 January 2019); Deputy President J W Constance

PASSPORTS – review of decision to cancel passport – whether the discretion to cancel the passport is to be exercised – report of passport as lost or stolen – whether passport was lost or stolen – decision set aside

Practice and Procedure

[MXYY and Comcare](#) (Compensation) [2019] AATA 40 (22 January 2019); Mr M Hyman, Member

PRACTICE AND PROCEDURE – application for dismissal – rehabilitation under the Safety, Rehabilitation and Compensation Act 1988 – closure of rehabilitation program and replacement with a new program – whether a determination under subsection 37(1) relates to a general or specific rehabilitation requirement – rehabilitation determination is for a specific program tailored to the individual – closure of program leaves no decision to be reviewed – application for review dismissed

[Nakad and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 39 (22 January 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time – explanation for delay – whether Applicant rested on 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

[DQJZ and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 30 (18 January 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – impairment – whether disability is fully diagnosed, treated and fully stabilised – whether applicant’s impairments attract 20 points or more under the Impairment Tables – mental illness – physical ailments – fibromyalgia – decision of the Social Security and Child Support Division is affirmed

[Elgar and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 60 (24 January 2019); Ms D K Grigg, Member

SOCIAL SECURITY – Carer Payment – whether satisfied qualification criteria – whether applicant providing “constant care” – decision under review affirmed

[Ponchard and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 58 (24 January 2019); Professor R McCallum AO, Member

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – spinal condition – mental health condition – carpal tunnel syndrome – skin condition and allergies – whether impairments fully diagnosed, treated and stabilised in the claim period – whether applicant’s impairments attract 20 points or more under the Impairment Tables during the relevant period – decision affirmed

[Saad and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 31 (18 January 2019); Senior Member C Puplick AM

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

[Tran and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 57 (25 January 2019); Senior Member C Puplick AM,

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – right hip arthrodesis – right shoulder deformity – hip and knee osteoarthritis – diabetes – anxiety – insomnia, hypercholesterolaemia and hypertension – whether applicant’s condition attracted 20 points or more under the Impairment Tables during the relevant period – decision affirmed

Taxation

[JBKR and Commissioner of Taxation](#) (Taxation) [2019] AATA 38 (18 January 2019); Ms D K Grigg, Member

TAX – whether default income tax assessment is excessive – decision under review affirmed

Veterans' Affairs

[Ralph and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 44 (23 January 2019);
Deputy President Boyle

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – posttraumatic stress disorder – ischaemic heart disease – whether Applicant suffers from PTSDel – whether defence service caused injury or disease – no causal relationship with defence service – reasonable satisfaction – overboard accident – discrepancies in versions of evidence between witnesses – 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
Hutchinson and Secretary, Department of Social Services	[2018] AATA 4673
Waraich and Minister for Immigration and Border Protection	[2018] AATA 4524

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Carlos v Secretary, Department of Social Services	[2017] AATA 1453	[2019] FCA 21



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