



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 6/2019

11 February 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.

Contents

AAT Recent Decisions	3
Child Support.....	3
Citizenship.....	3
Compensation	3
Corporations.....	4
Elections.....	4
Industrial Law	5
Migration.....	5
National Disability Insurance Scheme	6
Practice and Procedure.....	7
Social Security.....	8
Veterans' Affairs	8
Appeals	9
Appeals lodged.....	9
Appeals finalised	9

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.

Child Support

[NHVK and Secretary, Department of Social Services](#) (Child support second review) [2019] AATA 78 (4 February 2019); C Edwardes, Member

SOCIAL SECURITY - child support – percentage of care – no court orders - flexible arrangements – revocation of existing care percentage determination - texts between parties – usual care – AAT1 decision substitutes decision of registrar - decision affirmed

Citizenship

[Jaber and Minister for Home Affairs](#) (Citizenship) [2019] AATA 92 (6 February 2019); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – number of opportunities to sit standard test – refusal to grant Australian citizenship under statute – affirmed

[Syrett and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 107 (7 February 2019); Senior Member T Tavoularis

CITIZENSHIP – residency requirements – whether Applicant resided in Australia for four years prior to his application for citizenship – whether Applicant resided in Australia as a permanent resident for the 12 months prior to his application for citizenship - whether Applicant satisfies the special residence requirements for citizenship in circumstances where Applicant was required by work to fly in and out of Australia to work on a liquefied natural gas project – decision under review affirmed

[TWWH and Minister for Home Affairs](#) (Citizenship) [2018] AATA 4877 (21 December 2018); Senior Member R Cameron

CITIZENSHIP – application for Australian citizenship by descent – citizenship applicant born outside Australia – whether the citizenship applicant had an Australian citizen parent at the time of birth – meaning of parent – decision set aside and remitted for reconsideration

Compensation

[Donohue and Comcare](#) (Compensation) [2019] AATA 101 (7 February 2019); Senior Member L Kirk

WORKER'S COMPENSATION – whether the Applicant's claimed condition is an injury or disease – distinction between 'injury simpliciter' and disease – whether claimed condition is a 'sudden and ascertainable or dramatic physiological change or disturbance of the normal physiological state' – whether the Applicant's employment contributed to the disease to a significant degree – contribution of other factors to the claimed condition – decision under review affirmed

Corporations

[Campbell and Australian Securities and Investments Commission](#) [2019] AATA 110 (8 February 2019); Deputy President BW Rayment OAM QC

CORPORATIONS LAW – ten year banning order – whether conduct misleading or deceptive or likely to mislead or deceive – whether banning order an appropriate sanction – factors to be taken into account when imposing a banning order – duration of banning order – deterrence – likelihood of applicants engaging in further misconduct – impact on employer and clients – decision under review is set aside and varied – applicants banned under s 920A of the Corporations Act 2001 for a period of 18 months

[S & A Chalhoub Nominees Pty Ltd and Australian Securities and Investments Commission](#) [2019] AATA 80 (4 February 2019); Deputy President BJ McCabe and Senior Member The Hon. M Groom

CORPORATIONS - refusal to issue an Australian Financial Services Licence - whether the applicant will contravene the obligations under s 912A of the Corporations Act - Regulatory Guides - failure to meet requirements - professional indemnity insurance requirements - training requirements for responsible managers - efficiently, honestly and fairly requirement - decision affirmed
CORPORATIONS - refusal to issue an Australian Financial Services Licence - whether the applicant will contravene the obligations under s 912A of the Corporations Act - Regulatory Guides - failure to meet requirements - professional indemnity insurance requirements - training requirements for responsible managers - efficiently, honestly and fairly requirement - decision affirmed

[Superannuation Warehouse Australia Pty Ltd and Australian Securities and Investments Commission](#) [2019] AATA 88 (31 January 2019); Deputy President SA Forgie

PRACTICE AND PROCEDURE – application to re-open a hearing after decision reserved – principle of finality of litigation – consideration of procedural fairness – where no onus or burden of proof – duty to reach correct or preferable decision – application to have hearing re-opened granted

CORPORATIONS – application for Australian financial services licence – where applicant contravened provisions of the Australian Securities and Investments Act 2001 – where Responsible Manager and sole director found to be in breach of obligations – reason to believe applicant likely to contravene obligations that will apply under s 912A of the Corporations Act 2001 if licence granted – decision affirmed

Elections

[Watson and Australian Electoral Commission](#) [2018] AATA 4914 (20 December 2018); Deputy President Justice A Robertson, Senior Member R Pintos-Lopez and Senior Member R Cameron

ELECTIONS – whether the application by the Australia First Party (NSW) Incorporated to enter in the Register of Political Parties the logo set out in its application should be granted – Commonwealth Electoral Act 1918 (Cth) s 129A – logo including the Eureka flag – whether, in the Tribunal's opinion, the applicant's logo is the logo of any other person – whether, in the Tribunal's opinion, the applicant's logo so nearly resembles the logo of any other person that it is likely to be confused with or mistaken for that logo

Industrial Law

[Warren and Secretary, Department of Jobs and Small Business](#) [2019] AATA 95 (31 January 2019); Deputy President BW Rayment OAM QC

EMPLOYMENT ENTITLEMENTS – whether casual loading payments advanced to the applicant during course of employment can be offset against National Employment Standards – contract of employment purported to provide for casual employment – applicant employed on a full-time permanent basis → whether applicant entitled to annual leave, payment in lieu of notice and redundancy pay upon termination of employment – inconsistency between contract of employment and the provisions of the Fair Work Act including the National Employment Standards and the Black Coal Mining Industry Award – contract of employment denied applicant entitlements under legislation and the model award – decision under review set aside and remitted for reconsideration

Migration

[CZCV and Minister for Home Affairs](#) (Migration) [2019] AATA 91 (6 February 2019); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister to refuse application for a Class XA, Subclass 866 Protection visa – failure to pass character test – offence of sexually penetrated a child over 13 and under 16 years – Ministerial Direction no. 65 – primary and other considerations – international non-refoulement obligations – protection of the Australian community – best interests of minor children – expectations of the Australian community – Australia’s non-refoulement obligations breached if returned to Zimbabwe – whether expert is independent – content of briefing letters and documentation given to expert – weight to be given to expert report – operation of two day rule – best interests of Applicant’s nephew mentioned in closing submissions only – interpretation of Direction no. 65 – weight to be given to the primary and other considerations decision under review affirmed

[JPGY and Minister for Home Affairs](#) (Migration) [2019] AATA 86 (5 February 2019); Senior Member DJ Morris

MIGRATION – cancellation of visa – pleas of guilty – conviction for sexually based offences – consideration of character test – consideration of ministerial Direction No. 65 – primary considerations – other considerations – other relevant matters – decision under review affirmed

[LQZW and Minister for Home Affairs](#) (Migration) [2019] AATA 93 (6 February 2019); Deputy President Boyle

MIGRATION – decision not to revoke mandatory cancellation of visa – character test – substantial criminal record – Ministerial Direction no. 65 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – impact on victims – extent of impediments if removed – decision under review affirmed

[Muyobe and Minister for Home Affairs](#) (Migration) [2019] AATA 108 (25 January 2019); Deputy President SA Forgie

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – decision set aside.

PRACTICE AND PROCEDURE – section 500(6H) – limits imposed by requirement that information be previously set out in a written statement on information that may be presented orally – nature of a written statement – whether statement of facts, issues and contentions is a written statement – whether all information must be identified in written statement – whether extends to submissions made in support of applicant’s case – limits apply only to information given orally in support of applicant’s case and not to information given in response to questions on behalf of Minister or Tribunal

[NFLL and Department of Home Affairs](#) (Migration) [2019] AATA 85 (5 February 2019); Senior Member C Puplick AM

MIGRATION – BB subclass 155 Five Year Resident Return visa – mandatory cancellation – non-revocation – failure to pass the character test – Ministerial Direction No 65 – criminal convictions – reckless grievous bodily harm – protection of the Australian community – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – strength, nature and duration of ties – impact on Australian business interests – impact on victims – extent of impediments if removed – decision set aside

[Pohahau and Minister for Home Affairs](#) (Migration) [2019] AATA 106 (8 February 2019); Senior Member M Griffin QC

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – mandatory cancellation – failure to pass character test – Ministerial Direction No 65 – frequency of reoffending – cumulative effect of repeated offending – unacceptable risk of reoffending – strength, nature and duration of ties to Australia – extent of impediment if removed – best interest of minor children – decision affirmed

[Zaia and Minister for Home Affairs](#) (Migration) [2019] AATA 87 (4 February 2019); Senior Member A Poljak

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – Direction No. 65 – protection of Australian community – seriousness and nature of the relevant conduct – offending very serious in nature – risk conduct may be repeated – real risk of re-offending – best interests of minor children – expectations of Australian community – decision affirmed

National Disability Insurance Scheme

[Milburn and National Disability Insurance Agency](#) [2018] AATA 4928 (20 December 2018); Deputy President JW Constance

NATIONAL DISABILITY INSURANCE SCHEME – whether supports are reasonable and necessary – transport and associated carer services – singing lessons – transport and accommodation to visit family – remedial massage – bifocal glasses with prism lenses – specially compounded prescription medicine – Turner Syndrome – Borderline Personality Disorder – fibromyalgia – arthritis – macular degeneration – decision set aside

Practice and Procedure

[Azzopardi and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 105 (8 February 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application for confidentiality order – Tribunal is not satisfied that there are cogent reasons to grant order – request for confidentiality order declined by the Tribunal

[Dean and Comcare](#) (Compensation) [2019] AATA 99 (7 February 2019); M Hyman, Member

PRACTICE AND PROCEDURE – workers' compensation – access to documents returned under summons – medical evidence - relevant principles – where diagnosis of the accepted injury is challenged by Comcare – privacy – objection to access to documents disallowed

[Elite Academy Australia Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 79 (5 February 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – decision to cancel registration – prospects of success – consequences for Applicant – public interest – consequences for parties – whether review would be rendered nugatory – stay application refused

[Lee and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 84 (5 February 2019); Senior Member L Kirk

PRACTICE AND PROCEDURE – application for confidentiality order by applicant – suppression of name of applicant – applicant concerned about personal and professional reputation – the Tribunal is not satisfied that there are cogent reasons to depart from the norm of the publicity of Tribunal proceedings in the circumstances of this case – request for proposed confidentiality order declined by the Tribunal

[Productivity Partners Pty Ltd and Australian Skills Quality Authority](#) [2018] AATA 4878 (21 December 2018); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – application to vacate the hearing and for matter to be held in abeyance – where Applicant is also subject to civil penalty proceedings in the Federal Court – relevant considerations – penalty privilege – interests of justice – hearings vacated

[Richmond and Comcare](#) (Compensation) [2019] AATA 100 (1 February 2019); M Hyman, Member

PRACTICE AND PROCEDURE – release of documents from the implied undertaking – proposed use of expert reports created for a workers' compensation claim in a separate claim - whether information provided to doctors in an examination required under section 57 of the Safety, Rehabilitation and Compensation Act 1988 is provided under compulsion - whether reports covered by the implied undertaking – whether release from the implied undertaking is required for the use proposed – whether release should be granted – release granted

Social Security

[Greyson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 82 (4 February 2019); C Edwardes, Member

SOCIAL SECURITY – age pension asset test – value of applicants' assets – whether applicant to be attributed with assets of private companies and trusts – role of applicants in running of companies – attribution percentage – control test – decision affirmed

[Pocock and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 81 (1 February 2019); 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

[Robinson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 98 (6 February 2019); Senior Member N Manetta

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – medical conditions not fully diagnosed, treated and stabilised during the assessment period – decision under review affirmed

[Tydd and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 89 (5 February 2019); DK Grigg, Member

SOCIAL SECURITY – Newstart allowance – overpayment – where applicant did not advise Centrelink of income – income reassessment - where no administrative error – where no special circumstances – decision under review affirmed

Veterans' Affairs

[Thompson and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 83 (1 February 2019); Deputy President The Hon. D Cowdroy OAM QC

VETERANS' ENTITLEMENTS – application for pension at intermediate rate – application for pension at special rate – whether injury or disease was war-caused – cervical spondylosis – rotator cuff syndrome – 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
Harvey and Minister for Home Affairs	[2018] AATA 3962

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Tran v Singh	[2016] AATA 550	[2019] FCA 70 [2018] FCA 1512
Ayache v Minister for Home Affairs	[2018] AATA 310	[2019] FCA 80
Anees v Minister for Immigration and Border Protection	[2018] AATA 1855	[2019] FCA 84
Romanov v Minister for Home Affairs	[2018] AATA 937	[2019] FCAFC 13 [2018] FCA 1494



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.

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](#).