



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

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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 Division; 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](mailto:aatweb@aat.gov.au).

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# Recent developments

## New and Updated Practice Directions and Policies

The AAT has made a New Practice Direction and Guide for the new Small Business Taxation Division which commenced on 1 March 2019:

- [Review of Small Business Taxation Decisions Practice Direction](#)
- [Guide to the Small Business Taxation Division](#)

The AAT has also updated the following Practice Directions and Policies to include provision for the Small Business Taxation Division:

- [Allocation of Business to Divisions of the AAT President's Direction](#)
- [Giving Documents or Things to the AAT Practice Direction](#)
- [General Practice Direction](#)
- [Publication of Decisions Policy](#)

The Allocation of Business to Divisions of the AAT President's Direction also includes changes to allow Customs and Research and Development decisions to be managed in the AAT's Taxation and Commercial Division.

# 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

[Leggett and Child Support Registrar](#) (Child support) [2019] AATA 230 (22 February 2019); C Edwardes, Member

CHILD SUPPORT – child support debt – departure prohibition order (DPO) issued to Applicant – refusal by Respondent to allow Applicant to depart Australia to visit mother-in-law – decision under review affirmed

## Citizenship

[Anderson and Minister for Home Affairs](#) (Citizenship) [2019] AATA 229 (25 February 2019); Professor R McCallum AO, Member

CITIZENSHIP – application for Australian citizenship by descent – refusal of citizenship – whether the applicant is of good character – providing false or misleading information – applicant holds a New Zealand citizenship – adoption – biological parents – deportation – use of fraudulent passport – member of a life and motorcycle club – subclass 444 temporary visa – enduring moral qualities – supply of amphetamine – indigenous ancestry – imprisonment – conviction – possession and cultivation of cannabis – visa cancellation – burglary – decision remitted

[Butrus and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 239 (28 February 2019); Senior Member C Puplick AM

CITIZENSHIP – citizenship test exemption – whether the applicant suffered from a permanent or enduring physical or mental incapacity – evidence of mental incapacity – tribunal not satisfied that there is evidence of mental incapacity – decision affirmed

[Hamdan and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 228 (25 February 2019); Dr L Bygrave, Member

CITIZENSHIP – application for citizenship by conferral – whether the Applicant satisfies the general eligibility requirements for Australian Citizenship – the Tribunal has no discretion to consider the Applicant's circumstances or reasons for not successfully completing the citizenship test – the decision under review is affirmed

[QSNT and Minister for Home Affairs](#) (Citizenship) [2019] AATA 248 (22 February 2019); C Edwardes, Member

CITIZENSHIP - Myanmar refugee - application for citizenship refused – no birth certificate – born in rural village - whether Tribunal satisfied of identity – consideration of country information – identity satisfied

[Ranasinghe and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 227 (20 February 2019); Deputy President Boyle

CITIZENSHIP – Australian Citizenship Act 2007 (Cth) – whether the applicant meets the special residence requirement – s 22B(1)(b) – whether the applicant was engaged in that kind of work for a total of at least two years during the period of four years immediately before the day the person made the application – “that kind of work” – decision under review affirmed

[Taleb and Minister for Home Affairs](#) (Citizenship) [2019] AATA 244 (28 February 2019); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship by conferral – return resident – unable to satisfy general residency requirement – overseas absences – ministerial discretion sought to consider administrative error – processing time – decision affirmed

## Compensation

[Boggs and Comcare](#) (Compensation) [2019] AATA 221 (22 February 2019); Deputy President J Sosso

WORKERS' COMPENSATION – Compensation – Commonwealth employees – injury and impairment – disease – ailment – contributed to, “to a significant degree” – liability accepted for initial physical injury – whether initial physical injury has resolved – whether subsequent claim for related physical injury is open to applicant - liability denied for subsequent claimed mental injury – whether a separate injury – decisions under review affirmed

[Kucharski and Comcare](#) (Compensation) [2019] AATA 265 (25 February 2019); DK Grigg, Member

COMPENSATION — employees - whether applicant continues to suffer effects of compensable injury – whether permanent impairment - decision under review affirmed

## Migration

[Carter and Minister for Home Affairs](#) (Migration) [2019] AATA 242 (27 February 2019); Deputy President The Hon. D Cowdroy OAM QC

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – Direction No. 65 – best interests of minor children – other considerations – strength, nature and duration of ties to Australia – impact on family members – extent of impediments if removed – impact on victims – protection of Australian community – expectations of Australian community – unacceptable risk of harm – decision affirmed

[CCYW and Minister for Home Affairs](#) (Migration) [2019] AATA 241 (27 February 2019); T Eteuati, Member

MIGRATION – mandatory cancellation of applicant's visa under s 501(3A) – Applicant failed to pass the character test - whether there is another reason why cancellation decision should be revoked - application of Direction No. 65 – decision affirmed

[DGBK and Minister for Home Affairs](#) (Migration) [2019] AATA 243 (27 February 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Afghanistan – Class XA Subclass 866 Protection visa – sexually-based offences against multiple minor children – failure to pass good character test – Ministerial Direction No. 65 applied – decision affirmed

[NDDG and Minister for Home Affairs](#) (Migration) [2019] AATA 250 (27 February 2019); Senior Member L Kirk

MIGRATION – Absorbed Persons visa – mandatory cancellation – failure to pass character test – Ministerial Direction No 65 – sustained pattern of offending – violent offences – multiple terms of imprisonment – risk to the Australian community – expectations of Australian community – strength, nature and duration of ties to Australia – strength, nature and duration of ties to Australia – extent of impediment if removed – best interest of minor children – decision affirmed

[RZSN and Minister for Home Affairs](#) (Migration) [2019] AATA 240 (27 February 2019); R West, Member

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of the child – expectations of the Australian community – other considerations – decision under review affirmed.

[Te Oka and Minister for Home Affairs](#) (Migration) [2019] AATA 245 (27 February 2019); Deputy President The Hon. D Cowdroy OAM QC

MIGRATION – mandatory cancellation of visa – failure to pass character test – criminal record – 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 – decision affirmed

[WKGJ and Minister for Home Affairs](#) (Migration) [2019] AATA 247 (26 February 2019); Senior Member T Tavoularis

MIGRATION – Refusal to grant a visa – Applicant is a citizen of Iran – Applicant applied for a Bridging visa – s 501 character test applied – Applicant does not pass character test in s 501(6) Migration Act 1958 (Cth) - whether discretion to refuse visa should be exercised – considerations in Direction No. 65 – whether considerations weigh in favour of refusing visa – decision under review affirmed

[ZGWQ and Minister for Home Affairs](#) (Migration) [2019] AATA 264 (1 March 2019); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of visa – failure to pass character test – criminal record – whether the discretion to revoke the cancellation should be exercised – Direction No. 79 – 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 – decision affirmed

## Practice and Procedure

[Andrew and National Disability Insurance Agency](#) [2019] AATA 249 (6 February 2019); Mrs JC Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant’s request to become plan nominee and correspondence nominee refused – internal review not conducted - no internal reviewable decision before the Tribunal – application dismissed

[Australian Trade Training and Assessment Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 231 (25 January 2019); Ms A Burke AO, Member

PRACTICE AND PROCEDURE – application to Stay decision of Australian Skills Quality Authority – decision to cancel registration – whether remedial action taken – prospects of success – consequences for Applicant – public interest – whether review would be rendered nugatory – public interest best served by not allowing the Applicant to continue to operate – Stay application refused

[Binno and Comcare](#) (Compensation) [2019] AATA 237 (27 February 2019); Senior Member C Puplick AM

COMCARE – Extension of time applications – whether acceptable explanation of the delay – whether extension fair and equitable in the circumstances – whether applicant rested on their rights – prejudice to the respondent caused by the delay – prejudice suffered by general public - merits of substantial application – considerations of fairness as between the applicant and other persons – extension of time application refused

[Senanayake and Migration Agents Registration Authority](#) (Migration) [2019] AATA 225 (22 February 2019); Deputy President The Hon. D Cowdroy OAM QC

PRACTICE AND PROCEDURE – application to set aside summons – substantive proceedings concern decision to cancel applicant’s registration as a migration agent – purpose of summons is to impugn the credit of a witness – whether legitimate purpose – witness credibility is a fact in issue – summons upheld

## Social Security

[BVSC and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 235 (28 February 2019); Ms A Burke, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – mental health condition, lumber spine condition, cervical spine condition, bilateral shoulder condition and left elbow pain – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review set aside and substituted

[Camilleri and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 236 (27 February 2019); Senior Member C Puplick AM

SOCIAL SECURITY - lump sum compensation payment - compensation affected rate of payment – age pension - preclusion period - debt to commonwealth - administrative error - payments received in good faith - special circumstances – decision affirmed

[Clemente; Secretary, Department of Social Services and](#) (Social services second review) [2019]  
AATA 263 (16 January 2019); Senior Member BJ Illingworth

SOCIAL SECURITY – Overseas portability of social security payments – Respondent receiving Carer Payment and Carer Allowance – Portability period – Respite period – Whether portability period should be extended – Definition of ‘family member’ – Whether Respondent’s uncle a ‘family member’ as defined by the Act – Whether Respondent unable to return to Australia – Whether Respondent intended to return within the portability period – decision under review set aside

[Fisher and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 234 (28 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

[Hardman and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 220 (22 February 2019); C Edwardes, Member

SOCIAL SECURITY – paid parenting payments – debt incurred – partner’s annual fortnightly income – recovery of debt – waiver of debt - sole administrative error – capacity to pay - decision affirmed

[Jarrett and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 232 (27 February 2019); Senior Member C Puplick AM

SOCIAL SECURITY – age pension – application for payment – eligibility – whether Applicant an Australian resident – intention to reside in Australia – frequency and duration of travel outside Australia – family relationship and ties – nature of Applicant’s accommodation – business, financial and employment ties – nature and extent of Australian assets – decision under review affirmed

[Onody and Secretary, Department of Social Services](#) (Social services second review) [2018]  
AATA 4990 (21 December 2018); G Hallwood, Member

SOCIAL SECURITY – Pensions, benefits and allowances – Family Tax Benefit – Tax return lodged out of time by accountant – Whether special circumstances exist – Whether special circumstances prevented lodgement – Decision under review is affirmed

[Whitby and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 246 (26 February 2019); Dr I Alexander, Member

SOCIAL SECURITY – age pension – debt – assets test – whether testamentary trust established on the date the testator passed away – date a testamentary trust becomes a trust for the purposes of Part 3.18 of the Act – where no proprietary interest in un-administered estate – testamentary trust arises upon administration – testamentary trust a trust for the purposes of the means/assets test upon administration – no reportable change in financial circumstances – failure of Centrelink to act on provided information – sole administrative error – decision set aside

[Wright and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 219 (22 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.



## Taxation

[Keys and Commissioner of Taxation](#) (Taxation) [2019] AATA 238 (27 February 2019); Deputy President Boyle

TAXATION – income tax assessment objection – whether payments to the applicant are assessable income for the years ended 30 June 2012, 2013 and 2014 – whether payments made to the applicant under workers’ compensation law are loans – recovery of damages paid to reimburse workers’ compensation payments made not repayment of a loan – Income Tax Assessment Act 1997 (Cth) – s 59-30(3) – whether the lump sum damages awarded to the applicant represent compensation or damages for a wrong or an injury the applicant suffered in his occupation – decision under review is affirmed

[Linfox Australia Pty Ltd and Commissioner of Taxation](#) (Taxation) [2019] AATA 222 (22 February 2019); Deputy President Justice J Jagot

TAXATION – fuel tax credits – whether use of fuel for travelling on toll roads answers description of fuel “to use, in a vehicle, for travelling on a public road” – whether use of fuel in powering air conditioning answers description of fuel “to use, in a vehicle, for travelling on a public road” – whether fuel tax credit “taken into account” in assessment of net fuel amount – whether objection stated in sufficient detail – decision under review should be 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

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CASE NAME	AAT REFERENCE
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<b>Rye and Comcare</b>	<a href="#">[2018] AATA 4658</a>
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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
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<b>None finalised</b>		
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