



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, Small Business Taxation, 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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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, Small Business Taxation, 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

[Dostkam and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2019] AATA 5627 (28 November 2019); Senior Member L Kirk

REFUSAL OF CITIZENSHIP – application for Australian citizenship – citizenship test – general eligibility – exemption from citizenship test – permanent or enduring physical or mental incapacity – validity of citizenship application – jurisdiction – decision set aside and substituted

[Kamran and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2020] AATA 7 (6 January 2020); A Burke AO, Member

CITIZENSHIP – whether applicant met the general residence requirement at the time she applied for Australian citizenship – Australian spouse and children – close and continuing relationship with Australia - should ministerial discretion be exercised – decision under review affirmed

[Rezaee and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2019] AATA 5606 (24 December 2019); Senior Member B J Illingworth

CITIZENSHIP – applications for citizenship by conferral – applications for citizenship refused – whether Tribunal is satisfied as to identity – inconsistency in evidence – different dates of birth – credibility – identity - whether Applicants of good character – decision under review set aside and remitted

Compensation

[David and Comcare](#) (Compensation) [2019] AATA 5490 (19 December 2019); Senior Member M J McGrowdie

Workers Compensation — Whether fracture in right foot in January 2003 – delayed diagnosis of fracture – whether aggravation of Charcot's Foot with history of diabetes – liability to pay compensation – decision set aside and substituted

Migration

[Bulivesi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2019] AATA 3 (3 January 2019); Senior Member L Kirk

MIGRATION – non-revocation of mandatory cancellation – where Applicant does not pass the character test – serial domestic violence offender – whether there is another reason to revoke the cancellation of the Applicant's visa – application of Ministerial Direction 79 – decision under review affirmed

Dunkley and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 4 (6 January 2020); Senior Member B J Illingworth

MIGRATION – refusal to grant a visa – visitor visa – s 501 character test applied – whether discretion to refuse visa should be exercised – considerations in Direction 79 – whether consideration weigh in favour of refusing visa – decision under review set aside and remitted

Gubbay and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2019] AATA 5608 (24 December 2019); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of Applicant's visa – Applicant has substantial criminal record – domestic violence offences - whether discretion to revoke mandatory cancellation should be exercised – primary considerations - other considerations – decision under review set aside

NKHH and Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs

(Migration) [2019] AATA 5626 (23 December 2019); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of applicant's Class XB Subclass 202 Global Special Humanitarian visa – citizen of Sudan – Applicant has substantial criminal record – failure to pass character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations: non-refoulement obligations – decision under review affirmed

SBTY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2019] AATA 5609 (6 December 2019); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa under section 501CA – multiple breaches of family violence intervention order – whether mandatory cancellation should be revoked – Ministerial Direction 79 – primary considerations – other considerations – decision under review set aside and substituted

TNKG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 10 (9 January 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – review of decision to not revoke mandatory cancellation of visa under Migration Act – where applicant does not pass the character test – whether there is another reason why the mandatory cancellation should be revoked – consideration of Direction no. 79 – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – where applicant has been found to be owed protection obligations – international non-refoulement obligations – decision set aside and substituted

TYXB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 9 (7 January 2020); Dr M Evans, Senior Member

MIGRATION – refusal to grant a protection visa – Applicant has been convicted by a final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – seriousness and nature of the crimes committed – length of sentences imposed – whether any mitigating or aggravating circumstances – extent of the criminal history – nature of the prior crimes – risk of reoffending and recidivism and the likelihood of relapsing into crime – the criminal record as a whole – prospects of rehabilitation – decision under review affirmed

Practice and Procedure

[Armitage and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5659 (13 November 2019); Mr S Evans, Member

PRACTICE AND PROCEDURE – extension of time to lodge application for review – principles to be applied – no reasonable prospects of success – extension of time not granted

[Khor and Tax Practitioners Board](#) (Taxation) [2019] AATA 5635 (2 December 2019); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – decision to terminate tax agent registration for failing to comply with taxation laws in personal affairs – impacts on the applicant – impacts on third parties – stay necessary to be able to continue to pay off debt – no payment plan – applicant's history of non-compliance with repayments – no confidence in repayments if stay granted – public interest – whether the public interest is affected by the lack of commitment to comply with taxation laws – stay refused

[Morrow and Commissioner of Taxation](#) (Taxation) [2019] AATA 5524 (10 December 2019); Deputy President B J McCabe and Ms R Arends, Member

PRACTICE AND PROCEDURE – extension of time application – jurisdiction – futility of granting an extension of time – prospects of success of the substantive application – power of the Tribunal – Tribunal operating in the shoes of the original decision-maker – extension of time refused

[Nikolov and Comcare](#) (Compensation) [2019] AATA 5638 (3 December 2019); Senior Member R Cameron

PRACTICE AND PROCEDURE – workers' compensation – psychological injury depression – respondent neither favoured nor opposed application – no grounds of opposition – serious mental health conditions – application reinstated

[Polymath Investors Proprietary Limited and Australian Securities & Investments Commission](#) [2019] AATA 5628 (19 December 2019); Mr P W Taylor SC, Senior Member

PRACTICE AND PROCEDURE – summons to give evidence – objection to summons – Tribunal's discretionary powers to issue or refuse summons – s 40A of the Administrative Appeals Tribunal Act 1975 (Cth) – ASIC Industry Funding Levy – whether exceptional circumstances justify waiver of two levy components – managed investment scheme – s 258(1) of the Legal Profession Uniform Law (NSW) – summons refused

[Rob and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1 (2 January 2020); R West, Member

CITIZENSHIP - Citizenship by conferral – citizenship test – refusal for failure to complete – application for review – failure to attend hearing – dismissal under s 42A(2)(a) AAT Act – application for reinstatement – factors to consider – reinstatement refused.

Sports Anti-doping

[Smith and Anti-Doping Rule Violation Panel](#) [2019] AATA 5489 (19 December 2019); Deputy President J W Constance and Mr R Reitano, Member

SPORT — anti-doping — review of decisions of the Anti-Doping Rule Violation Panel to make assertions of possible use of a prohibited substance and possible presence of prohibited substances in relation to the Applicant — LGD-4033 and its metabolite Di hydroxy LGD-4033 — consideration of the application of the NAD Scheme to the Applicant — whether the Applicant was, at the relevant time, "a person who competes in sport" — where athletics is a sport having an anti-doping policy — where Applicant had not competed in any event for approximately eighteen months prior to March 2018 — where Applicant retired from the sport of athletics immediately after event in March 2018 — where urine sample collected from Applicant in May 2018 — Applicant not a person to whom the NAD Scheme, at the relevant time, applied — consideration of legality of sample collection — decisions under review set aside and substituted for decisions not to make any assertion in relation to the Applicant

Social Services

[Amin Zada and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5403 (21 November 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – rejection – physical and mental conditions – whether applicant has an impairment rating of 20 points or more according to the Impairment Tables Determination – whether the applicant has a continuing inability to work – where impairments not rated at 20 points or more under the Impairment Tables Determination – decision affirmed

[CJCY and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5636 (13 December 2019); Ms A Burke AO, Member

SOCIAL SECURITY – DSP - overpayment receiving single rate when partnered – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – special circumstances – back payment of rental assistance - rental assistance not payable for rent outside of Australia - failure to advise Centrelink of change of circumstances – decision affirmed – decision set aside and remitted

[Executor of the Estate of the late Seth Taulaga and Secretary Department of Social Services](#) (Social services second review) [2019] AATA 5408 (14 November 2019); D K Grigg, Member

SOCIAL SECURITY – compensation preclusion payment – calculation of preclusion period – whether preclusion period should be reflective of economic loss claim – whether the discretion under section 1184K of the Social Security Act 1991 (Cth) should be exercised to treat the lump sum compensation payment as not having been made on the grounds of special circumstances - decision under review set aside on grounds of special circumstances – appropriate case for the discretion to be exercised

[FXMM and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 5488 (19 December 2019); Emeritus Professor PA Fairall, Senior Member

SOCIAL SECURITY – disability support pension – whether impairments fully diagnosed, treated and stabilised – whether the applicant has an impairment rating of 20 or more points according to the Impairment Tables – whether the applicant has a continuing inability to work – depression – anxiety – PTSD – peripheral neuropathy – spinal condition – Still's disease – obstructive sleep apnoea – decision set aside and remitted

[Hassan and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 6 (6 January 2020); R West, Member

SOCIAL SECURITY – Disability support pension – cancellation of benefit – right tennis elbow, right shoulder and neck pain – chronic ongoing severe painful ulceration, cellulitis, osteomyelitis left leg – severe impairment – continuing inability to work – definition of “work” that was in force prior to 1 July 2006 – decision set aside

[Hurst and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2 (3 January 2020); Mr I Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances, claim for disability support pension rejected – whether conditions were fully diagnosed, treated and stabilised, severe impairment – decision under review set aside and substituted

[Keefe and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 5 (3 January 2020); The Hon. S Parry, Member

SOCIAL SECURITY – disability support pension – eligibility – whether applicant is qualified to be paid disability support pension – whether applicant has a continuing inability to work – whether the applicant's impairments were fully diagnosed, treated and stabilised – whether the applicant's impairments attract 20 points or more under the Impairments Table – Decision under review affirmed

[McPherson and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 12 (10 January 2020); Mr S Evans, Member

SOCIAL SECURITY – Newstart Allowance – where Applicant's contact details failed to update on online application – whether Applicant was notified that Newstart Allowance was granted – whether Applicant was notified that Newstart Allowance was cancelled – where Applicant elected to receive Centrelink Online Letters – date of effect of favourable determination resulting from review – s 109(2) – decision under review affirmed

[Mitchell and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 13 (9 January 2020); 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

[Morrow and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 8 (2 January 2020); M Hyman, Member

SOCIAL SECURITY – disability support pension – cancellation - spinal condition – bilateral ankle injuries – mental health – fixed flexion finger deformity – whether conditions fully diagnosed, fully treated and fully stabilised – assignment of ratings – unhelpful report from general practitioner - decision under review affirmed

[Nedeljkovic and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5639 (11 December 2019); Dr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension— whether decision under review should be affirmed — termination of hearing by Applicant — decision affirmed

[Sisalem and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 11 (8 January 2020); Senior Member R Cameron

SOCIAL SECURITY – disability support pension – whether qualified – whether entitled to unlimited portability - impairment tables – conditions fully diagnosed – conditions not fully treated and stabilised during qualification period – decision affirmed

Trade and commerce

[Two Feet and a Heartbeat Pty Ltd and Australian Trade and Investment Commission](#) [2019] AATA 5607 (24 December 2019); Deputy President Boyle

TRADE AND FOREIGN MARKETS – Export Market Development Grant – continuation of a business – jurisdiction of the Tribunal – relevant test under s 94(1) – purchase of business – Ministerial Guidelines – Administrative Guidelines - whether applicant carrying out business that is same or similar to previous business – decision set aside and remitted

Taxation

[The Trustee for the Whitby Trust and Commissioner of Taxation](#) (Taxation) [2019] AATA 5637 (23 December 2019); Deputy President F D O’Loughlin QC

TAXATION – distribution of trust assets – disclaimer of legal interests in trusts - whether disclaimer was effective – entitlement to income through a trust – whether the Tribunal is able to amend the grounds of objection – decisions affirmed

Veterans' Affairs

[Shambler and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 5491 (19 December 2019); Dr D H Katter, Senior Member

VETERANS' AFFAIRS – widow's pension – whether death of veteran defence-caused – material – decision 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, Small Business Taxation, 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
Bernard and Minister for Immigration and Border Protection	[2017] AATA 597
Chandra and Minister for Home Affairs	[2019] AATA 4894
Makarov and Minister for Home Affairs	[2019] AATA 5161
Mundele and Minister for Home Affairs	[2019] AATA 4968
Shillingford and Comcare	[2019] AATA 4972

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Eichmann	[2019] AATA 162	[2019] FCA 2155
Karabolovska v Comcare	[2019] AATA 1346	[2019] FCA 2153
Matthews v Minister for Home Affairs	[2018] AATA 1849	[2019] FCA 2184
MDXJ v Secretary, Department of Social Services	[2019] AATA 177	[2019] FCA 2163
XMBQ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 785	[2019] FCA 2134
Umi v Minister for Home Affairs	[2019] AATA 2316	[2019] FCA 2148

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 27 January 2020:

Kaposi sarcoma (Balance of Probabilities) – No. 2 of 2020

<https://www.legislation.gov.au/Details/F2019L01691>

Kaposi sarcoma (Reasonable Hypothesis) – No. 1 of 2020

<https://www.legislation.gov.au/Details/F2019L01689>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on 27 January 2020:

Kaposi's sarcoma – No. 10 of 2011

<https://www.legislation.gov.au/Details/F2010L03267>

Kaposi's sarcoma – No. 9 of 2011

<https://www.legislation.gov.au/Details/F2010L03266>



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