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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.

Contents

AAT Recent Decisions	3
Child Support	3
Citizenship	4
Compensation.....	4
Migration.....	4
National Disability Insurance Scheme.....	6
Practice and Procedure.....	6
Refugee.....	7
Social Security	8
Taxation.....	9
Veterans' Affairs.....	9
Appeals.....	10
Appeals lodged	10
Appeals finalised.....	10
Statements of Principles	11
New Statements of Principles.....	11
Amended Statements of Principles.....	13
Statements of Principles to be revoked.....	13

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

[Cowell and Child Support Registrar](#) (Child support) [2019] AATA 262 (7 January 2019); W Budiselik, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the cost percentages – discretion exercised to revoke existing percentage of care determinations and make new determinations – decision under review affirmed

[Langer and Clayton](#) (Child support) [2019] AATA 259 (8 January 2019); P Noonan, Member

CHILD SUPPORT – departure determination – special needs of the child – cost of maintaining the child is significantly affected – financial resources of both parents – decision under review set aside and substituted

[Cowie and Brelsford](#) (Child support) [2019] AATA 258 (11 January 2019); K Millar, Member

CHILD SUPPORT – departure determination – costs of education – manner expected by both parents – cost of maintaining the children are significantly affected – costs relating to special needs of the child – financial resources of both parents – decision to make a departure determination – decision under review set aside and substituted

[Lunn and Lunn](#) (Child support) [2019] AATA 261 (14 January 2019); R Ellis, Senior Member

CHILD SUPPORT – non-agency payment – whether payment made to a third party in lieu of child support – intention of both parents – decision under review set aside and substituted

[Metcalf and Slocombe](#) (Child support) [2019] AATA 260 (15 January 2019); Y Webb, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made - decision under review set aside and substituted

CHILD SUPPORT – date of effect of objection decision – whether there special circumstances that prevented the objection being lodged in time – special circumstances exist – decision under review set aside and substituted

Citizenship

[Kadir Muhamad and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 351 (8 March 2109); C Puplick AM, Senior Member

CITIZENSHIP – citizenship test exemption – whether the applicant suffered from a permanent or enduring physical or mental incapacity – decision affirmed

Compensation

[Tregar and Australian National University](#) (Compensation) [2019] AATA 316 (1 March 2109); Deputy President A G Melick AO SC

COMPENSATION – Whether the Applicant was incapacitated for performing his substantive role as Head of the School of Music (SoM) as at 26 June 2015 and to the date of his separation on 30 August 2015 – whether the Applicant remained incapacitated for the role as Head of the SoM beyond his separation from the ANU on 30 August 2015 – Applicant did not make an absolute recovery from his ‘adjustment reaction with mixed emotional features’ – whether it was reasonable within the meaning of s 19(4)(f) of the Safety Rehabilitation and Compensation Act 1988 (the Act) for the Applicant not to continue in the role of the Head of the SoM – whether the Applicant was ever offered the position to be created and called the Director of Music and, if so, whether it was reasonable within the meaning of s 19(4)(f) of the Act for the Applicant not to accept that role – Applicant entitled for incapacity payments in accordance with s 19(2) of the Act – reviewable decision set aside and remitted

Migration

[Barron and Minister for Home Affairs](#) (Migration) [2019] AATA 315 (4 March 2019); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision under review affirmed

[CJQP and Minister for Home Affairs](#) (Migration) [2019] AATA 332 (5 March 2019); Senior Member T Tavoularis

MIGRATION - non-revocation of mandatory cancellation of Class BB Subclass 155 Five Year Resident Return visa – 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 79 – consideration in Direction No 75 – decision under review affirmed

[Davids](#) (Migration) [2019] AATA 280 (16 January 2019); J Clarke, Member

MIGRATION – Child (Residence) (Class BT) – Subclass 802 (Child) – applicant over 18 – adopted by paternal grandparents – former carer died – financially supported by adoptive parents – credible witnesses – ministerial intervention referral – decision under review affirmed

[FGHG and Minister for Home Affairs](#) (Migration) [2019] AATA 329 (6 March 2019); Mr A Maryniak QC, Member

MIGRATION – mandatory cancellation of a Class UK Subclass 820 Partner (Temporary) visa – applicant concedes he does not pass the character test – serious and violent criminal offence – Ministerial Direction no. 79 – primary and other considerations – whether mandatory cancellation should be revoked – protection of the Australian community – low risk of violent recidivism – best interests of minor children – expectations of the Australian community – weight to be given to the primary and other considerations – decision under review revoked

[Igbolekwu](#) (Migration) [2019] AATA 327 (13 February 2019); Deputy President J Redfern (Presiding) and C Huntly, Member

MIGRATION – Student (Temporary) (Class TU) Subclass 500 visa – cancellation under s.116(1)(g) of the Migration Act 1958 – whether the prescribed ground in r.2.43(1)(o) of the Migration Regulations 1994 applies – visa cancelled following investigation into the circumstances surrounding the grant – consideration of the expressions ‘reasonably suspects’, ‘as a result of’ and ‘fraudulent conduct’ – insufficient evidence of a causal connection between the fraudulent conduct and the granting of the visa – ground for cancellation not established – decision set aside and substituted

[Moustafa](#) (Migration) [2019] AATA 267 (15 January 2019); H Claringbold, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) – Subclass 300 (Prospective Marriage) – Tribunal notified of marriage – taken to have applied for other partner visas – decision under review remitted for reconsideration

[Ocares Rojas](#) (Migration) [2019] AATA 191 (18 January 2019); M Bishop, Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 500 (Student) – genuine temporary entrant – sequential and continuing course enrolment – good academic progress – course valuable to career progression – compliance with visa conditions – family and community ties with Chile – decision under review remitted for reconsideration

[VJSG and Minister for Home Affairs](#) (Migration) [2019] AATA 345 (25 January 2019); Deputy President P Britten-Jones

IMMIGRATION – Mandatory cancellation of visa – Request for revocation of cancellation – Character test – Substantial criminal record over long period – Sentence of imprisonment of 12 months or more – Protection of the Australian community – Best interests of minor children – Expectations of the Australian community – Domestic violence – Other considerations – Strong ties to Australia – Warning given as to consequences of re-offending – Decision under review affirmed.

[VPKY and Minister for Home Affairs](#) (Migration) [2019] AATA 352 (8 March 2019); The Hon M Groom, Senior Member

MIGRATION – substantial criminal record - drug trafficking - mandatory cancellation – Direction 79 – five year resident return visa – citizen of the United Kingdom – Applicant lived in Australia for 50 years – fails the character test – whether another reason the mandatory cancellation should be revoked – decision affirmed

[VSGP and Minister for Home Affairs](#) (Migration) [2019] AATA 334 (1 March 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of Refugee visa (class XB sub-class 200) – 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 79 decision under review affirmed

[1900181](#) (Migration) [2019] AATA 318 (14 January 2019); S Baker, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – abide by conditions imposed on the visa – risk to the community – assaults and property damage charges – period in rehabilitation – mental health issues – support mechanisms in the community – decision under review affirmed

National Disability Insurance Scheme

[Ters and National Disability Insurance Agency](#) [2019] AATA 312 (23 January 2019); Senior Member J C Kelly

NATIONAL DISABILITY INSURANCE SCHEME – characterisation of decision made by Chief Executive Officer – whether decision to not review plan or decision to approve the statement of participant supports – decision not to review plan – misconceived application to Tribunal – application dismissed

Practice and Procedure

[Chemcert Training Group and Australian Skills Quality Authority](#) [2019] AATA 313 (4 March 2019); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – registered training organisation – where applicant failed to lodge application for renewal of registration more than 90 days before registration was due to expire – decision not to determine shorter period for making an application for renewal of registration – registration date elapsed – training organisation no longer registered – whether stay of decision can be granted in light of circumstances – practical effect of granting stay considered – prospects of success – consequences for Applicant – public interest – consequences for parties – whether review would be rendered nugatory – stay application granted

[Menzies Institute of Technology and Australian Skills Quality Authority](#) [2019] AATA 343 (12 February 2019); Member K. Parker

PRACTICE & PROCEDURE – application to stay decisions not to renew registrations of a vocational education and training organisation – whether stay conditions should be imposed – stay granted subject to conditions which included a prohibition on new enrolments – substantive hearing expedited

[Skilled Education Australia Pty Limited and Australian Skills Quality Authority](#) [2019] AATA 317 (4 March 2019); Senior Member A Poljak

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – registered training organisation – decision to cancel registration – factors relevant to the granting of a stay – prospects of success – reputational damage – cancellation decision already in effect – insufficient evidence of financial impact – stay application refused

[Townshend and Migration Agents Registration Authority](#) [2019] AATA 340 (14 February 2019); Mr A. Maryniak QC, Member

PRACTICE AND PROCEDURE – Application for order staying the decision of the Respondent – Whether to grant order – Weighing of relevant considerations – Application refused

[Watterson and Visionstream Pty Ltd](#) [2019] AATA 335 (25 February 2019); Member A Ward & Member D Ben-Tovim

INTERLOCUTORY APPLICATION – Application for disqualification of legal representatives – Restriction of disclosure of evidence – inadvertent provision of restricted order to other party in contravention of order – hearing procedure – ability of legal advisors to continue to represent the applicant – hearing of application conducted in private

[VETiS Consulting Services Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 241 (7 March 2019); Senior Member A Poljak

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – registered training organisation – decision to cancel registration – factors relevant to the granting of a stay – compliance history – prospects of success – consequences for applicant if stay not granted – applicant financially dependent on registration – reputational damage – public interest – impact on school students if substantive application affirmed – protection of Australia’s reputation in the VET sector – need to maintain confidence in the regulatory framework – public interest considerations outweigh consequences for applicant – stay application refused

Refugee

[1605363](#) (Refugee) [2019] AATA 224 (17 January 2019); A Grant, Member

REFUGEE – protection visa – Pakistan – particular social group – Turi Shia – father’s high profile in the community – death threats from extremist groups – family unable to relocate in Pakistan – adverse profile – person educated in a Western Country – claims supported by country information – decision under review remitted for reconsideration

[1712068](#) (Refugee) [2019] AATA 223 (25 January 2019); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – Federal Court remittal – religion – Christian convert – family connection to the Baha-i-faith – Bahai relative executed – Green movement supporter – lack of evidence – status as a failed asylum seeker – westernised Iranian – Christian convert – mental condition – PTSD – adequate health care – decision under review affirmed

[1617104](#) (Refugee) [2019] AATA 321 (4 February 2019); S Lucas, Member

REFUGEE – protection visa – India – political opinion – Aam Aadmi Party – Shiromani Akhali Dal – property dispute – injured by sword – credibility issues – decision under review affirmed

[1814425](#) (Refugee) [2019] AATA 324 (8 February 2019); M McAdam, Member

REFUGEE – cancellation – protection visa – Iran – imputed religion – attendance of house church – claimed profile of interest to the Basij – providing incorrect answers in visa application – returned to Iran despite claimed fears – non-compliance as described in s 107 notice – correctness of answers pertains to subjective fears at the time of application – decision under review set aside

[1716824](#) (Refugee) [2019] AATA 344 (20 February 2019); L Hardy, Member

REFUGEE – protection visa – Pakistan – Federal Circuit Court remittal – member of Awami National Party – involvement with NGO activities – opposed to Taliban’s policies – no real risk of significant harm in the reasonably foreseeable future – decision under review affirmed

Social Security

[Blake and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 330 (6 March 2019); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – applicant’s impairments total twenty points or more under the Impairment Tables – fibromyalgia – type II bipolar disorder – no continuing inability to work at date of claim – decision affirmed

[Holland and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 339 (6 March 2019); Mr C Edwardes, Member

SOCIAL SECURITY – compensation – motor vehicle accident - consent judgement – compensation preclusion period applied – Disability Support Pension (DSP) payment – straitened financial circumstances – ill health – other factors – evidence does not support special circumstances – decision affirmed

[Johnson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 328 (4 March 2019); Mr G Hallwood, Member

Extension of time – Reasons for delay – Strength of applicant’s case – Utility of application for Applicant – Date of effect of determination under s 107 of Social Security (Administration) Act 1999 – Alternative avenues

[Knight and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 311 (1 March 2019); D Grigg, Member

SOCIAL SECURITY – Rent Assistance – whether eligible – whether can be paid rent assistance from a date earlier than the date of the review request – decision under review affirmed

[Lynch and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 331 (6 March 2019); Ms 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

[Synnes and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 338 (6 March 2019); Ms K Parker, Member

Catchwords – family tax benefits – whether reconciliation conditions were met – late lodgement of applicant’s partner’s tax returns – whether special circumstances prevented timely lodgement – whether time for lodgement should be extended – applicant’s partner experienced mental health issues – marital issues also a factor – decision affirmed

Taxation

[Kort and Commissioner of Taxation](#) (Taxation) [2019] AATA 336 (7 March 2019); Senior Member R. Pintos-Lopez

TAXATION – capital gains tax – whether there is a CGT exemption – private ruling settlement sum provisions – settlement release agreement – whether sum relating directly to compensation – whether compensation for the taxation consequences of the receipt of a lump sum instead of payments on a monthly basis – total permanent disability payment as capital in nature – decision set aside

[Wainwright and Commissioner of Taxation](#) (Taxation) [2019] AATA 333 (5 March 2019); Deputy President RI Hanger QC

TAXATION – self managed superannuation fund – superannuation funds accessed before conditions of release met – superannuation funds used to meet personal expenses – benefits received not included in income tax return – whether benefits to be assessed in the year that they were received – administrative penalty and shortfall interest charges – whether Commissioner should have exercised his discretion to not include benefits in assessable income – unreasonable for the Commissioner to include a benefit in the Applicant’s assessable income – decision under review affirmed – decision under review set aside and substituted

Veterans' Affairs

[Greentree and Repatriation Commission](#) (Veterans’ entitlements) [2019] AATA 314 (1 March 2019); Deputy President J Sosso

VETERANS’ AFFAIRS – claim for war widow’s pension – veteran deceased – Statement of Principles No 9 of 2013 – Adenocarcinoma of the Kidney – inhaling respirable asbestos fibres – whether inhalation of respirable asbestos fibres in an open environment for at least 3,000 hours before clinical onset – was contributed to in a material degree – hypothesis raised is reasonable – hypothesis fits the Statement of Principles – facts not disproved beyond reasonable doubt – decision under review 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
Productivity Partners Pty Ltd and Australian Skills Quality Authority	[2018] AATA 4878
MNLR and Minister for Home Affairs	[2019] AATA 61
Nguyen and Minister for Immigration and Border Protection	[2018] AATA 4664
Warren and Secretary, Department of Jobs and Small Business	[2019] AATA 95

Appeals finalised

None finalised

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles, which take effect from **25 March 2019**:

Acute Articular Cartilage Tear (Balance of Probabilities) – No. 22 of 2019

<https://www.legislation.gov.au/Details/F2019L00234>

Acute Articular Cartilage Tear (Reasonable Hypothesis) – No. 21 of 2019

<https://www.legislation.gov.au/Details/F2019L00233>

Acute Meniscal Tear of the Knee (Balance of Probabilities) – No. 26 of 2019

<https://www.legislation.gov.au/Details/F2019L00247>

Acute Meniscal Tear of the Knee (Reasonable Hypothesis) – No. 25 of 2019

<https://www.legislation.gov.au/Details/F2019L00246>

Alzheimer Disease (Balance of Probabilities) – No. 34 of 2019

<https://www.legislation.gov.au/Details/F2019L00239>

Alzheimer Disease (Reasonable Hypothesis) – No. 33 of 2019

<https://www.legislation.gov.au/Details/F2019L00240>

Blepharitis (Balance of Probabilities) – No. 30 of 2019

<https://www.legislation.gov.au/Details/F2019L00252>

Blepharitis (Reasonable Hypothesis) – No. 29 of 2019

<https://www.legislation.gov.au/Details/F2019L00251>

Chronic Insomnia Disorder (Balance of Probabilities) – No. 38 of 2019

<https://www.legislation.gov.au/Details/F2019L00230>

Chronic Insomnia Disorder (Reasonable Hypothesis) – No. 37 of 2019

<https://www.legislation.gov.au/Details/F2019L00228>

Chronic Pruritus Ani (Balance of Probabilities) – No. 32 of 2019

<https://www.legislation.gov.au/Details/F2019L00256>

Chronic Pruritus Ani (Reasonable Hypothesis) – No. 31 of 2019

<https://www.legislation.gov.au/Details/F2019L00254>

Dental Malocclusion (Balance of Probabilities) – No. 20 of 2019

<https://www.legislation.gov.au/Details/F2019L00225>

Dental Malocclusion (Reasonable Hypothesis) – No. 19 of 2019

<https://www.legislation.gov.au/Details/F2019L00224>

De Quervain Tendinopathy (Balance of Probabilities) – No. 42 of 2019

<https://www.legislation.gov.au/Details/F2019L00241>

De Quervain Tendinopathy (Reasonable Hypothesis) – No. 41 of 2019

<https://www.legislation.gov.au/Details/F2019L00242>

Methaemoglobinaemia (Balance of Probabilities) – No. 18 of 2019

<https://www.legislation.gov.au/Details/F2019L00223>

Methaemoglobinaemia (Reasonable Hypothesis) – No. 17 of 2019

<https://www.legislation.gov.au/Details/F2019L00222>

Neurocognitive Disorder With Lewy Bodies (Balance of Probabilities) – No. 36 of 2019

<https://www.legislation.gov.au/Details/F2019L00231>

Neurocognitive Disorder With Lewy Bodies (Reasonable Hypothesis) – No. 35 of 2019

<https://www.legislation.gov.au/Details/F2019L00229>

Pilonidal Sinus (Balance of Probabilities) – No. 28 of 2019

<https://www.legislation.gov.au/Details/F2019L00249>

Pilonidal Sinus (Reasonable Hypothesis) – No. 27 of 2019

<https://www.legislation.gov.au/Details/F2019L00248>

Sinus Barotrauma (Balance of Probabilities) – No. 24 of 2019

<https://www.legislation.gov.au/Details/F2019L00237>

Sinus Barotrauma (Reasonable Hypothesis) – No. 23 of 2019

<https://www.legislation.gov.au/Details/F2019L00235>

Trigger Finger (Balance of Probabilities) – No. 40 of 2019

<https://www.legislation.gov.au/Details/F2019L00238>

Trigger Finger (Reasonable Hypothesis) – No. 39 of 2019

<https://www.legislation.gov.au/Details/F2019L00227>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made amendments to the following Statements of Principles. The amendments take effect from **25 March 2019**:

Subdural Haematoma – No. 44 of 2019

<https://www.legislation.gov.au/Details/F2019L00253>

Subdural Haematoma – No. 43 of 2019

<https://www.legislation.gov.au/Details/F2019L00245>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be revoked** on **25 March 2019**:

Acute Articular Cartilage Tear – No. 54 of 2010

<https://www.legislation.gov.au/Details/F2010L01667>

Acute Articular Cartilage Tear - No. 53 of 2010

<https://www.legislation.gov.au/Details/F2010L01666>

Acute Meniscal Tear of the Knee – No. 56 of 2010

<https://www.legislation.gov.au/Details/F2010L01669>

Acute Meniscal Tear of the Knee – No. 55 of 2010

<https://www.legislation.gov.au/Details/F2010L01668>

Alzheimer-type dementia – No. 23 of 2010

<https://www.legislation.gov.au/Details/F2014C00072>

Alzheimer-type dementia – No. 22 of 2010

<https://www.legislation.gov.au/Details/F2017C00820>

Blepharitis – No. 64 of 2010

<https://www.legislation.gov.au/Details/F2010L02303>

Blepharitis – No. 63 of 2010

<https://www.legislation.gov.au/Details/F2010L02302>

Chronic Pruritus Ani – No. 76 of 2010

<https://www.legislation.gov.au/Details/F2010L02315>

Chronic Pruritus Ani – No. 75 of 2010

<https://www.legislation.gov.au/Details/F2010L02314>

Dental Malocclusion – No. 18 of 2011

<https://www.legislation.gov.au/Details/F2011L00499>

Dental Malocclusion – No. 17 of 2011

<https://www.legislation.gov.au/Details/F2011L00489>

Methaemoglobinaemia – No. 48 of 2010

<https://www.legislation.gov.au/Details/F2010L01661>

Methaemoglobinaemia – No. 47 of 2010

<https://www.legislation.gov.au/Details/F2010L01660>

Pilonidal Sinus – No. 72 of 2010

<https://www.legislation.gov.au/Details/F2010L02311>

Pilonidal Sinus - No. 71 of 2010

<https://www.legislation.gov.au/Details/F2010L02310>

Sinus Barotrauma – No. 50 of 2010

<https://www.legislation.gov.au/Details/F2017C00075>

Sinus Barotrauma – No. 49 of 2010

<https://www.legislation.gov.au/Details/F2017C00074>



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