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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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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

[Atiya and Minister for Home Affairs](#) (Citizenship) [2019] AATA 415 (18 March 2019); Senior Member C Puplick AM

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

Compensation

[Girardi and Comcare](#) (Compensation) [2019] AATA 502 (21 March 2019); Senior Member DJ Morris

COMPENSATION – Accepted condition – whether liability to pay compensation continued earlier conflicting diagnoses – childhood injury – second condition – whether compensable – permanent impairment – whether payment for non-economic loss payable – reviewable decisions affirmed

[Prowse and Comcare](#) (Compensation) [2019] AATA 411 (14 March 2019); Mr M Hyman, Member

WORKERS' COMPENSATION – denial of liability – psychological condition – diagnosis – whether contributed to, to a significant degree, by employment – whether one or more causal events were administrative action – whether causal administrative action was reasonable – whether taken in a reasonable manner – whether in the absence of the administrative action the condition would have arisen – date of injury – decision set aside

[Rehberg and Comcare](#) (Compensation) [2019] AATA 413 (14 March 2019); Dr I Alexander, Member and Dr P Fricker, Member

COMPENSATION – injury – accepted injury 'acute lumbar strain' – whether applicant is entitled to continued compensation – s 16 and s 19 Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision affirmed

[Scully and BIS Industries Ltd](#) (Compensation) [2019] AATA 503 (21 March 2019); Dr P McDermott RFD, Deputy President

COMPENSATION – consideration of a previous decision of the Tribunal where it was decided that the applicant was entitled to compensation – reconsideration of own motion respondent accepted liability to pay compensation for "muscle spasm" – whether the applicant can agitate findings of fact made in a previous Tribunal hearing – decision under review affirmed

Corporations

[TMeffect Pty Limited and Australian Prudential Regulation Authority](#) [2019] AATA 459 (21 March 2019); Deputy President IR Molloy

CORPORATIONS – prudential regulation – use of restricted word in relation to a financial business – whether consent should be granted to allow applicant to use restricted word in relation to financial business – equity crowd-funding business – protection of the public from being misled – whether exceptional circumstances – decision affirmed

Migration

[BOLLAM](#) (Migration) [2019] AATA 466 (11 February 2019); H Kroger, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector – enrolment in a registered Higher Education course – applicant ceased studying – applicant’s family’s temporary financial hardship – medical condition affecting ability to communicate – applicant sought course deferment – decision under review set aside

[Pushparaj](#) (Migration) [2019] AATA 387 (14 February 2019); K Raif, Senior Member

MIGRATION – cancellation – Skilled (Provisional) (Class VF) visas – Subclass 476 (Skilled – Recognised Graduate) – providing fraudulent documents and incorrect answers with visa application – provisional certificates issued by the applicant’s university – Australian university approved support for business plans – conducting scientific research of benefit to a regional area – decision under review set aside

[Kocak](#) (Migration) [2019] AATA 481 (4 March 2019); M Brophy, Member

MIGRATION – Visitor (Class FA) visa – subclass 600 (Visitor) – Tourist stream – exceptional circumstances for further visa grant – staying in Australia consecutively for more than 12 months – husband’s medical condition – inability to travel – decision under review remitted

[CHENG](#) (Migration) [2019] AATA 447 (5 March 2019); J Cripps Watts, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Post-Study Work stream – undertaken two academic years (or 92 weeks) study in Australia – completed Master of Professional Accounting (Extension), CRICOS code 055635K – 104 weeks’ duration – delegate assessed incorrect course of shorter duration – subjects completed in unfinished Master of International Business course credited to final course – Australian study requirement 6 months preceding date of visa application satisfied – Decision under review remitted

[Chow](#) (Migration) [2019] AATA 497 (7 March 2019); S Lee, Member

MIGRATION – Business skills (Residence)(Class DF) visa – Subclass 892 – multiple applicants – issue of which applicant seeks to satisfy the primary criteria – department decision – primary applicant not in Australia for the requisite time during the two years immediately prior to the visa application – primary applicant outside Australia at time of review application – secondary applicant appeared at review – not the family member of a person holding Subclass 892 visa – decision under review affirmed

[DKDR and Minister for Home Affairs](#) (Migration) [2019] AATA 412 (7 March 2019); Mr T Eteuati, Member

MIGRATION – cancellation of applicant’s visa under s 501(2) – applicant failed to pass the character test – whether to exercise the discretion to cancel the applicant’s visa – application of Direction No. 79 – decision set aside

[Ali and Minister for Home Affairs](#) (Migration) [2019] AATA 417 (13 March 2019); Senior Member T Tavoularis

MIGRATION - non-revocation of mandatory cancellation of Class BS Subclass 201 Partner (Residence) visa – expedited matter – where visa was cancelled under s 501(3A) – applicant does not pass character test – whether discretion in s 501CA to revoke mandatory cancellation should be exercised – considerations in Direction No 79 – decision under review affirmed

[HPZB and Minister for Home Affairs](#) (Migration) [2019] AATA 439 (13 March 2019); Senior Member R Pintos-Lopez

MIGRATION – temporary protection visa refusal – failure to pass the character test – whether discretion to refuse visa should be exercised – protection and expectations of the Australian community – risk of reoffending – international non-refoulement obligations – decision under review affirmed

Practice and Procedure

[Prestige Technical Training Institute Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 460 (12 March 2019); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – extension of time application – rejected application for registration as a registered training organisation – application to Tribunal not within time – whether reasonable in all the circumstances – explanation for delay – whether prejudice to respondent and general public – whether substantive application has merit – extension of time refused

[Toma and Minister for Home Affairs](#) (Citizenship) [2019] AATA 505 (22 March 2019); Dr L Bygrave, Member

EXTENSION OF TIME – principles to be applied – applicant seeking an extension of time to make an application to review a decision – whether application for extension of time is reasonable in all the circumstances – permanent or enduring physical or mental incapacity – prejudice to the respondent and general public – whether the applicant rested on his rights – applicant did not provide a written explanation for the delay – merits of the substantial application – application of Citizenship Policy – extension of time refused

[Weng and Commissioner of Patents](#) [2019] AATA 418 (26 February 2019); Mrs JC Kelly, Senior Member

EXTENSION OF TIME – principles to be applied – no reasonable explanation for delay – public interest to lodge application on time – no prejudice to Respondent does not justify extension - Applicant’s case is frivolous and lacks merit – extension of time refused

[Williams and Members of the Companies Auditors and Liquidators Disciplinary Board](#) [2019] AATA 504 (19 March 2019); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – application to stay decision of Companies Auditors and Liquidators Disciplinary Board – decision cancelled applicant's registration as an auditor – applicant currently not working as an auditor – securing the effectiveness of the hearing and determination of the application for review – preventing respondent from publishing press releases – effect current and potential clients – financial consequences – prospects of success – consequences for the applicant if stay refused – public interest – consequences for the respondent – whether application would for review would be rendered nugatory if stay were not granted – stay refused

PRACTICE AND PROCEDURE – application for a confidentiality order – private hearing and non-publication orders – presumption that Tribunal proceedings are held in public – Tribunal's commitment to openness – legislative policy preference for openness -weighing protection of the applicant against information being provided to the public – confidentiality order refused

Refugee

[1716285](#) (Refugee) [2019] AATA 383 (14 January 2019); N Lamont, Member

REFUGEE – protection visa – Chad – Federal Circuit Court remittal – imputed political opinion – father's involvement in the Union of Forces for Democracy and Development – political opinion – posting on social media sites – religion – anti-Islamic beliefs – decision under review remitted

[1616256](#) (Refugee) [2019] AATA 322 (31 January 2019); D McCulloch, Member

REFUGEE – protection visa – Zimbabwe – particular social group – former member of police force – political opinion – support opposition parties – house broken into and vandalised – credibility issues – decision under review affirmed

[1724509](#) (Refugee) [2019] AATA 346 (12 February 2019); G Hoeben, Member

REFUGEE – protection visa – Malaysia – religion – interfaith relationship – attacked by girlfriend's family members – no evidence to support claims – no risk of harm – decision under review affirmed

[1835826](#) (Refugee) [2019] AATA 354 (14 February 2019); Dr I O'Connell, Deputy Division Head

REFUGEE – protection visa – Cambodia – Membership of a particular social group – Persons with drug related profile due to conviction for drug offences – divorcee – stigma exists but not to a level amounting to serious harm – decision under review affirmed

[1606113](#) (Refugee) [2019] AATA 422 (21 February 2019); L Hardy, Member

REFUGEE – protection visa – El Salvador – social group – gang violence threats – inconsistent evidence re nature of harm – family's relocation – non Convention related claim – credibility issues – invalid s438 certificate – no real risk of significant harm – decision under review affirmed

Social Security

[Bontes; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 461 (20 March 2019); C Edwardes, Member

SOCIAL SECURITY – disability support pension – impairment tables – did the Respondent have 20 impairment points – did the Respondent have a continuing inability to work – did the Respondent participate in program of support – decision under review set aside

[Caldaras and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 416 (2 March 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether applicant qualified during claim period – multiple conditions – whether conditions fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – continuing inability to work – program of support – decision under review affirmed

[Chung and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 425 (19 March 2019); Ms A Burke AO, Member

SOCIAL SECURITY – Newstart allowance — Parenting payment partnered - overpayment – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – no special circumstances – decision under review set aside and remitted

[Degiorgio and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 457 (21 March 2019); Senior Member A Poljak

SOCIAL SECURITY – age pension – cancellation of payment – assets test – principal place of residence exemption – applicant admitted to public hospital – facility not an approved provider of aged care – fees not payable under Aged Care Act – whether exemption continued to apply – applicant still in care situation – direction to consider suspension – decision set aside and remitted

[Khuu and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 419 (19 March 2019); Senior Member N Manetta

SOCIAL SECURITY – pensions, benefits and allowances - carer payment – eligibility – incorrect assessment of assets - request for recalculation under s 129 – whether applicant is entitled to back payment under s 109 - decision under review affirmed

[Larcombe and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 409 (13 February 2019); Senior Member DJ Morris

SOCIAL SERVICES – disability support pension – decision to cancel pension in 2007 – provisions of s 94 of Social Security Act 1991 – Respondent concedes impairments – question of impairment ratings to satisfy legislative provisions – consideration of repealed instrument then in force – applicant does not satisfy legislative requirement – decision affirmed – oral decision – written reasons requested

[Lewis; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 427 (19 March 2019); Dr M Evans, Senior Member

SOCIAL SECURITY – family tax benefit (FTB) – timing of lodgement of husband’s tax return – conflicting electronic lodgement dates provided by ATO and husband’s accountants – whether special circumstances prevented Applicant from lodging 2015/2016 tax return – whether difficulties contacting Centrelink constitute special circumstances – whether delay by accountant constitutes special circumstances – reviewable decision set aside and substituted

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 420 (19 March 2019); Senior Member The Hon. Matthew Groom

SOCIAL SECURITY – Disability Support Pension refusal – medical impairments in qualification period – medical impairment qualification requirements – medical impairments not fully treated or stabilised during qualification period – failure to qualify for rating under Impairment Tables – decision under review affirmed

[Webeck and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 410 (15 March 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether decision to cancel disability support pension was correct – applicant received periodic payments for compensation following workplace injury – whether periodic payments for compensation should be disregarded – whether there were special circumstances – whether applicant has debts for the overpayment of disability support pension – whether all or part of debts can be waived – whether there was administrative error – decision under review varied

Taxation

[Rosebridge Nominees Pty Ltd \(IN LIQ\) and Commissioner of Taxation](#) (Taxation) [2019] AATA 426 (19 March 2019); Senior Member G Lazanas

TAXATION – GST – time limits on entitlement to claim input tax credits and GST refunds – whether special rules relating to representatives of incapacitated entities provide exemption from time limits – whether reviewable GST decision – objection decision affirmed

Trade and Commerce

[Allmaster Software Pty Ltd and Australian Trade and Investment Commission](#) [2019] AATA 506 (21 March 2019); Deputy President JW Constance

TRADE AND COMMERCE - export market development grants - whether new owner carried on business of previous owner - where new owner carried on business of previous owner directly after purchase of business - where no statutory requirement for new owner to carry on business for particular period of time - decision under review affirmed

[Shopp Network Pty Ltd and Australian Trade and Investment Commission](#) [2019] AATA 421 (19 March 2019); Mr PW Taylor SC, Senior Member

BOUNTIES AND OTHER SUBSIDIES – export market development grants – trade and commerce – expenditure on overseas marketing – eligible applicant – eligible expense – eligible product – grants entry requirement – significant net benefit to Australia – Australian input – decision under review affirmed

Veterans' Affairs

[Smith and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2019] AATA 414 (14 March 2019); Dr P McDermott RFD, Deputy President

VETERANS' ENTITLEMENTS – military service – compensation claim for epilepsy – whether the applicant suffers from epilepsy – whether epilepsy is a service injury or a service disease – decision affirmed

Child Support

[Ashurst and Robertson](#) (Child support) [2019] AATA 377 (10 January 2019); F Hewson, Member

CHILD SUPPORT – application for collection of ongoing child support and arrears – whether private payments had been made in advance or in arrears – unpaid amounts – decision under review set aside and the matter remitted for reconsideration

[Kenyon and Child Support Registrar](#) (Child support) [2019] AATA 428 (16 January 2019); S Brakespeare, Member

CHILD SUPPORT – percentage of care – no change to the pattern of care – decision under review set aside and substituted

[Silcock and Silcock](#) (Child support) [2019] AATA 381 (15 January 2019); W Kennedy, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – decision under review set aside and substituted

[Sadhvani and Sadhvani](#) (Child support) [2019] AATA 430 (25 January 2019); P Jensen, Member

CHILD SUPPORT – child support terminating event – child living away from home – whether parent provides ongoing daily care – decision under review varied

[Manley and Lazenbury](#) (Child support) [2019] AATA 429 (7 February 2019); K Buxton, Member

CHILD SUPPORT – dismissal of application for review – particulars of the administrative assessment – estimate reconciliation – no reasonable prospect of success – application for review dismissed

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
Ali-Ahmad and Secretary, Department of Social Services	[2019] AATA 172
Doan and Minister for Home Affairs	[2019] AATA 169
Fiodorov and Minister for Home Affairs	[2019] AATA 117
Meyrick and Minister for Home Affairs	[2019] AATA 168
RZMW and Minister for Home Affairs	[2018] AATA 4620
Singh and Minister for Home Affairs	[2019] AATA 73
Townshend and Migration Agents Registration Authority	[2019] AATA 340
ZGWQ and Minister for Home Affairs	[2019] AATA 264

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Stewart	[2018] AATA 3685	[2019] FCA 365
Uolilo v Minister for Home Affairs	[2018] AATA 2876	[2019] FCA 336



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