



Administrative
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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; 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.

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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.

Compensation

[Cagliostro and Telstra Corporation Limited](#) (Compensation) [2019] AATA 559 (27 March 2019); Senior Member A Poljak

COMPENSATION – workers compensation – post-traumatic migraines – compensation in respect of medical expenses – incapacity for work – whether applicant continues to suffer from compensable injury – consideration of accuracy of applicant's self-reporting to medical practitioners – reporting inconsistent with surveillance footage – decision under review affirmed

[Goulthorpe and Comcare](#) (Compensation) [2019] AATA 550 (27 March 2019); Deputy President G Humphries AO

WORKER'S COMPENSATION – whether condition subject of claim is a 'disease' — whether Ms Goulthorpe's condition contributed to, to a significant degree, by her employment – inconsistent medical evidence leaving Tribunal in a state of indecision – decision under review set aside and substituted

[Peipman and Comcare](#) (Compensation) [2019] AATA 545 (26 March 2019); Deputy President J Sosso

COMPENSATION – workplace injury – injury to lower back – secondary psychiatric conditions – ceased effects determination – status epilepticus – liability denied – Safety Rehabilitation and Compensation Act 1988 – s 16 – whether medical treatment received by Applicant in relation to original compensable injury – *Telstra Corporation v Hannaford* – s 19 – whether incapacity for work as a result of original compensable injury – ceased effects reviewable decision set aside – status epilepticus reviewable decision affirmed

Migration

[Amoorthum and Minister for Home Affairs](#) (Migration) [2019] AATA 536 (25 March 2019); Senior Member R Cameron

MIGRATION – visa refusal on character grounds – whether the Applicant passes the character test – more than remote or trivial chance of reoffending – Applicant does not pass the character test – whether the visa application should be refused – consideration of relevant factors – decision set aside and remitted with direction

Practice and Procedure

[Barthel and Australian National University](#) (Compensation) [2019] AATA 548 (27 March 2019); Mr S Webb, Member

PRACTICE & PROCEDURE – application for dismissal – meaning of ‘no reasonable prospect of success’ – sufficiency of probative materials – expert reports – rationale of expert opinion – contrary medical reports – weight – evaluation of prospect of success – application refused

[Noonan and Comcare](#) (Compensation) [2019] AATA 515 (8 February 2019); Deputy President G Humphries AO

PRACTICE AND PROCEDURE – application for extension of time for making an application for review – whether Tribunal is satisfied that it is reasonable in all the circumstances to do so – application for extension of time is refused

[Simon and Australian Capital Territory](#) (Compensation) [2019] AATA 527 (22 March 2019); Mr M Hyman, Member

PRACTICE AND PROCEDURE – compensation – reinstatement of application earlier withdrawn – whether earlier application dismissed in error – where application withdrawn on legal advice – application for extension of time so as to reactivate previous application or lodge new application – lodgement of application for review of new decision relating to the earlier injury – whether new application an abuse of process – whether prevented or constrained by jurisdictional considerations – earlier application may not be reinstated – new application not an abuse of process and not excluded by jurisdictional considerations

[Vuong and Building Services Board](#) (WA) [2019] AATA 519 (22 March 2019); Senior Member A Poljak

PRACTICE AND PROCEDURE – jurisdiction – mutual recognition – decision to impose condition on registration – whether Tribunal has jurisdiction to review the imposition of an equivalent or identical condition – power under which conditions imposed is discretionary – Tribunal has jurisdiction to review decision

Professions and Trades

[Michan-Ranieri and Migration Agents Registration Authority](#) [2019] AATA 556 (27 March 2019); Mr C Edwardes, Member

MIGRATION AGENT REGISTRATION – application for registration – prohibition on registration conditional on satisfaction that applicant meets particular requirements – meaning of ‘passed a prescribed exam’ – components of prescribed exam – English language testing – requirement for minimum scores in overall English test and each sub-test – requirement not satisfied through aggregated scores – decision affirmed

Social Security

[Bariesheff and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 549 (26 March 2019); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – Refusal – Spine Condition – Mental Health Condition – Fibromyalgia Condition – Asthma Condition – Epilepsy Condition – whether impairments are of 20 points or more under the Impairment Tables – Applicant has a continuing inability to work – decision under review affirmed

[Chen and Secretary, Department of Social Services Services](#) (Social services second review) [2019] AATA 560 (27 March 2019); Senior Member C Puplick AM

SOCIAL SECURITY – Newstart allowance – Disability Support Pension – Pensioner Education Supplement – overpayment – assets – trusts – debt due to the Commonwealth – whether recovery of debt should be written off or waived – consideration of special circumstances – decision under review set aside and remitted

[Edwards and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 552 (28 March 2019); Mr IF Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension – physical, intellectual or psychiatric impairment – whether an impairment rating of 20 points or more exists under the Impairment Tables – multiple impairments – whether impairment was fully diagnosed, treated and stabilised – medical reports considered – Job Capacity Assessment Report considered – decision under review affirmed

[Frugtniet and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 547 (28 March 2019); Senior Member R Pintos-Lopez

[Ladley and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 546 (26 March 2019); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – mental health condition – dysthyroidism – chronic obstructive airways disease – hypertension – hypercholesterolemia – whether impairments are of 20 points or more under the impairment tables – whether permanent conditions contributed to a real degree to impairments – Applicant has 10 points – decision under review affirmed

[Mackenzie and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 553 (27 March 2019); Mr S Webb, Member

SOCIAL SECURITY – suspension of disability support pension – portability rules – cancellation of DSP – eligibility criteria – meaning of ‘impairment’ – difference between impairments and medical conditions – rules governing the assessment of impairments – permanency of conditions – no requirement for periodic specialist review in respect of chronic conditions established by evidence – speculation about treatment options and likely improvement not appropriate – rating of impairments – meaning of ‘common or combined impairment’ – requirement for impairment ratings of 20 points or more – continuing inability to work – probative value of prospective assessment of improvement in capacity for work with interventions where interventions are codified without explanation or rationale – cancellation decision set aside – portability decision affirmed

[Mitchell and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 551 (28 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

[Nedae and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 544 (26 March 2019); Dr I Alexander, Member

SOCIAL SECURITY – Disability Support Pension – chronic lower back pain – whether applicant qualified for DSP during claim period – whether condition fully diagnosed, treated, stabilised and likely to persist for more than two years – whether the applicant’s impairment attracts 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – decision under review affirmed

[Phelan and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 554 (27 March 2019); Senior Member T Tavoularis

SOCIAL SECURITY – NEWSTART – RENTAL ALLOWANCE – Whether the Respondent gave the Applicant the required notice under the Social Security (Administration) Act 1999 (Cth) with respect to the change in Newstart allowance rates – whether the relevant notices were fatally defective because they did not identify the date of effect of the decision(s), did not specifically use the term ‘rate’ and did not tally up the various components that constituted the Applicant’s Newstart allowance – Decision set aside and substituted

[Stojanovski and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 557 (27 March 2019); Senior Member D Cremean

FAMILY TAX BENEFIT – FTB – determination of the care period – determination of the applicant’s and the other party’s percentage of care in the care period – pattern of care – the child is not an FTB child of the other party – decision under review is set aside and substituted

Superannuation

[Truan and Commonwealth Superannuation Corporation](#) [2019] AATA 555 (26 March 2019); Ms A Burke AO, Member

SUPERANNUATION – beneficiary – commonwealth superannuation scheme – whether Widow entitled to spouse reversionary pension – marital or couple relationship – whether separation was due to special circumstances – whether marital relationship would exist but for deceased mental health issue of post-traumatic stress disorder (PTSD) – decision set aside and remitted

Taxation

[Hourigan and Commissioner of Taxation](#) (Taxation) [2019] AATA 558 (27 March 2019); Deputy President R I Hanger QC

TAXATION – tax liability – shortfall amount – imposition of administrative penalties – imposition of shortfall interest charges greater than 20% – whether there was intentional disregard by the taxpayer – whether the taxpayer was reckless – where no grounds for remission of administrative penalties exist – where no grounds for remission of shortfall interest charges exist – decision under review is varied

[YPQF and Commissioner of Taxation](#) (Taxation) [2019] AATA 518 (21 March 2019); Deputy President BJ McCabe

INCOME TAX – assessment of payments said to be loans – whether payments were borrowed money or proceeds from disposal of assets from China – fraud or evasion – decision affirmed for 2011 and 2012 years of income – decision varied for 2013 year of income

Veterans' Affairs

[Stevenson and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 520 (21 March 2019); Senior Member A Nikolic AM CSC

VETERANS' AFFAIRS – application for Special Rate of pension – veteran's degree of incapacity from war-caused injury or war-caused disease 70 per cent or more – whether veteran prevented from undertaking remunerative work – whether alone test at s 24(1)(c) of the Veterans' Entitlements Act 1986 (Cth) is met – whether ameliorating provisions of the Act apply – decision under review 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
CZCV and Minister for Home Affairs	[2019] AATA 91
Eichmann and Commissioner of Taxation	[2019] AATA 162
Linfox Australia Pty Ltd and Commissioner of Taxation	[2019] AATA 222
Tran and Minister for Home Affairs	[2019] AATA 125

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Paszkiwicz v Minister for Home Affairs	[2018] AATA 691	[2019] FCA 390
Zavrski v Department of Social Services	[2017] AATA 1587	[2019] FCA 381



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