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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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Contents

AAT Recent Decisions	3
Citizenship	3
Compensation	3
Education and Research	4
Environment	4
Migration.....	5
National Disability Insurance Scheme.....	7
Practice and Procedure.....	8
Social Security.....	8
Veterans' Affairs	9
Appeals	10
Appeals lodged.....	10
Appeals finalised	10

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

[NRHM and Minister for Home Affairs](#) (Citizenship) [2019] AATA 639 (4 April 2019); Ms A Burke AO, Member

CITIZENSHIP – whether applicant met the general residence requirement at the time she applied for Australian citizenship – Australian spouse and child – whether the applicant is likely to reside, or to continue to reside, in Australia or to maintain a close and continuing relation with Australia if citizenship application were to be approved – decision under review affirmed

[Yas and Minister for Home Affairs](#) (Citizenship) [2019] AATA 629 (3 April 2019); Mr C Edwardes, Member

CITIZENSHIP – whether Applicant of good character – meaning of good character – conviction for operating business illegally – enduring moral qualities – Australian values – Applicant found not to be of good character at time that the Minister made decision – decision under review is affirmed

Compensation

[Budarick and Australian Capital Territory](#) (Compensation) [2019] AATA 643 (4 April 2019); Mr M Hyman, Member

COMPENSATION – thoracic back strain – chronic pain disorder – cease effects - whether injuries continue to show required connection with employment – liability for medical expenses and incapacity – medical evidence – decision affirmed

[Collins and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 611 (29 March 2019); Ms K Parker, Member

COMPENSATION – military compensation – depressive disorder – application of statement of principles – clinical onset – whether persistent pain for duration of at least six months prior to clinical onset – whether factor related to service – decisions set aside

[Short and Linfox Transport Pty Ltd](#) (Compensation) [2019] AATA 613 (2 April 2019); Deputy President JW Constance

COMPENSATION – workers’ compensation – C6/7 right posterior lateral disc protrusion – where immediate physiological change in condition of C6/7 disc – whether ‘injury’ for purposes of the Act – whether injury ‘arising out of, or in the course of’, Applicant’s employment – decision set aside and substituted

COMPENSATION – workers’ compensation – aggravation of C6/7 right posterior lateral disc protrusion – whether ‘injury’ for purposes of the Act – whether ‘aggravation’ of injury – whether aggravation ‘arising out of, or in the course of’, Applicant’s employment – decision set aside and substituted

COMPENSATION – workers’ compensation – further C6/7 right posterior lateral disc protrusion – where immediate physiological change in condition of C6/7 disc – whether ‘injury’ for purposes of the Act – whether injury ‘arising out of, or in the course of’, Applicant’s employment – decision set aside and substituted

COMPENSATION – workers’ compensation – C6/7 right posterior lateral disc protrusion – whether ‘injury’ resulted in ‘permanent impairment’ for purposes of the Act – decision set aside and remitted

Education and Research

[Western Institute of Technology Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 657 (3 April 2019); Senior Member D Cremean and Senior Member The Hon. M Groom

Vocational Education and Training – registration cancelled – application to change scope of registration denied – non-compliance with standards – training and assessment – approved capacity limits and facilities – staff skills, qualifications and experience – English language proficiency assessment – course attendance and progress monitoring – decision affirmed

Environment

[Humane Society International \(Australia\) Inc and Department of Agriculture & Fisheries \(Qld\)](#) [2019] AATA 617 (2 April 2019); Deputy President I Hanger AM QC and Senior Member A Poljak

ENVIRONMENT – Parks and reserves – Great Barrier Reef Marine Park – application for review of decision concerning issue of a permit – program to take animals that pose a threat to human life or safety – lethal shark control program – drum lines – effect on tiger shark population – whether program reduces risk of human/shark interaction – statistics – non-lethal programs considered – environmental argument – whether program causing significant harm to ecology of the Great Barrier Reef – whether tiger shark population in decline – effect of removing apex predator from ecosystem – precautionary principle – scientific working group – interim orders made

Migration

[CHJK and Minister for Home Affairs](#) (Migration) [2019] AATA 584 (28 March 2019); Deputy President The Hon. D Cowdroy OAM QC

MIGRATION – mandatory visa cancellation – character test – substantial criminal record – Direction No 79 – whether the discretion to revoke the cancellation should be exercised – 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 – other considerations – strength, nature and duration of ties to Australia – impact on family members – extent of impediments if removed – expectations of Australian community – non-refoulement – decision affirmed

[Durham and Minister for Home Affairs](#) (Migration) [2019] AATA 645 (3 April 2019); Senior Member T Tavoularis

MIGRATION – NON-RECOVATION OF MANDATORY CANCELLATION OF VISA ON CHARACTER GROUNDS – expedited matter – Class TY Subclass 444 Special Category (Temporary) visa – where applicant does not pass the character test – more than 12 months’ imprisonment – whether discretion to revoke mandatory cancellation should be exercised – considerations in Direction 79 – decision under review affirmed

[Eteuati and Minister for Home Affairs](#) (Migration) [2019] AATA 578 (27 February 2019); Deputy President A G Melick AO SC

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 set aside and substituted

[GKQK and Minister for Home Affairs](#) (Migration) [2019] AATA (28 March 2019); Senior Member T Tavoularis

MIGRATION – NON-REVOCATION OF MANDATORY CANCELLATION OF VISA ON CHARACTER GROUNDS – expedited matter – Class CD Resolution of Status Visa – where visa was mandatorily cancelled and cancellation was not revoked – where Applicant does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – considerations in Direction 79 – decision under review affirmed

[HRVD and Minister for Home Affairs](#) (Migration) [2019] AATA 637 (3 April 2019); Senior Member R Cameron

MIGRATION – refusal of visa application – failed character test – risk of reoffending – expectations of the Australian community – best interests of children in Australia – impact on immediate family – decision set aside and remitted

[JFSQ and Minister for Home Affairs](#) (Migration) [2019] AATA 616 (2 April 2019); Deputy President G Humphries AO and Mr W Frost, Member

MIGRATION – application for revocation of mandatory cancellation of visa – where applicant fails the character test – where substantial criminal record under Migration Act 1958 – risk of reoffending – whether there is other reason why cancellation decision should be revoked – best interests of minor children – whether Australia's non-refoulement obligations are engaged – decision under review affirmed

[Nathanson and Minister for Home Affairs](#) (Migration) [2019] AATA 642 (4 April 2019); S Burford, Member

MIGRATION – Migration Act 1958 (Cth) – Mandatory visa cancellation – s 501CA(4) – Direction no. 79 – primary and other considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed to New Zealand – weight to be given to the primary and other considerations – decision under review affirmed

[PQSM and Minister for Home Affairs](#) (Migration) [2019] AATA 603 (28 March 2019); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – Mandatory visa cancellation – s 501CA(4) – sexually based offence involving a child – Direction 79 – primary and other considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – extensive criminal record – other considerations – Australia's non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – weight to be given to the primary and other considerations – decision under review affirmed

[SWWC and Minister for Home Affairs](#) (Migration) [2019] AATA 586 (29 March 2019); Senior Member K Millar

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

[Uasi and Minister for Home Affairs](#) (Migration) [2019] AATA 638 (2 April 2019); Senior Member T Tavoularis

MIGRATION – NON-REVOCAION OF MANDATORY CANCELLATION OF VISA ON CHARACTER GROUNDS – expedited matter – Class BB Subclass 155 Five Year Resident Return Visa – Where Applicant does not pass the character test – 12 months' imprisonment or more – Whether discretion to revoke cancellation of visa is applied – Considerations in Direction 79 – Whether there is any other reason to revoke the cancellation of the Applicant's visa – Decision under review affirmed

[Vu and Minister for Home Affairs](#) (Migration) [2019] AATA 635 (4 April 2019); Senior Member K Raif

MIGRATION – cancellation of visa under s501 – resident return visa (RRV) – applicant doesn't pass character test – substantial criminal record – applicant sentenced to a term of imprisonment of 12 months or more – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties to Australia – Ministerial Direction No. 65 – Ministerial Direction No. 79 – nature and seriousness of conduct – supply of prohibited drug – shoplifting – common assault – drive with middle range PCA – protection of the Australian community – decision affirmed

[Vural and Minister for Home Affairs](#) (Migration) [2019] AATA 579 (29 March 2019); Senior Member D. J. Morris

MIGRATION – Mandatory cancellation of Applicant's visa - applicant fails character test – Direction No. 79 – any other reasons to revoke mandatory cancellation – primary considerations – other considerations – any other matter – previous warnings from department about migration status being affected by further offending – reviewable decision affirmed

[Ward and Minister for Home Affairs](#) (Migration) [2019] AATA 581 (29 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

[Wekerle and Minister for Home Affairs](#) (Migration) [2019] AATA 630 (3 April 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory cancellation of TY Subclass 444 Special Category (Temporary) Visa – substantial criminal record – repeated violent offending – request for revocation of visa cancellation – failure to pass character test – Ministerial Direction No. 79 applied – protection of Australian community – best interests of minor children – expectations of Australian community – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

National Disability Insurance Scheme

[Hula and National Disability Insurance Agency](#) [2019] AATA 580 (13 March 2019); Professor R McCallum AO, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – bilateral knee osteoarthritis – shoulder pain – cervical spondylosis – whether applicant was receiving supports under a program prescribed by the scheme – decision set aside and substituted

[LQTF and National Disability Insurance Agency](#) [2019] AATA 631 (2 April 2019); Deputy President SA Forgie

NATIONAL DISABILITY INSURANCE SCHEME – JURISDICTION – dependent upon an application's being made for a reviewable decision – identifying reviewable decision – Tribunal has jurisdiction

Practice and Procedure

[Azzopardi and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 105 (27 February 2019); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – extension of time application – application for review of Social Services and Child Support Division decision affirming earlier decision rejecting claim for disability support pension – application to Tribunal not within time – whether reasonable in all the circumstances – reasons for delay – whether prejudice to respondent and general public – whether substantive application has merit – extension of time refused

[Chamma; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 644 (4 April 2019); Senior Member A Poljak

PRACTICE AND PROCEDURE – application to stay decision – substantive proceedings concern debt to the Commonwealth – whether applicant was a member of a couple – factors relevant to the granting of a stay – prospects of success – prejudice to the parties – public interest – stay application granted

[Steidler and Australian Prudential Regulation Authority](#) (Taxation) [2019] AATA 601 (12 March 2019); Deputy President SA Forgie

PRUDENTIAL REGULATION – JURISDICTION – application for review of decision by APRA to issue notice of non-compliance – no decision confirming or varying decision to issue notice of non-compliance made – as beneficiaries of the trust, applicants not persons “affected” by APRA’s decision under the Superannuation Industry (Supervision) Act 1993 – no jurisdiction to review decision of which review sought – applications dismissed

[Viengkham and Minister for Home Affairs](#) (Migration) [2019] AATA 636 (4 April 2019); Senior Member C Puplick AM

EXTENSION OF TIME – resident visa refusal – character test not satisfied – issue of standing considered – spouse of applicant does not have standing to seek review – review applicant offshore at time of review application – applicant does not have standing to seek review – extension of time refused

Social Security

[Bebendorf and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 577 (29 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

[Boyle and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 604 (29 March 2019); Senior Member C Puplick AM

SOCIAL SECURITY – preclusion period – compensation payment – application of statutory formula – compensation payment for personal injury received – whether special circumstances exist – financial hardship – decision affirmed

[Evgeniou and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 634 (4 April 2019); Ms D Mitchell, Member

SOCIAL SECURITY – Newstart Allowance – overpayment – where data match of income occurred – where no administrative error – where no special circumstances – decision under review affirmed

[Foy and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 626 (3 April 2019); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – whether applicant's impairments total twenty points or more under the Impairment Tables – decision affirmed

[Marshall and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 615 (2 April 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

[Samson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 582 (29 March 2019); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Sultana and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 628 (3 April 2019); Mr C Edwardes, Member

SOCIAL SECURITY – age pension – arrears – 13 weeks – illness – lack of understanding of system – Centrelink notices – error in calculations – decision affirmed

Veterans' Affairs

[Holmes and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 640 (29 March 2019); Deputy President J Sosso

VETERANS' AFFAIRS – widow's pension – whether death of veteran defence-caused – alcohol use disorder – SoP 49 of 2017 – having a clinically significant disorder of mental health – Category 1A stressor – Category 1B stressor – Category 2 stressor – death of a significant other – inability to obtain appropriate clinical management – whether Factors caused or contributed to death – whether Factor arose out of, or was attributable to service – reviewable decision 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, 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
CWGF and Minister for Home Affairs	[2019] AATA 179
RZSN and Minister for Home Affairs	[2019] AATA 240

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Dharma v Minister for Home Affairs	[2018] AATA 2757	[2019] FCA 431
Hawkins v Minister for Home Affairs & Anor	[2018] AATA 1462	[2019] FCA 437
Kraues v Office of Migration Agents Registration Authority	[2016] AATA 1086	[2018] FCA 664 [2019] FCAFC 52
ZMBZ v Minister for Home Affairs	[2018] AATA 1869	[2019] FCA 455



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