



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

[Ahmadzai and Minister for Home Affairs](#) (Citizenship) [2019] AATA 669 (11 April 2019); Senior Member K Raif

CITIZENSHIP – refusal to grant Australian Citizenship by conferral – applicant has limited understanding of English language – section 21(3) of Australian Citizenship Act – whether applicant had permanent or enduring physical or mental incapacity – whether not capable of understanding the nature of the application – whether not capable of demonstrating a basic knowledge of English – whether not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of citizenship – decision affirmed

[Hameed and Minister for Home Affairs](#) (Citizenship) [2019] AATA 675 (11 February 2019); R West, Member

CITIZENSHIP – Application for citizenship by descent – review of refusal decision – whether the applicant had an Australian citizen parent at time of birth – not biological parents – extended meaning of 'parent' – test not satisfied – decision affirmed

[Kivalu and Minister for Home Affairs](#) (Citizenship) [2018] AATA 5156 (17 August 2018); Deputy President I Hanger AM QC

AUSTRALIAN CITIZENSHIP – adoptive mother – cultural adoption – birth certificate – Bridging Visa E – legal adoption – biological parent – ordinary meaning of the word "parent" – parent's conduct before and at the time of birth

[Wang and Minister for Home Affairs](#) (Citizenship) [2019] AATA 665 (5 April 2019); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship – citizenship by conferral – character requirement – decision under review set aside

Compensation

[Arbon and Comcare](#) (Compensation) [2019] AATA 663 (25 March 2019); Deputy President P Britten-Jones and D Ben-Tovim, Member

COMPENSATION – thyroid cancer – applicant worked at Maralinga – applicant was exposed to a low level of ionising radiation – whether the statutory presumption in s 7(1) of the Safety, Rehabilitation and Compensation Act 1988 applies – employment involving exposure to ionising radiation – consideration of what kind of employment the applicant was engaged in for the purposes of s 7(1)(c) of the Safety, Rehabilitation and Compensation Act 1988 – applicant was an electrician and his work duties did not require him to attend in contaminated areas – presumption does not apply – was thyroid cancer contributed to by his employment to a significant degree – causation and epidemiological studies – decision affirmed

[Church and Comcare](#) (Compensation) [2019] AATA 673 (9 April 2019); Senior Member C Puplick AM

Workers' Compensation – injury sustained in 1986 – reasonable medical expenses – chiropractic treatment – lumbar disc prolapse – injury misdiagnosed – applicant no longer suffering the effects of the accepted injury – whether Applicant presently entitled to medical expenses – decision under review affirmed

Corporations

[Legat and Australian Securities and Investments Commission](#) [2019] AATA 685 (9 April 2019); Deputy President BJ McCabe

CORPORATIONS – banning order – prohibition from engaging in any credit activities for a period of 3 years – contravention of consumer credit regulations – model of operation to avoid interest rate cap – sham business model – misleading and deceptive conduct – poor diligence, competence and judgement – contempt for decisions of Federal Court and Tribunal – whether applicant is likely to contravene credit legislation, or be involved in the contravention of any credit legislation – fit and proper person – regulatory action – protection of consumers – specific deterrence – general deterrence – decision under review is varied – banning period increased

Education and Research

[Last and Secretary, Department of Education and Training](#) [2019] AATA 658 (8 April 2019); Senior Member C Puplick AM

EDUCATION – FEE-HELP debt – application for remittal of debt – standard of units delivered – applicant completed units – does not satisfy special circumstances – decision under review affirmed

Migration

[Di Stefano and Minister for Home Affairs](#) (Migration) [2019] AATA 677 (12 April 2019); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – Applicant convicted of approximately 70 offences over a 30 year period – Direction no. 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant has resided in Australia for approximately 38 years – extent of impediments if returned to Italy – reviewable decision affirmed

[DMSB and Minister for Home Affairs](#) (Migration) [2019] AATA 679 (15 March 2019); K Parker, Member

MIGRATION – application for review of decision to refuse protection visa on character grounds – Sudanese citizen – previous finding that Australia owes protection obligations to applicant – applicant lawfully present in Australia for last 20 years on successive bridging visas awaiting processing of visa application – applicant committed drug-related and other offences – applicant diagnosed with psychological condition – effects of drug addiction – applicant does not pass character test – whether discretion should be exercised to refuse visa application under s 501(1) of the Migration Act 1958 (Cth) – expectations of Australian community – protection of Australian community – likelihood of relapse and reoffending – nature of harm – existence of protective factors that did not exist previously – reliance upon expert evidence by psychiatrist – decision set aside

[GZCK and Minister for Home Affairs](#) (Migration) [2019] AATA 656 (5 April 2019); Mr A Maryniak QC, Member

Migration – protection visa – refugee – whether the Applicant committed war crimes – whether the Applicant was a member of the LTTE – whether witness is credible – whether witness is reliable – misleading government officials – international law - Sri Lanka – Refugee Convention – Rome Statute – decision affirmed

[Lumanovski and Minister for Home Affairs](#) (Migration) [2019] AATA 681 (13 February 2019); Ms A Burke AO, Member

MIGRATION – visa refusal – applicant is a citizen of the Former Yugoslav Republic of Macedonia (FYROM) – applicant applied for a Bridging visa – applicant does not pass character test in s 501(6) of the Migration Act 1958 – applicant not of good character on account of criminal conduct – whether discretion to refuse visa should be exercised – applicant does not present unacceptable risk of re-offending – impact on family and business interest – decision under review set

[Ma'afu and Minister for Home Affairs](#) (Migration) [2019] AATA 684 (9 April 2019); Senior Member T Tavoularis

MIGRATION – REVOCATION OF MANDATORY CANCELLATION OF VISA ON CHARACTER GROUNDS – expedited matter – applicant failed to pass the character test – sentenced to 12 months' imprisonment or more – whether there is any other reason to revoke the mandatory cancellation of the Applicant's visa – considerations in Direction 79 – decision under review set aside and substituted

[PKBV and Minister for Home Affairs](#) (Migration) [2019] AATA 683 (9 April 2019); Deputy President The Hon. Dennis Cowdroy OAM QC

MIGRATION – mandatory cancellation of visa – failure to pass character test – criminal record – whether the discretion to revoke the cancellation should be exercised – Direction No. 79 – 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 affirmed

Practice and Procedure

[Hewawasam Revulge and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 674 (17 January 2019); Ms A Burke AO, Member

SOCIAL SERVICES – whether applicant entitled to Austudy payment – whether doctoral degree at Queensland University of Technology an approved course – whether incorrect advice provided by Centrelink – no reasonable prospects of success – interlocutory application granted - matter dismissed

[PVQQ and Secretary, Department of Education](#) [2019] AATA 659 (5 April 2019); Senior Member BJ Illingworth

HIGHER EDUCATION SUPPORT – FEE-HELP – remission of debt – whether the applicant’s circumstances were beyond the applicant’s control – medical evidence – whether special circumstances exist – extension of time application – extension of time refused

Social Security

[Arman and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 678 (10 April 2019); K Parker, Member

SOCIAL SECURITY – disability support pension – whether the applicant has physical, intellectual or psychiatric impairments – osteoarthritis (right knee) – post-traumatic stress disorder – persistent depressive disorder (dysthymia) – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised and likely to persist for longer than two years – whether applicant had undertaken reasonable medical treatment – impairment of lower limb function – meaning of “assistance” in Table 3 of the Impairment Tables – impairment of mental health function – whether applicant had “continuing inability to work” – whether applicant met “program of support” requirements – meaning of “actively participated in a program of support” – decision affirmed

[Beattie and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 5158 (21 September 2018); C Edwardes, Member

Social Security – disability support pension – medical conditions – neck and back pain – migraine – fibromyalgia – palpitations – tumour in left shoulder – mental health – qualification period – impairment tables – continuing inability to work rating – participation in program of support – decision under review

[Campagna and Secretary, Department of Social Services](#) (Social services second review) [2018]
AATA 5160 (14 December 2018); Ms A Burke, Member

SOCIAL SECURITY – family tax benefit/rent assistance – overpayment – debt due to the Commonwealth – whether recovery of debt should be written off or waived – whether debt attributable solely to error made by Centrelink – no special circumstances – decision under review affirmed

[Chisholm and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 671 (12 April 2019); M Hyman, Member

SOCIAL SECURITY – disability support pension – cancellation – ischaemic heart disease – major depressive disorder – whether fully diagnosed, fully treated and fully stabilised – decision affirmed

[Eom and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 662 (8 April 2019); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – 20 points across multiple impairment tables, whether there is a continuing inability to work, whether the Applicant had actively participated in a program of support, whether an exemption to participation applied – decision under review affirmed

[FCLQ and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 672 (29 March 2019); Senior Member DJ Morris

SOCIAL SECURITY – family tax benefit – was there a change in pattern and percentage of care of FTB children – signed form submitted by both parents advising of parenting plan – Social Services & Child Support Division decision affirmed

[Hamid and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 676 (12 April 2019); Dr I Alexander, Senior Member

SOCIAL SECURITY – Newstart Allowance – Carer Payment – undeclared income – unexplained cash deposits – assets test – whether legal interest in title of property is an asset for the purposes of assets test – constructive trust – no beneficial interest – decision set aside and remitted

[Hobden and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 680 (8 April 2019); G Hallwood, Member

SOCIAL SECURITY – Carer Allowance – Date lodged – Deemed date – Payment start date – Mistaken advice – Decision under review is set aside

[Jordan and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 660 (8 April 2019); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – major depressive disorder – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review set aside and substituted

[Marshall and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 670 (4 April 2019); Senior Member C Puplick AM

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

[ZVTL and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 682 (9 April 2019); Professor R McCallum AO, Member

SOCIAL SECURITY – Austudy debt owed to the Commonwealth – applicant ceased studying on a full-time basis – whether debt should be written off, waived or set aside – debt recoverable at law – applicant knowingly failed to report that he was not studying full-time – applicant has capacity to repay the debt – no special circumstances to justify waiver of the debt – decision under review affirmed

Transport

[Ham and Minister for Urban Infrastructure and Cities](#) [2019] AATA 664 (8 April 2019); Senior Member PJ Clauson

TRANSPORT – motor vehicle importation – nonstandard vehicle – not owned for 12 months prior to return to Australia – should the regulation 11 discretion be exercised – decision under review set aside

[Whalley and Minister for Infrastructure, Transport and Regional Development](#) [2019] AATA 661 (8 April 2019); Deputy President J Sosso

TRANSPORT – importation of motor vehicle – non-standard vehicle – gift from mother – exercise of discretion – no grounds for exercise of discretion – 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
DGBK and Minister for Home Affairs	[2019] AATA 243
Humane Society International (Australia) Inc and Department of Agriculture & Fisheries	[2019] AATA 617

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commonwealth of Australia v Snell	[2018] AATA 1107	[2019] FCAFC 57
DKXY v Minister for Home Affairs	[2018] AATA 3779	[2019] FCA 495
Hong v Minister for Immigration and Border Protection	[2017] AATA 2386	[2018] FCA 1085 [2019] FCAFC 55



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