



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT 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](mailto: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.

## Aviation

[Whitehall and Civil Aviation Safety Authority](#) [2019] AATA 709 (14 March 2019); Deputy President I Hanger AM QC and Dr S Lewinsky, Member

CIVIL AVIATION – whether the applicant meets the medical standard for the issue of a Class 1 medical certificate – whether the extent to which the applicant fails to meet those standards is likely to endanger the safety of air navigation – whether any conditions could be imposed upon a medical certificate which would ameliorate any threat posed to air safety – applicant has a medically significant condition that is safety relevant – applicant has a severe opioid dependence and moderately severe benzodiazepine dependence – applicant's abstinence from problematic use of opioids and benzodiazepines not certified by an appropriate specialist medical practitioner – reviewable decision affirmed.

## Citizenship

[Al-Khalidi and Minister for Home Affairs](#) (Citizenship) [2019] AATA 700 (12 April 2019); Senior Member C Puplick AM

Citizenship – citizenship by conferral – general residence requirement – spouse of Australian citizen – spousal discretion – whether applicant had close and continuing association with Australia during periods of absence from Australia in relevant period – decision under review affirmed

[Jarusheh and Minister for Home Affairs](#) (Citizenship) [2019] AATA 711 (12 April 2019); Senior Member C Puplick AM

CITIZENSHIP – citizenship test exemption – whether the applicant suffered from a permanent or enduring physical or mental incapacity – evidence of mental incapacity – tribunal not satisfied that there is evidence of mental incapacity – decision affirmed

[JLKJ and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 716 (17 April 2019); Mr C Edwardes, Member

CITIZENSHIP – Afghanistan refugee – application for citizenship refused – bogus driver's licence – whether Tribunal satisfied of identity and good character – consideration of country information – good character test – decision under review – decision affirmed

[Kuron and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1330 (17 April 2019); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review set aside

[Mohammadi and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 702 (12 April 2019); Dr P McDermott RFD, Deputy President

CITIZENSHIP – permanent resident – application for Australian citizenship – notice of approval to cancel approval for citizenship – cancelled on character grounds – whether the applicant was of good character – the making of false statements – decision under review affirmed

## Compensation

[Thompson and Comcare \(Compensation\)](#) [2019] AATA 714 (16 April 2019); Deputy President Boyle

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) – ten applications – decisions under review affirmed

## Education and Research

[GMFV and Secretary, Department of Education and Training](#) [2019] AATA 701 (16 April 2019); D K Grigg, Member

HIGHER EDUCATION – late withdrawal – whether any special circumstances exist to re-credit a VET FEE-HELP loan – decision under review affirmed

## Migration

[Harris and Minister for Home Affairs](#) (Migration) [2019] ATTA 718 (17 April 2019); Mr C Edwardes, Member

MIGRATION – application for visitor short stay visa – battery conviction – whether decision –maker is to exercise discretion to refuse the grant of a visa – whether the applicant is of good character – future conduct s 501(6)(d)(i) – Direction 79 – decision set aside and remitted with direction

[MXFR and Minister for Home Affairs](#) (Migration) [2019] ATTA 705 (5 April 2019); Deputy President S A Forgie

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 – other reason why cancellation decision should be revoked – decision set aside

[QYFM and Minister for Home Affairs](#) (Migration) [2019] ATTA 717 (16 April 2019); Senior Member T Tavoularis

MIGRATION – NON REVOCATION OF MANDATORY CANCELLATION OF VISA ON CHARACTER GROUNDS – Class BC Subclass 100 (Partner) visa – where Applicant does not pass the character test – more than 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 affirmed

[RWXF and Minister for Home Affairs](#) (Migration) [2019] ATTA 1614 (18 April 2019); Senior Member M Griffin QC

MIGRATION – visa refusal – Bridging E (Class WE) visa – character test – where applicant has substantial criminal record – where applicant’s conduct in detention reflects adversely on character – whether risk of applicant engaging in criminal conduct in Australia – protection of the Australian community from criminal or other serious conduct – the best interests of minor children – expectations of the Australian community – other considerations – where international non-foulement obligations not relevant to proceedings – decision affirmed

[Toki and Minister for Home Affairs](#) (Migration) [2019] ATTA 742 (17 April 2019); Member S Burford

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – capacity of Tribunal to go behind conviction - character test – substantial criminal record – Applicant convicted of unlawful assault – bodily harm against women in a short time period after arriving in – Australia Direction no. 79 – weighing up of 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 – extent of impediments if returned to New Zealand – reviewable decision affirmed

[Tuimalatu and Minister for Home Affairs](#) (Migration) [2019] ATTA 719 (18 April 2019); Senior Member D. J. Morris, Senior Member C. J. Furnell

MIGRATION – mandatory cancellation of visa – consideration of Direction No. 79 – primary considerations – other considerations – any other matter – context of the offending and whether trend of increasing seriousness of violent offending – reviewable decision set aside and new decision substituted

## **Practice and Procedure**

[Business Institute of Australia Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 699 (16 April 2019); Deputy President The Hon. D Cowdroy OAM QC

POLICY AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – decision to impose conditions on Applicants’ registration – stay granted

[Merage Group Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 713 (15 February 2019); The Hon. D Cowdroy OAM QC, Deputy President

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 – maintenance of standards for education and training – protection of students – insufficient evidence of financial impact – stay application refused

[Whitehall and Civil Aviation Safety Authority](#) [2019] AATA 704 (16 April 2019); Deputy President I Hanger AM QC and Dr S Lewinsky, Member

PRACTICE AND PROCEDURE – whether order restricting or prohibiting the identity of the applicant should be made – where tribunal's reasons disclose sensitive and personal information – principle that proceedings before the tribunal should be held in public considered – application is refused

## **Social Security**

[Fayez and Secretary, Department of Jobs and Small Business](#) (Social services second review) [2019] AATA 710 (16 April 2019); Ms A Burke, Member

SOCIAL SECURITY – Newstart Allowance – failure to attend appointment with employment services provider – failure to advise of non-attendance prior to appointment – whether reasonable excuse for the failure – penalty payment imposed – decision under review is affirmed

[Hamilton and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 703 (16 April 2019); Dr L Bygrave, Member

SOCIAL SECURITY – application for extension of time – age pension debt – where applicant rested on his rights – where prejudice to Secretary and general public – where substantive matter may have merit – extension of time granted

[Mosai and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 715 (17 April 2019); Senior Member D. J. Morris

SOCIAL SECURITY – member of a couple – whether Applicant a member of a couple – if so, whether discretion should be exercised not to treat Applicant as a member of a couple for purposes of Act – consideration of circumstances of Applicant – purposes of the discretionary provision – special reasons in a particular case must be satisfied – not satisfied particular circumstances of Applicant enliven discretion – decision affirmed

## **Veterans' Affairs**

[Dougherty and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 706 (16 April 2019); Senior Member L Kirk

VETERANS' AFFAIRS – disability pension claim – alcohol use disorder – hypertension – Deledio Principles – where hypothesis for claimed conditions consistent with templates in relevant Statement of Principles – whether claimed conditions were war-caused – where alcohol use disorder not war-caused – where hypertension war-caused – decision set aside in part

[Quazer and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 712 (17 April 2019); Mr A. Maryniak QC, Member

VETERANS' AFFAIRS – application for increase to special rate of pension from general rate of pension – Applicant aged under 65 at time of application – Applicant's general rate of pension assessed at 100 per cent – Applicant's incapacity from war-caused injuries or diseases renders him incapable of working more than eight hours per week – whether alone test at s 24(1)(c) is satisfied – decision under review set aside and substituted

# 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

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CASE NAME	AAT REFERENCE
<b>CJQP and Minister for Home Affairs</b>	<a href="#">[2019] AATA 332</a>
<b>Pohahau and Minister for Home Affairs</b>	<a href="#">[2019] AATA 106</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>FYBR v Minister for Home Affairs &amp; Anor</b>	<a href="#">[2018] AATA 4281</a>	<a href="#">[2019] FCA 500</a>

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