



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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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.

Citizenship

Correction – Please note the following decision appeared in last week's bulletin, No.16 - 23 April 2019, with an incorrect citation and link. The correct version is set out below for your convenience.

[Kuron and Minister for Home Affairs](#) (Citizenship) [2019] AATA 747 (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

Compensation

[Doering and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 752 (23 January 2019); A Ward, Member

COMPENSATION – Hearing on papers – Onset of permanent impairment of PTSD injuries – Date of trauma causing PTSD – Review of onset in hindsight – Onset of condition and diagnosis of condition factual issues – Injuries established before 1 December 1988 – Decision under review set aside

Environment

[Lord Howe Island First Peoples Association and Australian Pesticides & Veterinary Medicines Authority](#) [2019] AATA 748 (18 April 2019); Deputy President BW Rayment OAM QC

ENVIRONMENT – proposal to eradicate rats on Lord Howe Island using brodifacoum – limitations on jurisdiction of Tribunal to review parts of permit – expedited hearing – decision under review set aside and substituted

Migration

Correction – Please note the following decision appeared in last week’s bulletin, No.16 - 23 April 2019, with an incorrect citation and link. The correct version is set out below for your convenience.

[RWXF and Minister for Immigration and Border Protection](#) (Migration) [2019] AATA 749 (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

[Subasinghe and Minister for Home Affairs](#) (Migration) [2019] AATA 751 (24 April 2019); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – substantial criminal record – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – nature of harm – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[TGXY and Minister for Home Affairs](#) (Migration) [2019] AATA 757 (24 April 2019); Mr T Eteuati, Member

MIGRATION – mandatory cancellation of applicant’s visa under s 501(3A) – Applicant failed to pass the character test - whether there is another reason why cancellation decision should be revoked - application of Direction No. 65 – how expectations of the Australian community are determined – decision affirmed

[YKSB and Minister for Home Affairs](#) (Migration) [2019] AATA 759 (24 April 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of visa on character grounds – Class BF Transitional (Permanent) visa – where Applicant does not 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 affirmed

National Disability Insurance Scheme

[Evans and National Disability Insurance Agency](#) [2019] AATA 754 (24 April 2019); Mr A Maryniak QC, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – hearing impaired applicant – whether impairments result in substantially reduced functional capacity in one or more relevant activities – whether substantially reduced functional capacity to communicate – whether applicant requires support from the NDIS for lifetime – decision under review set aside and substituted

Practice and Procedure

[Binga and Minister for Home Affairs](#) (Citizenship) [2019] AATA 755 (13 March 2019); M O'Loughlin, Member

EXTENSION OF TIME - extension of time application – length of delay – reason for delay – merits of substantive case - extension of time granted

[Devetzidis and Comcare](#) (Compensation) [2018] AATA 5317 (4 December 2018); Senior Member BJ Illingworth

PRACTICE AND PROCEDURE – extension of time application – over two years out of time – application previously withdrawn – whether applicant requesting reinstatement of withdrawn application – whether the application was dismissed in error – whether special circumstances provisions applied – extension of time application refused

[Gédéon and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 750 (23 April 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – cancellation of disability support pension – application for a stay of decision – principles governing a stay – prospects of success – prejudice to the respondent – recovery of overpayments – financial hardship – public interest – whether the appeal might be rendered nugatory – stay granted

[HILL and Tax Practitioners Board](#) (Taxation) [2019] AATA 756 (26 April 2019); Senior Member PW Taylor SC

POLICY AND PROCEDURE – stay application – tax agent registration cancellation – whether decision to cancel tax agent registration should be stayed – whether decision to prevent reapplying for tax agent registration for five years should be stayed – conduct of personal affairs – prospects of success – public interest – futility of stay – stay rejected

[O'Heir and Comcare](#) (Compensation) [2019] AATA 743 (18 April 2019); M Hyman, Member

PRACTICE AND PROCEDURE – compensation - extension of time – relevant principles – where delay substantial – whether the applicant laboured under a disability because of his mental health condition – confusion engendered by shifting basis for respondent's decisions – prospects of success – potential exclusion of applicant from any ventilation of relevant matters - substantial justice of the case – extension granted

[Pacific Flight Services Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 745 (23 April 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – request for stay of decision – decision under review to refuse to renew registration under NVR Act – decision under review to refuse to renew registration under ESOS Act – factors to be considered in deciding whether to grant stay – prospects of success – consequences for the Applicant – public interest – consequences for the Respondent – whether refusal would render application nugatory – stay refused

Social Security

[Boxall and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 764 (26 April 2019); Brigadier AG Warner, Member

SOCIAL SECURITY – age pension – whether residence requirements satisfied – relevant factors – nature of accommodation – nature and extent of family relationships – nature and extent of person’s employment, business or financial ties – nature and extent of person’s assets – frequency and duration of person’s travel – any other relevant matter – decision affirmed

[Dyer and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 5318 (10 August 2018); IF Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether medical conditions fully diagnosed, fully treated and fully stabilised during the assessment period - whether an impairment rating of 20 points or more existed under the Impairment Tables - decision under review affirmed

[Fragomeni and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 746 (23 April 2019); Senior Member BJ Illingworth

FAMILY TAX BENEFIT – shared care - percentages of care – actual care – FTB child – decision affirmed

[Hicks and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 744 (18 April 2019); Mr A Maryniak QC, Presiding Member and Dr A Reddy, Member

SOCIAL SECURITY – Disability Support Pension – Where the Applicant’s Disability Support Pension was cancelled – Whether the Applicant was qualified to receive Disability Support Pension as at date of cancellation – Whether conditions are fully diagnosed, treated and stabilised – Whether the Applicant can be assigned 20 points under the Impairment Tables – Decision affirmed

[Kang and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 758 (26 April 2019); Deputy President Boyle

SOCIAL SECURITY – Disability Support Pension – control test – controlled private trust – attributable stakeholder – asset attribution percentage – decision under review remitted and set aside

[Mills; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 753 (23 April 2019); Ms A Burke AO, Member

SOCIAL SECURITY – compensation preclusion payment – calculation of preclusion period - straitened financial circumstances – ill health including mental health conditions – impaired decision making - evidence does not show special circumstances – decision under review varied.

[Ware and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 5288 (9 October 2018); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – refusal – severe degenerative arthritis of both knees, lumbar pain, arthritis in shoulders and hands, obesity, asthma, deep vein thrombosis, depression, high blood pressure and kidney problems – whether conditions are fully diagnosed, treated and stabilised – whether impairments are of 20 points of more under the Impairment Tables – decision under review affirmed

[Wittig-Goss and Secretary, Department of Social Services](#) (Social services second review)
[2019] AATA 765 (26 April 2019); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – mental health condition, lumber spine condition, cervical spine condition, bilateral shoulder condition and left elbow pain – 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

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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Beckett v Tax Practitioners Board

[\[2018\] AATA 1860](#)

[\[2019\] FCA 353](#)



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