



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.

## Child Support

[Dahl and Paddington](#) (Child support) [2019] AATA 693 (8 March 2019); S Brakespeare, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income - whether the estimate should have been refused - estimate of income was correctly accepted - decision under review affirmed

[Darcy and Darcy](#) (Child support) [2019] AATA 690 (7 March 2019); A Schiwy, Member

Child support - departure determination – financial resources of both parents - period of departure - decision under review set aside and substituted

[Gilbert and Bako](#) (Child support) [2019] AATA 692 (8 March 2019); K Buxton, Member

CHILD SUPPORT – dismissal of application for review - particulars of the administrative assessment – last relevant year of income correctly applied - no reasonable prospect of success - application for review dismissed

[Shahadi and Lardon](#) (Child support) [2019] AATA 695 (11 March 2019); P Jensen, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure - costs of special needs do not significantly affect the cost of maintaining the child – costs of child care do not significantly affect the cost of maintaining the child - financial resources of both parents are fairly represented in the administrative assessment - no ground for departure - application to depart is refused - decision under review set aside and substituted

[Whyte and Child Support Registrar](#) (Child support) [2019] AATA 689 (7 March 2019); F Hewson, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made - decision under review set aside and substituted

CHILD SUPPORT – date of effect of the tribunal's decision – whether there were special circumstances that prevented the application for review being lodged in time - special circumstances do not exist - tribunal decided not to make a determination under subsection 95N(2)

## Citizenship

[Sedhom and Minister for Home Affairs](#) (Citizenship) [2019] AATA 784 (2 May 2019); Senior Member K Raif

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether the application for citizenship made by the applicant should be approved – general and special residence requirements – defence service requirement – decision under review affirmed

## Compensation

[Barthel and Australian National University](#) (Compensation) [2019] AATA 548 (30 April 2019); Mr S Webb, Member

COMPENSATION – accepted injury – carpal tunnel syndrome – file review – decision to deny present liability in respect of incapacity for work and medical treatment expenses without determining specific claim – weight to be given to neutral evaluation report – implied issues of credit – doctor shopping not made out – consideration of effects of ‘injury’ – carpal tunnel syndrome resolved with surgery – persistence of symptoms during post-surgical recovery – extent of liability – ‘disease’ and ‘injury (other than a disease)’ not exclusive – expert evidence – effects of ‘injury’ continuing – denial of present liability not consistent with evidence – liability persists – no unmet claim for compensation for incapacity for work or medical treatment expenses – entitlement to be assessed on the merits of claims made – decision set aside

[Hogan and National Australia Bank Limited](#) [2019] AATA 780 (1 May 2019); Dr P McDermott RFD, Deputy President

COMPENSATION – claim for a psychiatric injury as a result of the applicant’s employment with the respondent – liability accepted for the injury by the respondent – applicant’s failure to undertake a rehabilitation program – applicant’s compensation payments suspended – whether there was a reasonable excuse to not undertake a rehabilitation program – decisions under review affirmed

[Hollis and Comcare](#) (Compensation) [2019] AATA 772 (29 April 2019); Deputy President JW Constance

WORKERS' COMPENSATION – application for review of decision affirming determination that Respondent not liable to compensate Applicant in respect of claimed injury – whether Applicant suffered "ailment" or "aggravation of such an ailment" – major depressive disorder – whether ailment "contributed to, to a significant degree" by Applicant's employment - whether “disease ... suffered as a result of ... administrative action taken ... in respect of the [Applicant's] employment” – disease suffered prior to alleged administrative actions – whether injury resulted in “incapacity for work, or impairment” – decision under review set aside and remitted

PRACTICE AND PROCEDURE – proceedings on remittal from Federal Court – where order remitting matter unqualified and unambiguous – whether decision under review to be reconsidered on the merits – unqualified order remitting matter ordinarily to be taken as invitation to Tribunal to begin again statutory task of review

## Migration

[Basnet](#) (Migration) [2019] AATA 729 (8 April 2019); J Cripps Watts, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 – visa application not accompanied by evidence that applicant applied for Australian Federal Police check in the 12 months before making application – decision under review affirmed

[F & C Vogels](#) (Migration) [2019] AATA 725 (10 April 2019); K Synon, Member

MIGRATION – nomination – genuine position – Agricultural Technician - ANZSCO Code 311111 – Regional Australia – classification of role – Young Cattle Supervisor position aligns with Agricultural Technician – role classified correctly – decision under review set aside

[Kalan and Minister for Home Affairs](#) (Migration) [2019] AATA 787 (2 May 2019); Senior Member DJ Morris

MIGRATION – application for prospective marriage visa – application refused under s 501(1) of Migration Act – sponsor of Applicant seeks review of refusal decision – consideration of character test and powers of discretion in Act – can Tribunal go behind conviction when applicant convicted in absentia – ministerial Direction – primary considerations – other considerations – serious nature of conviction – reviewable decision affirmed

[Liaquat](#) (Migration) [2019] AATA 731 (9 April 2019); J Cripps Watts, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 – IELTS test – applicant did not meet required English language proficiency – applicant did not hold passport of type specified – decision under review affirmed

[LZTW and Minister for Home Affairs](#) (Migration) [2019] AATA 779 (30 April 2019); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – s 501(3A) – 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 – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed to New Zealand – decision under review affirmed

[Maharjan](#) (Migration) [2019] AATA 737 (5 April 2019); K Malyon, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 – standard business sponsor stream – applicant not subject of approved nomination – Federal Circuit Court remittal – nomination ceased – cook – Migration Amendment Reforms – issue with representatives – unique and exceptional circumstances – case referred to minister – decision under review affirmed

[Ozzy Fortune Group Pty Ltd](#) (Migration) [2019] AATA 735 (10 April 2019); R Skaros, Member

MIGRATION – nomination – Temporary Residence Transition stream – Program or Project Administrator - 511112 – financial capacity of applicant to employ nominee full-time for two years – evidence of financial capacity provided – decision under review set aside

[QQYJ and Minister for Home Affairs](#) (Migration) [2019] AATA 770 (2 April 2019); Mr T Eteuati, Member

MIGRATION – refusal of application for Bridging visa under section 501(1) – Applicant failed to pass the character test under section 501(6)(d)(i) – whether the discretion to refuse to grant the Bridging visa should be exercised – application of Direction No. 79 – decision under review set aside and remitted for reconsideration

[XMBQ and Minister for Home Affairs](#) (Migration) [2019] AATA 785 (9 April 2019); The Hon. Matthew Groom, Senior Member

MIGRATION – mandatory cancellation under s 501(3A) of the Migration Act – applicant convicted of sexually based offences involving a child – applicant has a substantial criminal record – applicant fails character test – whether another reason why the mandatory cancellation should be revoked – Direction 79 – nature and seriousness of the offending – risk of reoffending linked to risk of relapse into alcohol dependency – concerns about protection of the Australian community – expectations of the Australian community – international non-refoulement obligations – applicant liable to be repatriated to Somalia – applicant faces significant impediments if removed – acquired brain injury – mental health conditions – overall balance weighs in favour of revocation – decision affirmed

## Refugee

[1605660](#) (Refugee) [2019] AATA 791 (26 March 2019); L Symons, Member

REFUGEE – protection visa – Indonesia – imputed political opinion – arrested after anti-corruption protests – applicant failed to attend hearing – limited evidence – decision under review affirmed

[1606399](#) (Refugee) [2019] AATA 793 (9 April 2019); P Millar, Member

REFUGEE – protection visa – Bangladesh – applicant fears harm from creditors – business owner – credibility issues – inconsistent evidence – no real risk of serious harm – decision under review affirmed

[1718259](#) (Refugee) [2019] AATA 792 (10 April 2019); A Murphy, Member

REFUGEE – cancellation – protection visa – Iraq – religion – Shia Muslim – imputed political opinion – family member of informer against Sunni extremists – incorrect answers on form – multiple visits to Iraq after protection visa granted – incorrect date given of death of relative – best interests of the child – contribution to the Australian community – decision under review set aside

[1723990](#) (Refugee) [2019] AATA 698 (25 March 2019); T Flood, Member

REFUGEE – cancellation – protection visa – Stateless – incorrect information in protection application and applicant's return trip to Iraq – non-compliant under s107 – Tribunal not persuaded applicant is stateless – Bidoon – political opinion – applicant threatened by Badr forces – well-founded fear of persecution by Iraqi militia groups – risk of serious harm if returned to Iraq – relocation in home country not reasonable – applicant has young family – best interests of children – decision under review set aside and substituted with decision not to cancel visa

[1816669](#) (Refugee) [2019] AATA 795 (10 April 2019); N Burns, Member

REFUGEE – protection visa – Iraq – religion – Shia Muslim – political opinion – anti-Sadr militia – religious extremists – Dawa party – social group – educated women – occupation – real chance of persecution – relocation in home country not reasonable – decision under review remitted

## **Social Security**

[Meyers and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 788 (2 May 2019); Ms DK Grigg, Member

SOCIAL SECURITY – age pension – whether income stream asset exempt – decision under review set aside

[Boyton and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 775 (1 May 2019); Ms DK Grigg, Member

SOCIAL SECURITY – age pension – date of effect of favourable determination – whether section 43(6) of the Administrative Appeals Tribunal Act 1975 applies – decision under review set aside

[Cullen and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 777 (1 May 2019); Ms D Mitchell, Member

SOCIAL SECURITY – New Start Allowance – cancellation – refusal or failure to accept an offer of suitable employment – reasonable excuse – decision under review affirmed

[Cullen and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 783 (1 May 2019); Ms D Mitchell, Member

SOCIAL SECURITY – Family Tax Benefit – overpayment – where no administrative error – where no special circumstances – decision under review affirmed

[Seven and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 786 (2 May 2019); Senior Member DJ Morris

SOCIAL SECURITY – family tax benefit – what is percentage of care of the applicant and the other party for a relevant FTB child in three periods – contentions about actual care – paucity of evidence and concessions about older child moving between parents – decision of Social Services and Child Support Division affirmed

[Singleton and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 766 (26 April 2019); Ms K Parker, Member

SOCIAL SECURITY – family tax benefit – claim for lump sum payment for past period – late lodgement of claim – late lodgement of taxation returns – whether an extension of time should be granted – whether special circumstances prevented lodgement by due date – meaning of “special circumstances” – meaning of “prevented” – where applicant relied on erroneous advice from accountant – where applicant deferred lodgement while awaiting private ruling from Australian Taxation Office and further determination of subsequent objection application – where lack of awareness that obligation existed to lodge taxation returns despite seeking a private ruling – where delay also said to be caused by post-natal depression, minor surgery to child, and short periods of international travel by applicant’s husband – Tribunal satisfied that special circumstances did not exist that prevented lodgement by the due date – family tax benefit claim not “effective” – decision affirmed

[TCVR and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 778 (1 May 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
<b>Ali and Minister for Home Affairs</b>	<a href="#">[2019] AATA 417</a>
<b>BNNN and Minister for Home Affairs</b>	<a href="#">[2019] AATA 27</a>
<b>Chen and Secretary, Department of Social Services</b>	<a href="#">[2019] AATA 560</a>
<b>CHJK and Minister for Home Affairs</b>	<a href="#">[2019] AATA 584</a>
<b>Frugtniet and Secretary, Department of Social Services</b>	<a href="#">[2019] AATA 547</a>
<b>HPZB and Minister for Home Affairs</b>	<a href="#">[2019] AATA 439</a>
<b>NDDG and Minister for Home Affairs</b>	<a href="#">[2019] AATA 250</a>
<b>Nguyen and Minister for Home Affairs</b>	<a href="#">[2019] AATA 370</a>
<b>Stevenson and Repatriation Commission</b>	<a href="#">[2019] AATA 520</a>
<b>Truan and Commonwealth Superannuation Corporation</b>	<a href="#">[2019] AATA 555</a>
<b>XFCS and Minister for Home Affairs</b>	<a href="#">[2019] AATA 201</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Twentyman v Secretary, Department of Social Services</b>	<a href="#">[2018] AATA 110</a>	<a href="#">[2018] FCA 1892</a> <a href="#">[2019] FCA 586</a>



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