



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.

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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

[Shafari and Minister for Home Affairs](#) (Citizenship) [2019] AATA 808 (7 May 2019); Senior Member DJ Morris

CITIZENSHIP – citizenship by conferral – delegate refused application for citizenship – not satisfied of identity of applicant – veracity of document provided – birthdate changed historically – other documents supportive of identity – Tribunal limited to review question before decision – maker – decision under review set aside and remitted with direction

Compensation

[Chalhoub and Comcare](#) (Compensation) [2019] AATA 811 (29 April 2019); Senior Member

C Puplick AM

COMPENSATION – Commonwealth employee – claim for compensation for work related injury denied – whether applicant sustained injury in the course of employment – pre-existing condition – whether applicant entitled to compensation for neck and lower back injury and head tension and migraines – decision affirmed

[Steins and Comcare](#) (Compensation) [2019] AATA 803 (6 May 2019); M Hyman, Member

COMPENSATION – rehabilitation – chronic migraines, neck strain, major depressive disorder and sleep apnoea – provision of a recliner chair – whether the original employer remains the rehabilitation authority – whether applicant is undertaking, has completed or has been assessed as not capable of undertaking a rehabilitation program – home assessments – whether a recliner chair is an aid or appliance – medical evidence – whether the chair is reasonably required – amount of compensation to be paid – decision under review set aside

National Disability Insurance Scheme

[MHZQ and National Disability Insurance Agency](#) [2017] AATA 810 (8 May 2019); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – bilateral knee condition – borderline personality disorder – whether applicant has a disability – whether impairments permanent – whether substantially reduced functional capacity – where psychiatric condition results in substantially reduced functional capacity to socially interact – decision set aside and remitted

Practice and Procedure

[Claasz and Comcare](#) (Compensation) [2019] AATA 800 (3 May 2019); Mr W Frost, Member

PRACTICE AND PROCEDURE – compensation – incapacity resulting from injury – where lump sum payable under superannuation benefit scheme – date compensation payable from – calculation of superannuation amount for the purposes of s 21 of the Safety, Rehabilitation and Compensation Act 1988 – decision varied for date compensation payable – otherwise decision affirmed

[Evans and Comcare](#) (Compensation) [2019] AATA 799 (17 April 2019); Mr S Webb, Member

PRACTICE AND PROCEDURE – applications for review of decisions rejecting compensation claims – delay – failure to comply with directions – failure to proceed – application for dismissal – meaning of ‘within a reasonable time’ – discretion enlivened – factors relevant to exercise of discretion – explanation for applicant’s failure to proceed and comply – fairness – prejudice – flexibility and latitude in the context of properly determined procedure – serial non-compliance and failure to proceed by applicant – Tribunal objectives – consideration of appropriate procedure – application dismissed

[Hasan and Inco Ships Pty Ltd](#) (Compensation) [2019] AATA 801 (7 May 2019); Deputy President JW Constance

PRACTICE AND PROCEDURE – application for review of decision to refuse extension of time in which to seek reconsideration of determination of liability – where delay in seeking reconsideration more than eight years after prescribed time in which to seek reconsideration expired – whether acceptable explanation of delay – whether prejudice to Respondent if extension granted – entirety of delay not satisfactorily explained – extension would unsettle established practices and generate uncertainty – decision under review affirmed

[National College of Trade Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 797 (3 May 2019); Mrs JC Kelly, Senior Member

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – registered training organisation – decision to remove nationally recognised qualification from scope of registration – Standard for RTOs 2015 cl. 1.8, 1.13, 1.14, 1.15, 1.16, 3.1 – decision to cancel registration – Standard for RTOs 2015 cl. 4.1, 5.1, 5.2, 5.3, 7.3, 1.7, 1.1, 1.2, 1.3, 1.8, 1.13, 1.14, 1.15, 1.16, 3.1, 3.2 – consideration of factors in Re Scott and Australian Securities and Investments Commission – majority of non-compliances not rectified – no current enrolments – stay application refused for remove from scope decision – stay application refused for cancellation decision

Social Services

[GJCN and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 802 (7 May 2019); Senior Member R Cameron

SOCIAL SECURITY – newstart allowance – disability support pension – jurisdiction question – whether telephone call with a customer service officer is a reviewable decision – no jurisdiction

[Gordon and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 805 (7 May 2019); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – lumbar/cervical spine condition, left shoulder condition, right knee/leg condition, mental health condition, acquired brain injury and diabetes – 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

[Kennedy and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 806 (7 May 2019); 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

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 796 (3 May 2019); Ms D Mitchell, Member

SOCIAL SECURITY – lump sum preclusion period – compensation charge – whether special circumstances exist – compensation lump sum – no evidence that special circumstances exist – decision under review affirmed

[Termaine and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 813 (9 May 2019); Ms D K 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

Taxation

[Seven Network \(Operations\) Limited and Screen Australia](#) (Taxation) [2019] AATA 798 (1 May 2019); Deputy President BW Rayment OAM QC

TAXATION AND REVENUE – films – income tax offsets – producer offset – qualifying conditions – “documentary” meaning – series called Bride and Prejudice – series not entitled to offset – decision under review affirmed

Veterans' Affairs

[Mottlee and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 812 (8 May 2019); Deputy President R I Hanger QC

VETERANS' AFFAIRS – disability pension – defence service with the Royal Australia Navy – Post-Traumatic Stress Disorder (PTSD) – application of Statement Principles No. 83 – condition defence-caused – decision under review 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
GKQK and Minister for Home Affairs	[2019] AATA 614
Legat and Australian Securities and Investments Commission	[2019] AATA 685
SWWC and Minister for Home Affairs	[2019] AATA 586
Tran and Minister for Home Affairs	[2018] AATA 3028
Uasi and Minister for Home Affairs	[2019] AATA 638
Vu and Minister for Home Affairs	[2019] AATA 635
ZVTL and Secretary, Department of Social Services	[2019] AATA 682

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
DFW18 v Minister for Home Affairs	[2018] AATA 469	[2019] FCA 599
Minister for Home Affairs v Sharma	[2018] AATA 2110	[2019] FCA 597

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from 27 May 2019.

Rapidly progressive crescentic glomerulonephritis (Reasonable Hypothesis) – No. 45 of 2019

<https://www.legislation.gov.au/Series/F2019L00633>

Rapidly progressive crescentic glomerulonephritis (Balance of Probabilities) – No. 46 of 2019

<https://www.legislation.gov.au/Series/F2019L00634>

Posterior adventitial heel bursitis (Reasonable Hypothesis) – No. 47 of 2019

<https://www.legislation.gov.au/Series/F2019L00629>

Posterior adventitial heel bursitis (Balance of Probabilities) – No. 48 of 2019

<https://www.legislation.gov.au/Series/F2019L00630>

Poisoning from plants or fungi (Reasonable Hypothesis) – No. 49 of 2019

<https://www.legislation.gov.au/Series/F2019L00651>

Poisoning from plants or fungi (Balance of Probabilities) – No. 50 of 2019

<https://www.legislation.gov.au/Series/F2019L00652>

Rheumatic heart disease (Reasonable Hypothesis) – No. 51 of 2019

<https://www.legislation.gov.au/Series/F2019L00635>

Rheumatic heart disease (Balance of Probabilities) – No. 52 of 2019

<https://www.legislation.gov.au/Series/F2019L00636>

Acute rheumatic fever (Reasonable Hypothesis) – No. 53 of 2019

<https://www.legislation.gov.au/Series/F2019L00641>

Acute rheumatic fever (Balance of Probabilities) – No. 54 of 2019

<https://www.legislation.gov.au/Series/F2019L00642>

Dislocation of a joint and dubluxation of a joint (Reasonable Hypothesis) – No. 55 of 2019

<https://www.legislation.gov.au/Details/F2019L00640>

Dislocation of a joint and dubluxation of a joint (Balance of Probabilities) – No. 56 of 2019

<https://www.legislation.gov.au/Series/F2019L00647>

Joint Instability (Reasonable Hypothesis) – No. 57 of 2019

<https://www.legislation.gov.au/Series/F2019L00645>

Joint Instability (Balance of Probabilities) – No. 58 of 2019

<https://www.legislation.gov.au/Series/F2019L00644>

Gout (Reasonable Hypothesis) – No. 59 of 2019

<https://www.legislation.gov.au/Series/F2019L00637>

Gout (Balance of Probabilities) – No. 60 of 2019

<https://www.legislation.gov.au/Series/F2019L00638>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be revoked** on **27 May 2019**:

Dislocation – No. 24 of 2010

<https://www.legislation.gov.au/Series/F2010L01040>

Dislocation – No. 25 of 2010

<https://www.legislation.gov.au/Series/F2010L01041>

Gout – No. 30 of 2010

<https://www.legislation.gov.au/Series/F2010L01046>

Gout – No. 31 of 2010

<https://www.legislation.gov.au/Series/F2010L01047>

Joint Instability – No. 32 of 2010

<https://www.legislation.gov.au/Series/F2010L01048>

Joint Instability – No. 33 of 2010

<https://www.legislation.gov.au/Series/F2010L01049>

Heel bursitis – No. 77 of 2010

<https://www.legislation.gov.au/Series/F2010L02316>

Heel bursitis – No. 78 of 2010

<https://www.legislation.gov.au/Series/F2010L02317>

Rapidly progressive crescentic glomerulonephritis – No. 81 of 2010

<https://www.legislation.gov.au/Series/F2010L02337>

Rapidly progressive crescentic glomerulonephritis – No. 82 of 2010

<https://www.legislation.gov.au/Series/F2010L02338>

Poisoning and toxic reaction from plants and fungi – No. 84 of 2010

<https://www.legislation.gov.au/Series/F2010L02839>

Poisoning and toxic reaction from plants and fungi – No. 85 of 2010

<https://www.legislation.gov.au/Series/F2010L02840>

Rheumatic heart disease – No. 19 of 2011

<https://www.legislation.gov.au/Series/F2011L00493>

Rheumatic heart disease – No. 20 of 2011

<https://www.legislation.gov.au/Series/F2011L00492>

Acute rheumatic fever – No. 23 of 2011

<https://www.legislation.gov.au/Series/F2011L00503>

Acute rheumatic fever – No. 24 of 2011

<https://www.legislation.gov.au/Series/F2011L00504>



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