



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 2/2020

20 January 2020

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions	3
Aviation.....	3
Child Support.....	3
Citizenship	4
Compensation.....	4
Education and Research	5
Migration.....	5
Practice and Procedure.....	6
Refugee	7
Social Services	8
Appeals.....	10
Appeals lodged	10
Appeals finalised.....	10

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

[Chernikeeff and Civil Aviation Safety Authority](#) [2020] AATA 25 (13 January 2020); Senior Member R Cameron

CIVIL AVIATION – cancellation of Private Pilot Licence Aeroplane Category – whether applicant fit and proper person – whether applicant failed in duty as a pilot – need to maintain proper documentation – where applicant had prior suspension of licence – decision under review set aside and substituted

Child Support

[Banerjee and Child Support Registrar](#) (Child support) [2019] AATA 5732 (12 December 2019); J Leonard, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – date of notification of the care change – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances

[Beringer and Armistead](#) (Child support) [2019] AATA 5736 (19 November 2019); K Buxton, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – adjusted taxable income of the liable parent varied – decision under review set aside and substituted

[Gorbald and Hurst](#) (Child support) [2019] AATA 5734 (28 November 2019); A Schiwy, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

[Midgley and Midgley](#) (Child support) [2019] AATA 5733 (20 November 2019); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – nights versus daytime care – nights in care is the best measure of the care provided – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Stidolph and Stidolph](#) (Child support) [2019] AATA 5738 (26 November 2019); K Buxton, Member

CHILD SUPPORT – departure determination – costs of education – manner expected by both parents – cost of maintaining the children are significantly affected – property settlement – financial resources of both parents – decision to depart – decision under review affirmed

Citizenship

[Moukhalalati and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 33 (17 January 2020); Senior Member L Kirk

CITIZENSHIP – refusal of application for citizenship – citizenship test – claim for exemption based on inability to learn English – whether applicant suffers from a permanent or enduring mental incapacity – medical evidence considered – applicant diagnosed with Major Depressive Disorder – whether applicant's inability to demonstrate basic knowledge of English based upon a permanent or enduring mental incapacity – decision under review affirmed

[Wheeder and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 30 (14 January 2020); Dr N A Manetta, Senior Member

CITIZENSHIP – whether applicant of good character – where convictions for fraud – where applicant knowingly made false assertion in statutory declaration in support of his citizenship application – decision under review affirmed

Compensation

[Colebatch and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 34 (16 January 2020); Dr I Alexander, Senior Member

COMPENSATION – Military rehabilitation and compensation – Liability for schizophrenia and adjustment disorder – whether conditions arose out of defence service – whether material contribution – consideration of Statements of Principles – decision set aside and substituted

[Fairall and Comcare](#) (Compensation) [2020] AATA 27 (14 January 2020); Senior Member M J McGrowdie

WORKERS' COMPENSATION – psychological condition – liability to pay compensation – whether stressors in employment constituted injury – whether actions of employer administrative actions – whether Applicant's claimed condition excluded from the definition of injury – decision set aside and substituted

[Ivill and Comcare](#) (Compensation) [2020] AATA 36 (16 January 2020); Senior Member D O'Donovan

WORKERS COMPENSATION – discrete physical injury in 2001 – accepted condition of aggravation of sacro-iliitis not elsewhere classified, sprain of other specified sites of hip and thigh and displacement of intervertebral disc – second injury to knee sustained in 2008 as a result of weakness in left leg occasioned by earlier injury – whether chronic pain is a symptom of physical injuries or a secondary condition – chronic pain syndrome – adjustment disorder with depressed mood – whether the applicant's second physical condition arose as a result of first accepted condition – whether the applicant's conditions result in permanent impairment – nature of whole person impairment considered

[Wirth and Comcare](#) (Compensation) [2020] AATA 29 (14 January 2020); Senior Member R Cameron

COMPENSATION – injuries to shoulder and knee – whether arising out of or in the course of employment – evidence of pre-existing degenerative change – subsequent incidents that affected the injury – impact of age and weight on conditions – whether conditions still related to employment – first reviewable decision set aside – second reviewable decision affirmed

Education and Research

[Tristar Academy Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 5873 (19 December 2019); Emeritus Professor P A Fairall, Senior Member

VOCATIONAL EDUCATION AND TRAINING – decision to refuse to allow Applicant to make application for renewal of registration within shorter time period – where Applicant failed to make application for renewal of registration at least 90 days before the day registration expired – interpretation of “application” under s 31(3) – discretion under s 31(1)(b) – relevant principles – explanation for the delay – prejudice to Respondent – prospects of success – public interest – decision under review affirmed

Migration

[Mayes and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 32 (16 January 2020); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Applicant’s Visa – character test – substantial criminal record – offences included sexually penetrated a child over 13 and under 16 – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to United Kingdom – reviewable decision affirmed

[Wytrwal and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2019] AATA 5830 (23 December 2019); Senior Member D J Morris

MIGRATION – Mandatory cancellation of Class BF Transitional (Permanent) visa – refusal of delegate to revoke mandatory cancellation – applicant fails character test – Direction No. 79 – primary considerations – other considerations – any other reason – medical evidence – decision under review set aside and new decision substituted – written reasons provided

[Lao](#) (Migration) [2019] AATA 5587 (11 December 2019); C Carney-Orsborn, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – skills assessment – nominated occupation – ICT Sales Representative – clerical error – ICT Business Analyst – ascertaining the applicant’s intended nominated occupation – positive assessment – decision under review remitted

[Singh](#) (Migration) [2019] AATA 5586 (11 December 2019); C Carney-Orsborn, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – skills assessment – Lift Mechanic – application accompanied by relevant evidence – suitability for nominated occupation – assessment in a different occupation from the nominated occupation – Electrical Engineering Technician – ascertaining the applicant's intended nominated occupation – explanation for the mistake – decision under review affirmed

[Taghavipooya](#) (Migration) [2019] AATA 5470 (27 November 2019); K Kendall, Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 892 (State/Territory Sponsored Business Owner) – main business – level of applicant's ownership interest in company operating business at relevant times – change of company shareholder structure – oversight by accountant – restructure submitted to ASIC at later date and backdated to earlier date – no inquiry by ASIC as to legitimacy of backdating – treated as late lodgement with penalty fee – acceptance for corporations law does not extend to migration law – consideration of evidence from applicant and related owners of business – family business conducted with some informality – inconsistencies of evidence reflective of informality and time elapsed – backdating not solely to satisfy requirements for visa – decision under review remitted

[Vu Vu](#) (Migration) [2019] AATA 5740 (18 December 2019); J Harkess, Member

MIGRATION – Student (Temporary)(Class TU) visa – subclass 500 (Student) – genuine student – held five consecutive student visas – changed from hospitality course to mental health – course change reactive to visa refusal – job prospects – remuneration – significant periods applicant failed to progress academically – incentives to remain in Australia – economic circumstances – 12 years residence in Australia – compliant student – decision under review affirmed

[Ward](#) (Migration) [2019] AATA 5571 (10 December 2019); M Ison, Senior Member

MIGRATION – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – substantial cultural or personal ties of benefit to Australia – “substantial ties of benefit” – visa applicant's contribution to review applicant's heritage restoration projects, and gardening projects – applicants' families, properties, finances and residence in Australia and Canada – decision under review remitted

Practice and Procedure

[Invincible Airscrews Pty Ltd and Civil Aviation Safety Authority](#) [2020] AATA 21 (13 January 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – whether the Tribunal has jurisdiction to hear the matter – prospects of success – operation of certification regulations – operation of transitional provisions – whether the transitional provisions for propellers applies to allow application of original regulations – certificate of type approval – type certificates – whether a type certificate can be issued under the certificate of type approval requirements – no prospects of success – application dismissed under s 42B(1)

[Jayawardhena and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5755 (19 December 2019); Ms Anna Burke AO, Member

PRACTICE AND PROCEDURE – application for extension of time – delay of one month in lodging application – whether reasonable excuse for delay – where prejudice would be incurred by respondent and public by allowing extension of time – prospects of success – reasonable in all the circumstances to allow extension of time

[TZBP and Child Support Registrar](#) (Child support second review) [2020] AATA 19 (10 January 2020); Brigadier A G Warner, Member

PRACTICE AND PROCEDURE – Child Support Registrar – percentage of care – request by Other Party to dismiss Applicant’s application for review of decision of Administrative Appeals Tribunal, Social Services & Child Support Division – whether substantive application is vexatious – merits of substantive application – request for dismissal refused

[Walker and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 31 (14 January 2020); Senior Member A Nikolic AM CSC

PRACTICE AND PROCEDURE – jurisdiction – migration – mandatory visa cancellation – nine day time limit – whether notice complied with s 501G(1) of the Migration Act and given in prescribed manner – whether application for review lodged within time – notice complied with and was given in accordance with s 501G – application not lodged within time – no discretion to extend time to lodge review application – no jurisdiction – application dismissed

Refugee

[1609296](#) (Refugee) [2019] AATA 5533 (18 July 2019); L Hardy, Member

REFUGEE – protection visa – Pakistan – religion – Muslim – Hindu – atheism – inter-religious marriage – threats of honour killing – fears harm from unknown Islamic extremists – familial harassment – inconsistent claims – vague and speculative evidence – decision under review affirmed

[1609357](#) (Refugee) [2019] AATA 5459 (12 July 2019); M Judd, Member

REFUGEE – protection visa – Sri Lanka – political opinion – member of Sri Lankan Muslim Congress – particular social group – returnees from overseas – religion – Muslim – victim of abduction and extortion – harassment by Buddhist terrorist group – Bodu Bala Sena – relocation within home country unreasonable – decision under review remitted

[1609587](#) (Refugee) [2019] AATA 5824 (21 May 2019); F Meagher, Member

REFUGEE – protection visa – Solomon Islands – victim of domestic and sexual violence – customary law – bride price – embellished or exaggerated claims – authenticity of documents – inconsistent evidence – delay in seeking protection – absence of contemporaneous primary reports – credibility issues – decision under review affirmed

[1702881](#) (Refugee) [2019] AATA 5752 (19 December 2019); A Grant, Member

REFUGEE – protection visa – China – religion – membership of church listed as banned ‘cult’ by Chinese government – political opinion – organiser of protests against corrupt inflation of social compensation fee and embezzlement by officials – family planning regulations – two daughters – wife’s forced sterilisation reversed by church member doctor – third daughter unregistered – birth of son – payment of social compensation fees by borrowing from family and friends – arrest, detention and torture – departure from China via another city on own passport – harassment of family since applicant’s departure – application under review remitted

[1732631](#) (Refugee) [2019] AATA 5845 (13 May 2019); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Kenya – provided incorrect answers in visa applications – previously known to the Department under a different identity – facial imaging comparison – unsuccessful protection claim under previous identity – outstanding debts to the Australian government – re-entered Australia and sought to engage Australia’s protection obligations under a new identity – claimed events in protection visa application could not have occurred as applicant resided in Australia during relevant period – consideration of discretion – gravity of non-compliance – bogus documents – Australia’s non-refoulement obligations – decision under review affirmed

Social Services

[Bennett; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 5828 (18 December 2019); Deputy President S A Forgie

SOCIAL SECURITY – Aged Pension cancellation – Disability Support Pension cancellation – eligibility for pension met – playability of pension not met due to assets test – Social Security Act 1991 s 1122 – whether advance of money to a body corporate is a loan – whether deficit of body corporate can offset assets – decision under review set aside and remitted

[Bozinovski and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 23 (13 January 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension – whether Applicant satisfies relevant tests – medical conditions including (right) supraspinatus tear and tennis elbow and adjustment disorder with mixed anxiety and depressed mood – whether Applicant to be awarded 20 points under Impairment Tables – whether Applicant’s conditions fully diagnosed, treated and stabilised – decision affirmed

[Green and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 26 (13 January 2020); 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

[Hopper and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 20 (10 January 2020); Brigadier A G Warner, Member

SOCIAL SECURITY – disability support pension – whether Applicant’s conditions were fully diagnosed, fully treated and fully stabilised – whether Applicant’s conditions attract 20 points under the Impairment Tables – whether Applicant has severe impairment – whether Applicant has a continuing inability to work – decision under review affirmed

[Kabir and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 22 (13 January 2020); P Ranson, Member

SOCIAL SECURITY – family tax benefit – schoolkids bonus – care period – what is the care period – overnight care – whether the applicant had care of the children more than thirty-five percent – whether the applicant had overnight care of the children – decision under review affirmed

[Kabir and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 24 (13 January 2020); P Ranson, Member

SOCIAL SECURITY – debt – family tax benefit – schoolkids bonus – percentage of care of children – overnight care – whether the applicant was entitled to receive the family tax benefit – whether the applicant had overnight care of the children – whether the applicant was entitled to receive the schoolkids bonus – whether the applicant has a debt owing to the Commonwealth – whether the recovery of the debt can be written off or waived – decision under review affirmed

[Leszkay Jenkins and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 28 (14 January 2020); Senior Member B Pola

SOCIAL SECURITY – Austudy – Overpayment of Austudy – Debt due to Commonwealth – Waiver of debt – Special circumstances – Notional entitlement to Newstart allowance – No special circumstances that make it desirable to waive debt – Debt recoverable – Decision under review 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
Hooley and Comcare	[2019] AATA 5176
QDWQ and Minister for Home Affairs	[2019] AATA 4622
Uolilo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 5411

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).

