



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 20/2019

20 May 2019

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
Citizenship	3
Compensation	3
Migration	4
Practice and Procedure	5
Social Services	5
Taxation	6
Veterans' Affairs	6
Appeals	7
Appeals lodged	7
Appeals finalised	7

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

[Gorbunkova and Minister for Home Affairs](#) (Citizenship) [2019] AATA 853 (13 May 2019); C Edwardes, Member and S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – general residence requirement – application of Ministerial discretion – whether close and continuing association with Australia – whether migrated to and established home in Australia – Australian citizen children – extended family in Australia – long term relationship with Australian citizen spouse – decision affirmed

Compensation

[Oliver and Comcare](#) (Compensation) [2019] AATA 888 (15 May 2019); M Hyman, Member

COMPENSATION – rehabilitation – whether the applicant is obliged to undertake the rehabilitation program determined for her – whether the applicant had a reasonable excuse for refusing or failing to undertake the rehabilitation program – where the credit of the applicant and some of her witnesses is in question – where the evidence of medical specialists is at odds with the evidence of the applicant and her general practitioner – whether a new rehabilitation program should be made for the applicant – evidence of the experts should be preferred – decisions under review affirmed

PRACTICE AND PROCEDURE – prima facie contempt of the tribunal – where a witness admitted to contravening a direct order of the tribunal – apparent collusion and fabrication of evidence – effect on credit of witness – effect on credit of applicant

[Pearson and Prosecur Australia Pty Ltd](#) (Compensation) [2019] AATA 823 (8 May 2019); Deputy President Boyle

WORKERS' COMPENSATION – soft tissue injury – claim made – decision under s 62 Safety, Rehabilitation and Compensation Act 1988 (Cth) – application to dismiss on the basis that the Tribunal does not have jurisdiction – jurisdiction found

Migration

[Leau and Minister for Home Affairs](#) (Migration) [2019] AATA 843 (13 May 2019); The Hon. Dennis Cowdroy OAM QC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass character test – TY Subclass 444 Special Category (Temporary) Visa – New Zealand citizen – extensive criminal record – repeated violent offending – common assault – domestic violence – aggravated break and enter – drive without licence – fail to appear in accordance with bail undertaking – destroy or damage property – stalk/intimidate – primary considerations – protection of Australian community from criminal or other serious conduct – nature and seriousness of conduct – best interests of minor children – expectations of Australian community – risk to the Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – decision affirmed

[Lee and Minister for Home Affairs](#) (Migration) [2019] AATA 871 (15 May 2019); Senior Member K Raif

MIGRATION – Class BS Subclass 801 Partner visa – mandatory visa cancellation – non-revocation – failure to pass the character test – Ministerial Direction No. 79 – substantial criminal record – trafficking, possession and importation of a commercial quantity of prohibited drugs – use of prohibited drugs and alcohol – supply of prohibited drugs – gambling – drink driving offences – primary considerations – protection of the Australian community – expectations of the Australian community – best interests of minor children – strength nature and duration of ties – hardship in the event of removal – Singapore – decision affirmed

[Maksoud and Minister for Home Affairs](#) (Migration) [2019] AATA 825 (10 May 2019); The Hon. D Cowdroy OAM QC, Deputy President

MIGRATION – refusal of visa under s 501(1) – whether the applicant passes the character test – past and present general conduct – disregard for the laws of Australia – whether to exercise discretion to refuse visa – Ministerial Direction No. 79 – protection of the Australian Community – expectation of the Australian Community – non-refoulement obligations – decision affirmed

[MQGT and Minister for Home Affairs](#) (Migration) [2019] AATA 874 (14 May 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of visa on character grounds – Class XB, Subclass 202 Global Special Humanitarian visa – where Applicant did 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 – application of Primary and Other Considerations in Direction No 79 – whether there is a claim which may give rise to international non-refoulement obligations – consideration of Direction No 75 – decision under review affirmed

[TBNM and Minister for Home Affairs](#) (Migration) [2019] AATA 850 (7 May 2019); Senior Member DJ Morris

MIGRATION – mandatory cancellation of a visa – consideration of discretion exercisable under s 501 of Migration Act – Ministerial Direction No. 79 – primary considerations – sexual offending against minor – other considerations – decision not to revoke the mandatory cancellation of the visa affirmed

[TVVT and Minister for Home Affairs](#) (Migration) [2019] AATA 824 (6 May 2019); Mr A. Maryniak QC, Member

MIGRATION – application for revocation of mandatory cancellation of visa – where applicant fails the character test – where substantial criminal record under Migration Act 1958 – consideration of Ministerial Direction – other reason why mandatory cancellation decision should be revoked – decision set aside and substituted for decision revoking mandatory cancellation of visa

[WRFG and Minister for Home Affairs](#) (Migration) [2019] AATA 916 (12 April 2019); Deputy President P Britten-Jones

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – serious offending against women - whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – non-refoulement obligations - decision under review affirmed

Practice and Procedure

[Hopfner and Tax Practitioners Board](#) [2019] AATA 851 (13 May 2019); Deputy President IR Molloy

TAX AGENT REGISTRATION – application for a stay of the decision under review – consent stay order in operation – consideration of the applicant’s prospects of success – the consequences to the applicant if a stay is not granted – the public interest – the consequences to the respondent if the stay is or is not granted – whether the application for review will be rendered nugatory if the stay is not granted – any other relevant matters – application for stay of the decision under review refused

[VXQB and Child Support Registrar](#) (Child support second review) [2019] AATA 873 (10 May 2019); Dr M Evans, Senior Member

CHILD SUPPORT – INTERLOCUTORY – practice and procedure – stay order application – percentage of care decision – revocation decision – jurisdiction of General Division to grant stay order – whether stay order would secure effectiveness of hearing - jurisdiction of General Division review percentage care decision – whether substantive application should be adjourned pending the decision of the Federal Court of Australia on similar jurisdictional issue – whether application vexatious – whether application for review does not clearly identify the respects in which the Applicant believes the decision is not the correct or preferable decision – Tribunal has jurisdiction to determine stay order and substantive application – stay order granted – adjournment granted – application not vexatious

Social Services

[Campbell and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 903 (12 February 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

[Cordin and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 887 (15 May 2019); DK Grigg, Member

FAMILY ASSISTANCE – parenting payment and family tax benefit – overpayment resulting in debt – whether sole administrative error – where no special circumstances exist to waive or write off the debt – decision under review affirmed

[Lewis and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 901 (15 May 2019); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – whether the Applicant's impairments can be assigned 20 points or more under the Impairment Tables – decision under review affirmed

[Morris and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 902 (15 May 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – skin condition – mental health condition – traumatic brain injury – where applicant has medical conditions causing impairment – where skin condition and mental health condition fully diagnosed, fully treated and fully stabilised during the claim period – where impairments not rated at 20 points or more under the Impairment Tables – decision affirmed

[Nicholas and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 872 (15 May 2019); DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions permanent - whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work - decision under review affirmed

[O'Rance and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 804 (7 May 2019); D Mitchell, Member

SOCIAL SECURITY – Austudy payment – overpayment – where no administrative error – where no special circumstances – decision under review affirmed

Taxation

[Handsley and Commissioner of Taxation](#) (Taxation) [2019] AATA 917 (17 May 2019); Deputy President FD O'Loughlin

INCOME TAX – whether applicant a resident of Australia – whether applicant had Australian domicile – whether applicant had permanent place of abode outside Australia – decision affirmed

Veterans' Affairs

[Thurlow and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 822 (8 May 2019); Deputy President B W Rayment OAM QC

VETERANS' AFFAIRS – application for extreme disablement adjustment – applicant's general rate of pension at 100% – whether lifestyle rating of six – psychiatric conditions – decision under review set aside and remitted

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
BLSL and Minister for Home Affairs	[2018] AATA 3681
Ferreira and Minister for Home Affairs	[2018] AATA 2599
Fualau and Minister for Home Affairs	[2018] AATA 3373
KHHG and Minister for Home Affairs	[2018] AATA 3811
Leone and Minister for Home Affairs	[2018] AATA 3363
LKQD and Minister for Immigration and Border Protection	[2018] AATA 2710
Matthews and Minister for Home Affairs	[2018] AATA 1849

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugtniet v Australian Securities and Investments Commission	[2015] AATA 128	[2016] FCA 995
		[2017] FCAFC 162
		[2019] HCA 16
Hutchinson v Secretary, Department of Social Services	[2018] AATA 4673	[2019] FCA 660



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](#).