



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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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

[Hailu and Child Support Registrar](#) (Child support second review) [2019] AATA 982 (30 April 2019); Ms A Burke AO, Member

CHILD SUPPORT – Departure Prohibition Order (“DPO”) – no grounds requiring revocation of DPO – no grounds for exercising discretion to revoke DPO – decision under review affirmed

Citizenship

[Guillen Manzanilla and Minister for Home Affairs](#) (Citizenship) [2019] AATA 962 (22 May 2019); Senior Member K Raif

CITIZENSHIP – application for Australian citizenship by conferral – general residence requirement – where applicant spouse of Australian citizen – where applicant has two Australian citizen children – where applicant had extended periods of absence from Australia in four years immediately before the citizenship application – where applicant was not present in Australia as a permanent resident for the period of 12 months immediately before the citizenship application – ministerial discretion to treat periods overseas as a period in which the applicant was present in Australia as a permanent resident – whether close and continuing association with Australia during period of absence – where applicant had established a home in Australia prior to travelling overseas – where applicant's intention was to reside in Australia – decision set aside and remitted

[Tannoury and Minister for Home Affairs](#) (Citizenship) [2019] AATA 966 (23 May 2019); Senior Member A Poljak

CITIZENSHIP – where citizenship application refused – whether applicant of good character – drug related offences – firearms offences – driving offences – whether reasonable period of time has passed to establish a pattern of good behaviour – insufficient passage of time to establish pattern of good behaviour – decision affirmed

Compensation

[Horton and Australian Capital Territory](#) (Compensation) [2019] AATA 953 (10 May 2019); Deputy President G Humphries AO

COMPENSATION – aggravation of adjustment reaction with mixed emotional features – whether ailment excluded by operation of reasonable administrative action exception – exception not established – decision set aside and substituted

PRACTICE AND PROCEDURE – where Comcare made a reconsideration of own motion decision revoking 22 previous determinations – where Mr Horton suffers from a primary condition and aggravation of that earlier condition – whether both of Mr Horton’s conditions are the subject of Comcare’s reconsideration decision – scope of Tribunal’s jurisdiction – finding that Tribunal’s jurisdiction limited to later condition

[Phillips and Australian Capital Territory](#) (Compensation) [2019] AATA 936 (20 May 2019); Senior Member L Kirk

COMPENSATION – achilles tendonitis/tendinopathy – whether claimed condition is an ailment or injury simpliciter – whether claimed condition arose out of or in the course of her employment – meaning of ‘place of work’ and ‘ordinary recess’ considered – whether Applicant injured while undertaking activity ‘associated with’ her employment or at the ‘direction or request of the Commonwealth’ – whether Applicant’s employment significantly contributed to her condition – decision under review affirmed

[Smith and Comcare](#) (Compensation) [2019] AATA 927 (20 May 2019); Ms M East, Member

WORKERS’ COMPENSATION – Commonwealth employee – physical injury – liability accepted – reconsideration of own motion – whether treatment related to compensable injury – decision under review affirmed

[Wood and Comcare](#) (Compensation) [2019] AATA 981 (23 May 2019); Mr M Hyman, Member

WORKERS COMPENSATION – no present entitlement – accepted conditions of tenosynovitis and chronic pain syndrome – new medical evidence – osteoarthritis of the thumbs – carpal tunnel syndrome – aggravation – where no change to underlying pathology – whether symptoms contributed to by employment to the requisite degree – whether medical treatment obtained in relation to the compensable conditions – whether reasonably obtained – decision under review set aside

Freedom of Information

[VFRG and Australian Information Commissioner](#) (Freedom of information) [2019] AATA 965 (23 May 2019); Senior Member R Cameron

FREEDOM OF INFORMATION – access refused under s 47E(d) Freedom of Information Act 1982 – public interest conditional exemptions – ongoing complaint investigation – where investigation concluded and respondent conceded exemption no longer applied – decision under review set aside

Industrial Law

[Bierton and Secretary, Department of Jobs and Small Business](#) [2019] AATA 967 (23 May 2019); Senior Member A Poljak

EMPLOYMENT ENTITLEMENTS – claim for advance under Fair Entitlements Guarantee Act – whether applicant entitled to redundancy and pay in lieu of notice under governing instrument – whether termination at the initiative of the employer – whether employment brought to an end at the discretion of the employer – where applicant claimed employer’s conduct caused his responsibilities and duties to change substantially – where finding that employer made clear to applicant that his employment was not terminated and his ongoing assistance was required – decision affirmed

Migration

[GJJF and Minister for Home Affairs](#) (Migration) [2019] AATA 930 (17 May 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 affirmed

[GYNF and Minister for Home Affairs](#) (Migration) [2019] AATA 959 (21 May 2019); Mr A Maryniak QC, Member

refusal of visa under s501(1) – where applicant fails the character test – sexually – based offences involving a child – Ministerial Direction No. 79 – protection on the Australian community – impact on family members – expectations of the Australian community – decision under review set aside and substituted

[KLQF and Minister for Home Affairs](#) (Migration) [2019] AATA 933 (16 May 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. 79 – consideration of Australia’s international non-refoulement obligations – decision affirmed

[Gutierrez Martinez and Minister for Home Affairs](#) (Migration) [2019] AATA 955 (20 May 2019); Senior Member C Puplick AM

MIGRATION – whether to revoke the mandatory cancellation of a visa – applicant does not pass the character test – other reason to revoke cancellation – Ministerial Direction No. 79 – protection of the Australian community – risk of reoffending – expectation of the Australian community – best interests of minor children – when to consider non-refoulement obligations – Honduras – impediments to removal – genuine fear of consequences of return – strength of ties – impact on victims – domestic violence – decision set aside and substituted

[Lum and Minister for Home Affairs](#) (Migration) [2019] AATA 935 (17 May 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of visa on character grounds – Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – sentenced to 12 months’ full time imprisonment – whether there is another reason why the mandatory cancellation decision should be revoked – application of Primary and Other Considerations in Direction No 79 – decision under review affirmed

[Sheik and Minister for Home Affairs](#) (Migration) [2019] AATA 961 (22 May 2019); Senior Member DJ Morris

MIGRATION – mandatory cancellation of visa – applicant sentenced to prison sentence exceeding twelve months – sexual offences – ministerial direction No. 79 – primary considerations – other considerations – any other reason – decision under review affirmed

Social Services

[Maloney and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 928 (20 May 2019); Senior Member C Puplick AM

SOCIAL SECURITY – extension of time application – substantial delay on bringing application – reasons for delay – no satisfactory explanation – prospects of success – other contact with Department – prejudice to the Department – prejudice to general public

[Owen and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 960 (22 May 2019); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether mental health condition fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

Taxation

[Roszkiewicz and Commissioner of Taxation](#) (Taxation) [2019] AATA 931 (20 May 2019); Ms DK Grigg, Member

TAXATION – where Applicant derived income in 2017 financial year which was earned in 2016 financial year – which accounting method is appropriate – whether income should be included as assessable in 2016 or 2017 financial year – decision under review affirmed

[VCJN and Commissioner of Taxation](#) (Taxation) [2019] AATA 968 (23 May 2019); Deputy President Boyle

TAXATION AND COMMERCIAL DIVISION – objection decision – Income Tax Assessment Act 1936 (Cth) – loans treated as dividends – decision 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
FGBP and Minister for Home Affairs	[2018] AATA 3971
GVSW and Minister for Immigration and Border Protection	[2017] AATA 1543
GWSC and Minister for Home Affairs	[2018] AATA 4353
QJTT and Minister for Home Affairs	[2019] AATA 152
Singleton and Comcare	[2018] AATA 4088
WRFG and Minister for Home Affairs	[2019] AATA 916
XDJD and Minister for Immigration and Border Protection	[2018] AATA 4226
YZXB and Minister for Home Affairs	[2019] AATA 69
ZYVZ and Minister for Immigration and Border Protection	[2018] AATA 3967

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Minister for Immigration and Border Protection v G & Anor	[2017] AATA 1052	[2018] FCA 1229 [2019] FCAFC 79



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