



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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Bulletin News

Reviewable Decisions List updated as at 31 May 2019

The AAT Reviewable Decisions List provides a list of Acts and legislative instruments which state that certain decisions may be reviewed by the AAT. The List has been revised to assist parties and others to identify the laws that give the AAT jurisdiction to review decisions.

The List has been updated to include current and prospective changes expected to occur in the next few months. Each Act or instrument is hyperlinked to the Federal Register of Legislation, through which users can view the most recent full version of the relevant law.

The latest List can be found at <http://www.aat.gov.au/resources/legislation-and-jurisdiction>

Feedback about use of this List can be sent to LPExtFeedback@aat.gov.au

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

[Dunsford and Dunsford](#) (Child support) [2019] AATA 1196 (2 April 2019); M Kennedy, Member

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

[Steer and Mayler](#) (Child support) [2019] AATA 1222 (9 April 2019); W Budiselik, Member

CHILD SUPPORT – particulars of the administrative assessment – income determination – whether the income for a year of income was correctly determined – further investigation required – decision under review set aside and sent back for reconsideration with directions

[Sacker and Hatherall](#) (Child support) [2019] AATA 1194 (11 April 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 affirmed

[Tomes and Child Support Registrar](#) (Child support) [2019] AATA 1215 (12 April 2019); S Brakespeare, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay – no arguable merit – extension of time was correctly refused – decision under review affirmed

[Hussey and Carsley](#) (Child support) [2019] AATA 1218 (18 April 2019); S Letch, Member

CHILD SUPPORT – dismissal of application for review – departure determination – the income, property and financial resources of the liable parent – no reasonable prospect of success – application for review dismissed

[VGLV and Child Support Registrar](#) (Child support second review) [2019] AATA 1097 (3 June 2019); Senior Member A Poljak

CHILD SUPPORT – percentage of care – likely pattern of care for the child during the relevant period – where parents separated but living under one roof – where child suffered from mental illness – where parents provided equal care for the child – decision set aside and substituted

Citizenship

[VFWQ and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1096 (31 May 2019); C Edwardes, Member

CITIZENSHIP – whether Applicant of good character – meaning of good character – traffic conviction – ASIO assessment – enduring moral qualities – Australian values – Applicant found not to be of good character at time that the Minister made decision – decision under review is affirmed

Compensation

[Carvalho and Comcare](#) (Compensation) [2019] AATA 1130 (5 June 2019); Mr S Webb, Member

COMPENSATION – accepted injury – determination denying present liability for a gym program and for household support made in 2007 – dispute about whether a request for reconsideration was made – legislative requirements for a request for reconsideration – persistent efforts to challenge decision – alleged missing documents - written request desirable but not mandatory – unresolved oral request for reconsideration – subsequent written request more than 10 years later – unresolved reconsideration request to be acted upon – time not granted in respect of subsequent written request - decision affirmed in part

[Ghaddar and Comcare](#) (Compensation) [2019] AATA 1093 (3 June 2019); Deputy President JW Constance

WORKERS' COMPENSATION - application for review of decision to deny liability to compensate for pain/swelling in supraclavicular region – whether ailment “contributed to, to a significant degree”, by Applicant’s employment – where Applicant suffered from acute brachial neuritis caused by infection unrelated to working conditions – whether Applicant suffered “injury” in the primary sense – materiality of suddenness to determination of whether injury other than a disease has been suffered – decision under review affirmed

[KTKY and Comcare](#) (Compensation) [2019] AATA 1123 (30 April 2019); Dr M Evans, Senior Member

COMPENSATION – Workers’ Compensation – Commonwealth employee – whether Comcare liable to pay compensation – heart attack – broken heart – type 2 acute myocardial infarction – whether a “disease” or an “injury (other than a disease)” – whether causal relationship between Applicant’s employment and her heart attack – whether injury arising out of, or in the course of the Applicant’s employment – decision under review affirmed

[Mates and Comcare](#) (Compensation) [2019] AATA 1135 (6 June 2019); R West, Member

WORKERS COMPENSATION - asymptomatic right-sided lateral epicondylitis – condition became symptomatic - no aggravation due to workplace incident – no liability under s.14 – decision under review affirmed

[O'Brien and Comcare](#) (Compensation) [2019] AATA 1004 (24 May 2019); Mr S Webb, Member

COMPENSATION – low back injury claim – frank injury or disease - nature and conditions of work – notice of claimed injury – legal advice – no prejudice - serial occurrences of low back pain – accepted injuries – fluctuating symptoms – recurrence and exacerbation of symptoms – ‘disease’ contributed to by employment to a significant degree – progression of ‘disease’ - contribution of activities outside employment – nature and conditions of work significantly contributed to recurrence and progression of ‘disease’ – decision set aside

COMPENSATION – accepted low back injuries – frank injury – aggravation of intervertebral disc displacement significantly contributed to by employment – disease - progression and deterioration – causes of incapacity – medical treatment – persistence of effects of accepted injuries – meaning of ‘as a result of’ – no sole cause test - incapacity results from compensable injuries - liability to pay compensation in respect of incapacity and medical treatment expenses continues – decisions set aside

[Tucker and Comcare](#) (Compensation) [2019] AATA 1136 (6 June 2019); R West, Member

Compensation – back and neck pain – liability to pay compensation for permanent impairment and non-economic loss - sprained dorsal back and cervical muscles - no current entitlement to compensation - decision affirmed

Education and Research

[KDRH and Secretary, Department of Education](#) [2019] AATA 1114 (3 June 2019); Senior Member C Puplick AM

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting – out of time – whether special circumstances apply – domestic violence – pregnancy – whether domestic circumstances prevented application for re-crediting in twelve months – decision affirmed

[Loch and Secretary, Department of Education and Training](#) [2019] AATA 1101 (3 June 2019); Senior Member A Poljak

HIGHER EDUCATION SUPPORT – HECS-HELP debt – application for remission – special circumstances – whether circumstances beyond applicant’s control – whether circumstances made their full impact on or after the census date – whether impracticable for applicant to complete the unit requirements – Tribunal does not find special circumstances – decision under review affirmed

Industrial Law

[Gayed and Secretary, Department of Jobs and Small Business](#) [2019] AATA 1132 (5 June 2019); Ms A Burke AO, Member

EMPLOYMENT - fair entitlements guarantee - entitlement to redundancy payment - when did employment cease - whether Applicant was employed by a small business - discretion to waive a debt - decision set aside

Migration

[Chung](#) (Migration) [2019] AATA 949 (11 April 2019); A Mendes Da Costa, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – internationally recognised record of exceptional and outstanding achievement in the sport of breakdancing – outstanding record as breakdancing competitor, trainer and judge – recently competing in international events – judge at international events – still prominent in the field – decision under review remitted

[1701829](#) (Migration) [2019] AATA 857 (12 April 2019); Deputy President J Redfern (Presiding) and Dr C Huntly, Member

MIGRATION – Refugee and Humanitarian (Refugee) (Class XB) (Subclass 200) visa – cancellation of visa under s 109 of the Migration Act 1958 – whether incorrect information provided in visa application – information related to the applicant’s marital and relationship status – non-compliance not established – decision set aside and substituted

[Bhagwati Redcliffe Pty Ltd](#) (Migration) [2019] AATA 1075 (15 May 2019); I Berry, Member

MIGRATION – Nomination – genuine position – customer service manager – organisational restructure – role now has more responsibility – decision under review set aside

[AUS FOODS UNIT TRUST](#) (Migration) [2019] AATA 1076 (14 May 2019); W Stooke, Member

MIGRATION – Nomination – Temporary Residence Transition nomination stream – tasks and duties not match occupation – Skill Level 2 Retail Manager – role similar to Skill Level 4 Retail Supervisor – higher-level functions undertaken by business owner – decision under review affirmed

[Yassa](#) (Migration) [2019] AATA 1078 (20 May 2019); C Kannis, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Tourist stream – stay in Australia more than 12 consecutive months – further visa requested – requires medical attention from Australian citizen children – pre-existing medical conditions – used carers in Egypt – no exceptional circumstances – decision under review affirmed

[SALMA](#) (Migration) [2019] AATA 1085 (21 May 2019); K McNamara, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 – Temporary Graduate (Post-Study Work) stream – health criteria not met – secondary applicant – assessed for period of one year six months – significant cost of provision of health care or community services for temporary visa – decision under review affirmed

[SAMUEL](#) (Migration) [2019] AATA 1079 (22 May 2019); K Raif, Senior Member

MIGRATION – Skilled Independent (Permanent) visa – Subclass 189 Skilled-Independent – points test – Telecommunications Network Engineer – more evidence provided – employment was in nominated occupation or a closely related occupation – achieved requisite score – decision under review remitted

[McCutcheon and Minister for Home Affairs](#) (Migration) [2019] AATA 932 (20 May 2019); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation – whether mandatory cancellation should be revoked – Ministerial Direction 79 – serious criminal offending – rape – false imprisonment – mental health – citizen of the United Kingdom – long-term resident – decision affirmed

[QPRD and Minister for Home Affairs](#) (Migration) [2019] AATA 1098 (30 May 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of visa – Class BF Transitional (Permanent) visa – Where Applicant does not pass the character test – sentenced to 12 months' full time imprisonment or more – 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

[Stacey and Minister for Home Affairs](#) (Migration) [2019] AATA 1073 (22 May 2019); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – child sex offences – 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 grandson – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to United Kingdom – reviewable decision affirmed

[YVTG and Minister for Home Affairs](#) (Migration) [2019] AATA 934 (17 May 2019); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa – applicant does not pass character test – substantial criminal history – whether discretion to revoke mandatory cancellation should be exercised – drug dependency – intellectual disability – legal and administrative guardian – risk of reoffending – no family connections in Australia – overall balance weighs in favour of revocation – decision affirmed

National Disability Insurance Scheme

[PPFQ and National Disability Insurance Agency](#) [2019] AATA 1092 (31 May 2019); Mrs JC Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant suffers from moderate to severe hearing loss, tinnitus and hyperacusis – Applicant requested funding for high level technology hearing aids – whether supports are reasonable and necessary pursuant to subsections 34(1) of the National Disability Insurance Act 2013 (Cth) – whether there has been adequate investigation of other sources of funding - whether supports represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support – whether support is the minimum necessary support required - decision set aside and substituted

Practice and Procedure

[BJSB Pty Ltd \(t/a The Imperial College of Australia\) and Australian Skills Quality Authority](#)

[2019] AATA 1053 (30 May 2019); Dr D Cremean, Senior Member

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – renewal as registered training organisation and CRICOS provider refused by respondent – consideration of factors in deciding whether to grant a stay – application granted

[Ellisdon and Secretary, Department of Social Services](#) (Social services second review) [2019]

AATA 1129 (5 June 2019); K Parker, Member

EXTENSION OF TIME APPLICATION – whether reasonable in all the circumstances to grant the extension of time – application lodged four years and ten months out of time – applicant claims that reviewable decision not sent her and not advised of 28-day time limit - explanation for the delay – merits of the substantive application – application refused

[Gould and Tax Practitioners Board](#) [2019] AATA 1056 (28 May 2019); Deputy President IR Molloy

TAX AGENT REGISTRATION - application for a stay of the decision under review - interim stay order in operation - consideration of the applicant's prospects of success - adverse findings against applicant in a decision of the Federal Court of Australia - whether applicant is a person of good fame, integrity and character - the consequences to the applicant if a stay is not granted - the public interest - the consequences to the respondent in carrying out its functions - whether the review would be rendered nugatory - time likely until the hearing of the review - application for stay of the decision under review is refused - interim stay order discharged

[Reilly and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA

1182 (7 June 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review – explanation for delay – prospects of success – prejudice to respondent and public – Tribunal satisfied that reasonable in all the circumstances to grant extension of time – extension of time granted

[Sunrise Institute of Australia Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 1131

(5 June 2019); Senior Member Professor PA Fairall

PRACTICE AND PROCEDURE – application for dismissal of substantive application – Australian Skills Quality Authority – registered training organisation – decision to cancel NVR Act registration – decision to refuse CRICOS registration – whether Applicant failed to comply with a direction by the Tribunal – whether substantive application has no reasonable prospect of success – application for dismissal refused

Refugee

[1609490](#) (Refugee) [2019] AATA 1121 (29 April 2019); G Cullen, Member

REFUGEE – protection visa – Fiji – religion – Christian – holding regular religious meetings in SODELPHA location – imputed opinion in opposition to government – military and police intervention – failed asylum seeker – not a credible witness – review under decision affirmed

[1807853](#) (Refugee) [2019] AATA 1118 (13 May 2019); A Murphy, Member

REFUGEE – cancellation – protection visa – Iran – incorrect information in the visa application – fraudulent documents – nationality – stateless – race – Faili Kurd – inconsistent information about dates of birth and marriage – Departmental requests for identity documents – legal entitlement to Iranian documents – decision under review set aside

[1905923](#) (Refugee) [2019] AATA 1126 (22 May 2019); C Cody, Member

REFUGEE – protection visa – Thailand – targeted by a well-connected politician – physical injuries and threats – credibility issues – travel history not consistent with fear of persecution – inconsistent evidence – delay in claiming protection – work history in Australia – decision under review affirmed

Social Security

[Fogg and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1099 (23 May 2019); DK Grigg, Member

SOCIAL SECURITY – compensation preclusion payment – calculation of preclusion period – whether the Tribunal has jurisdiction to revisit calculation of preclusion period - where no special circumstances – decision under review varied

[Graham and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1090 (31 May 2019); C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – PTSD, depression and anxiety – chronic abdominal pain – hearing loss – infectious diseases – cervical spine – hyperparathyroidism – other – qualification period – fully diagnosed treated and stabilised – 10 points – no program of support – decision affirmed

[Kennedy and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1201 (7 June 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

[Lutvey and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1203 (7 June 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

[Maybir and Australian Postal Corporation](#) (Social services second review) [2019] AATA 1071 (17 May 2019); Senior Member PE Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the relevant period – whether Applicant had 20 impairment points – spinal condition and right lower knee and knee injuries – MVA hyperlipidaemia and dermatitis.

[Nicholson; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 1037 (27 May 2019); Senior Member A Poljak

SOCIAL SECURITY – age pension – Commonwealth Seniors Health Cards – Low Income Health Care Card – where age pension automatically cancelled for failure to report – whether applicants entitled to SHC and LIC due to grandfathering provisions – decision set aside and substituted

[Scott; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 1119 (5 June 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 set aside

[Thomson; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 1094 (20 May 2019); Senior Member R Cameron and Senior Member CJ Furnell

SOCIAL SECURITY – disability support pension – whether fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under the Impairment Tables – decision affirmed

Taxation

[Schweitzer and Commissioner of Taxation](#) (Taxation) [2019] AATA 1100 (29 May 2019); Deputy President SA Forgie

TAXATION – application for review of an objection decision – whether Commissioner can grant release of certain tax liabilities – whether liabilities ‘tax’ under Item 6 of s 340-10(2) of the Tax Administration Act 1953 – no release from judgment debt or interest – whether applicant should be released from tax liabilities – no serious financial hardship – decision affirmed

[Very Important Business Pty Ltd and Commissioner of Taxation](#) (Taxation) [2019] AATA 1120 (4 June 2019); Deputy President BJ McCabe and Senior Member Ms G Lazanas

TAXATION – GST – input tax credits – creditable acquisition – gold industry – whether taxpayer a refiner of precious metal – whether taxpayer regularly converts or refines precious metal in carrying on its enterprise – whether consideration provided or taxpayer liable to provide consideration – whether second-hand goods rules apply – form of tax invoices – serious shortcomings in evidence – unreliable and incomplete documents – insufficient information in invoices – recklessness as to operation of taxation laws – objection decision re assessment of net amount affirmed – objection decision re imposition of penalty affirmed – decision not to remit penalty 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
Boyton and Secretary, Department of Social Services	[2019] AATA 775
MQGT and Minister for Home Affairs	[2019] AATA 874
Nathanson and Minister for Home Affairs	[2019] AATA 642
NDBR and Minister for Home Affairs	[2019] AATA 612
PQSM and Minister for Home Affairs	[2019] AATA 603
QYFM and Minister for Home Affairs	[2019] AATA 717
TBNM and Minister for Home Affairs	[2019] AATA 850
VCBP and Minister for Home Affairs	[2019] AATA 337
VJSG and Minister for Home Affairs	[2019] AATA 345
Vural and Minister for Home Affairs	[2019] AATA 579
XMBQ and Minister for Home Affairs	[2019] AATA 785

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ali v Minister for Home Affairs	[2018] AATA 2512	[2019] FCAFC 93 [2018] FCA 1895



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