



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.

Citizenship

[Sahar and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1232 (7 June 2019); Senior Member L Kirk

CITIZENSHIP – citizenship test exemption – whether applicant suffers from a permanent or enduring mental incapacity – medical evidence considered – chronic conditions – applicant diagnosed with Post Traumatic Stress Disorder and Depressive Disorder – causal connection established between the applicant's mental incapacity and his inability to demonstrate a basic knowledge of the English language – decision under review set aside and substituted

Compensation

[Cosgrove-Kaye and Comcare](#) (Compensation) [2019] AATA 1238 (7 June 2019); Deputy President J Sosso

COMPENSATION – claimed conditions of fibromyalgia and conversion disorder – whether claimed conditions an injury or disease – where Respondent decides no present liability for medical treatment and incapacity – whether Applicant's employment contributed, to a significant degree, to the onset of the Applicant's conditions – credibility of witnesses considered – decisions under review set aside and remitted

Corporations

[Menzies and Australian Securities and Investments Commission](#) [2019] AATA 1296 (13 June 2019); Deputy President BW Rayment OAM QC

CORPORATIONS – banning order – financial services – applicant prohibited from providing any financial services for four years – financial products – MINI warrants – financial market – market manipulation – setting of artificial price for purpose of transferring profit/loss – admissibility of telephone recordings – failure to keep required records – length of banning order – effects of a stay on appropriate length of banning order – public interest – deterrence – decision varied – banning period extended

[Watson and Secretary, Department of Jobs and Small Business](#) [2019] AATA 1300 (14 June 2019); Deputy President JW Constance

FAIR ENTITLEMENTS GUARANTEE – eligibility for an advance – whether Applicant a director of employer company – whether appointment valid – whether Applicant held himself out to be director – decision under review affirmed

Education and Research

[Achieve Goals Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 1239 (11 June 2019); Senior Member C Puplick AM

VOCATIONAL EDUCATION AND TRAINING – application for initial registration as an RTO – whether applicant complies with standards for NVR registered training organisations – whether applicant satisfies Fit and Proper Person Requirements – decision affirmed

Energy and Resources

[J & J Wallace \(Permits\) Pty Ltd and Great Barrier Reef Marine Park Authority](#) [2019] AATA 1280 (13 June 2019); Justice DG Thomas, President and Deputy President J Sosso

ENVIRONMENT AND ENERGY – Great Barrier Reef Marine Park – environmental management charge – chargeable permissions – permits – whether the Applicant's passengers are transfer passengers or visitors – nature of a tourist activity – decision under review set aside – decision under review remitted to the Respondent for reconsideration

Migration

[Dayal and Minister for Home Affairs](#) (Migration) [2019] AATA 1235 (11 June 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – Resident Return visa – where visa was cancelled under s 501(3A) because Applicant did not pass the character test and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – risk of harm to Australian community – minor children – expectations of Australian community – strength duration and nature of ties – decision under review affirmed

[FTDN and Minister for Home Affairs](#) (Migration) [2019] AATA 1301 (16 May 2019); Ms S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – Australia Direction no. 79 – weighing up of 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 Vietnam – reviewable decision affirmed

[KMXK and Minister for Home Affairs](#) (Migration) [2019] AATA 1234 (11 June 2019); Senior Member BJ Illingworth

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision under review affirmed

[Lemalu and Minister for Home Affairs](#) (Migration) [2019] AATA 1237 (11 June 2019); Mr T Eteuati, Member

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – Applicant failed to pass the character test – whether there is any other reason to revoke the mandatory cancellation of the Applicant’s visa – considerations in Direction 79 – decision under review 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

[ZBMD and Minister for Home Affairs](#) [2019] AATA 1278 (13 June 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 children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to Philippines when Applicant has voluntarily returned – reviewable decision affirmed

National Disability Insurance Scheme

[Burchell and National Disability Insurance Agency](#) [2019] AATA 1256 (4 June 2019); Deputy President BW Rayment OAM QC

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – cerebral palsy – dysphagia – thickened fluid and food supplements – statutory interpretation – resort to extrinsic materials – services offered by other health service providers – whether support services “offered” include services not actually made available – whether NDIS can fund supports more appropriately provided but not actually offered by other health services – decision set aside and remitted

Practice and Procedure

Correction – Please note the following decision appeared in last week’s bulletin, No.23 – 11 June 2019, with incorrect catchword. The correct version is set out below for your convenience.

[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

Privacy

[NWFQ and Privacy Commissioner](#) [2019] AATA 1302 (14 June 2019); Deputy President G Humphries AO

PRIVACY – review of decision of the Privacy Commissioner – where Commissioner found that data security failure caused interferences with the Applicant’s privacy in breach of Part III of the Privacy Act 1988 – where it was determined that the Other Parties were consequently liable to pay compensation for non-economic loss and her legal expenses – whether the sums payable by the Other Parties should be increased – whether Applicant is entitled to aggravated damages – decision under review is affirmed

Professions and Trades

[Morrow and Registrar of Marriage Celebrants](#) [2019] AATA 1253 (12 June 2019); Senior Member C Puplick AM

Marriage – failure to pay celebrant registration charge – registration cancelled – scope of discretion to give notice of deregistration on non-payment of charge – decision varied

Social Services

[Dixon and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1231 (11 June 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 – lower and middle back pain, spine and hips pain and shoulder pain, regular urine infections, chronic obstructive pulmonary disease, insomnia, depression and a prolapsed uterus – decision under review affirmed

[Duthoit and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1297 (14 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

[Ford and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1299 (14 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, whether residency requirements are met, whether entitled to DSP under Agreement on Social Security between Australia and New Zealand – decision under review affirmed

[Pillai and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1233 (11 June 2019); Senior Member C Puplick AM

SOCIAL SECURITY – Disability support pension – New Zealand citizen – Residency requirements – whether Applicant is “severely disabled” – International Agreement – Applicant qualified as resident under international agreement – Decision under review set aside

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 796 (13 June 2019); Mr W Frost, Member

SOCIAL SECURITY – Disability Support Pension – medical condition – skin condition – whether the Applicant’s impairment can be assigned 20 points or more under the Impairment Tables – whether Applicant’s condition fully diagnosed, treated and stabilised – decision under review affirmed

[Tamay and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1277 (13 June 2019); Ms A Wood, Member

SOCIAL SECURITY – disability support pension – condition not fully treated and stabilised – medical advice not acted on – decision under review affirmed

Taxation

[Bosanac and Commissioner of Taxation](#) (Taxation) [2019] AATA 1240 (10 June 2019); Deputy President Boyle

TAXATION – Taxation Administration Act 1953 (Cth) – remittal from Federal Court – whether the tax shortfall penalty should be remitted in full or in part under s 298-20 of Schedule 1 – broad discretion – particular circumstances of taxpayer – lack of financial understanding – penalty be reduced from 75% to 60%

[Brooks and Commissioner of Taxation](#) (Taxation) [2019] AATA 1236 (5 June 2019); Dr M Evans, Senior Member

SUPERANNUATION – self-managed superannuation fund – decision to disqualify Applicant as trustee of self-managed superannuation fund – nature, seriousness and number of contraventions – whether Applicant fit and proper person to be a trustee – loan to related party – no formal loan agreement or other documentation of loan – whether a commercial loan or payment of member benefit – application for review lodged outside of 28 day period – extension of time by consent – reviewable decision affirmed

INCOME TAXATION – decision not to reduce shortfall interest charges – whether withdrawal of funds from self-managed superannuation fund a loan or assessable income – no loan agreement – moneys withdrawn from self-managed superannuation fund used to purchase investment property – no interest repaid – reviewable decision affirmed

Veterans' Affairs

[Iserief and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 1298 (13 June 2019); Deputy President RI Hanger QC

VETERANS' AFFAIRS – claim for defence-cause condition of cervical spondylosis – relevant Statement of Principles – diagnosis of cervical spondylosis accepted – clinical onset of cervical spondylosis not within 25 years of trauma – connection between condition and service not reasonably satisfied – 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
Cullen and Secretary, Department of Social Services	[2019] AATA 777

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
GCLV v Minister for Home Affairs & Anor	[2018] AATA 4460	[2019] FCA 845



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