



Administrative
Appeals Tribunal

AAT
Bulletin

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.

Contents

Recent developments	3
Changes to AAT application fees on 1 July 2019	3
AAT Recent Decisions	4
Citizenship	4
Compensation.....	4
Customs	5
Migration.....	5
Practice and Procedure.....	5
Social Services	6
Veterans' Affairs.....	6
Appeals.....	8
Appeals lodged	8
Appeals finalised.....	8

Recent developments

This section of the *Bulletin* contains information about recent legal or other developments that may be of interest to members and staff. Please forward any contributions you wish to be included in the *Bulletin* or suggestions for topics to LegalAndPolicy@aat.gov.au.

Changes to AAT application fees on 1 July 2019

Application fees in the Administrative Appeals Tribunal will increase on 1 July 2019.

General, Freedom of Information, Security, Taxation & Commercial and Small Business Taxation Divisions

From 1 July 2019 application fees for the review of a decision in the General, Freedom of Information, Security, and Taxation & Commercial Divisions, where a fee is payable, will increase.

- The standard application fee will increase to **\$932**;
- The fee payable for certain taxation applications will increase to **\$92**.

This fee increase will not impact the:

- Concession fee paid within these divisions (no change from **\$100**);
- Standard fee for review of Small Business Taxation Decisions (no change from **\$500**).

Migration and Refugee Division

From 1 July 2019 application fees for the review of a decision, where a fee is payable, will increase to **\$1,787**.

In cases where a 50% fee reduction is granted the reduced fee will be **\$893.50**.

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

[Nfaiel and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1337 (21 June 2019); Senior Member K Raif

CITIZENSHIP – application for Australian Citizenship by conferral – refusal of citizenship – humanitarian visa – applicant has limited understanding of English language – illiteracy in Arabic – applicant suffers from PTSD and MDD – whether the applicant has permanent or enduring physical or mental incapacity – whether not capable of understanding the nature of the application – whether not capable of demonstrating a basic knowledge of English language – whether not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of citizenship – decision set aside and remitted

Compensation

[Cooke and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 1344 (19 June 2019); Mr M O'Loughlin, Member

COMPENSATION – Military rehabilitation and compensation – Whether the condition is connected with defence service – Whether the condition is a “service injury or disease” – Whether the condition falls within the Statement of Principles concerning Cervical Spondylosis – Whether trauma to the cervical spine occurred – Decision under review affirmed.

[Fitzgerald and Comcare](#) (Compensation) [2019] AATA 1348 (5 June 2019); Deputy President P Britten-Jones

COMPENSATION – Whether an adjustment disorder was an ailment or aggravation of an ailment – Whether the aggravation was contributed to, to a significant degree, by applicant's employment – Whether aggravation suffered as a result of reasonable administrative action – Whether administrative action in respect of the employment of the applicant – Whether administrative action reasonable – Whether administrative action taken in reasonable manner – Conduct of the employer causative of aggravation – Conduct of the employer was reasonable administrative action – Decision under review affirmed

[Onassys and Comcare](#) (Compensation) [2019] AATA 1338 (19 June 2019); Senior Member M J McGrowdie

WORKERS COMPENSATION – shoulder conditions – claim for physiotherapy/massage therapy and hydrotherapy – Applicant in receipt of weekly benefits and paid lump sum compensation – decision under review set aside – claim for Chronic Pain Disorder – insufficient medical evidence – decision under review affirmed

[Pito and Comcare](#) (Compensation) [2019] AATA 1347 (20 June 2019); Mr R West, Member

Compensation – jurisdiction of Tribunal – chronic pain syndrome – aggravation – sustained as a sequelae – decision set aside – costs reserved

[Tervel and Comcare](#) (Compensation) [2019] AATA 1304 (28 May 2019); Senior Member Mr P W Taylor SC

WORKERS' COMPENSATION – claim for medical expenses and incapacity payments in respect of Major Depressive Disorder – compensation claim made under sections 16 and 19 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether applicant continues to suffer a “disease” materially contributed to by her employment – whether applicant has an ongoing incapacity for work as a result of her depressive condition – decision under review set aside and substituted

Customs

[Alstom Transport Australia Pty Ltd and Comptroller-General of Customs](#) [2019] AATA 1308 (17 June 2019); Deputy President B W Rayment OAM QC

CUSTOMS – TARIFF CONCESSION ORDER – whether applicant meets core criteria – whether substitutable goods produced in Australia that are put, or capable of being put to a use that corresponds with a use to which the goods the subject of the TCO can be put – description of use in defining substitutable goods – specificity in describing use – reasonable use – whether uses correspond – decision affirmed

Migration

[Mence and Minister for Home Affairs](#) (Migration) [2019] AATA 1309 (14 June 2019); 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 another reason to revoke the mandatory cancellation of the Applicant's visa – considerations in Direction 79 – decision under review affirmed

Practice and Procedure

[Academy of Global Business Training Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 1345 (12 June 2019); Deputy President S A Forgie

PRACTICE AND PROCEDURE – application for dismissal under s 42(B)(1) of the Administrative Appeals Tribunal Act 1975 – whether no reasonable prospects of success or application lacks substance – whether failure to meet criterion j) of Fit and Proper Person Requirements fatal to application – application for dismissal refused

[Dimitropoulos AND Australian Securities and Investments Commission](#) [2019] AATA 1350 (20 June 2019); Senior Member Mr P W Taylor SC

PRACTICE AND PROCEDURE – proceedings – application that a member of the Tribunal recuse themselves from hearing the matter due to an apprehension of bias – where Tribunal member had previously presided over proceedings in relation to a potential witness – whether findings of credit or credibility in relation to that potential witness had been made during the prior proceedings – application refused

Social Services

[Brzozek and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1306 (17 June 2019); Senior Member DJ Morris

SOCIAL SECURITY – are applicants members of a couple – if so, is discretion enlivened for determination that they are not a member of a couple for the purposes of the Act – consideration of circumstances of the two applicants – factors to take into account in arriving at decision – decisions set aside and new decisions substituted therefore

[Parker and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1307 (17 June 2019); C Edwardes, Member

Social Security – sole parent payment – single parenting payment – member of a couple – Centrelink debt raised – Family Court affidavits – ‘marriage like relationship’ – de facto partner – overpayment – debt recovery – special circumstances – decision affirmed

Correction – Please note the following decision appeared in last week’s bulletin, No.24 – 17 June 2019, with incorrect link. The correct version is set out below for your convenience.

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1279 (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

[Voller and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1336 (19 June 2019); Professor R McCallum AO, Member

SOCIAL SECURITY – disability support pension – myasthenia gravis – fibromyalgia – where impairments fully diagnosed, treated and stabilised – whether impairments are of 20 points or more under the Impairment Tables – where impairments not assessable as severe – decision affirmed

Veterans' Affairs

[Clearihan and Repatriation Commission](#) (Veterans’ entitlements) [2019] AATA 1339 (18 June 2019); K Parker, Member

VETERANS’ ENTITLEMENTS – application for special or intermediate rate of pension – veteran served in Vietnam – meaning of “totally and permanently incapacitated” – war-caused skin cancer, prostate cancer and sequelae psychological conditions – “alone test” – consideration of other preventative factors such as age, voluntary redundancy package and non-war-caused spinal condition – improvement in veterans’ capacity for work during the assessment period – “loss of salary and wages” requirement not met – not all eligibility criteria met – eligibility for special rate or intermediate rate of pension not met – decision affirmed

[Paxton and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 1305 (17 June 2019);
Senior Member L Kirk

VETERANS' AFFAIRS – Veterans' entitlements – Special rate of pension - Intermediate rate of pension – Whether Applicant's incapacity renders him incapable of undertaking remunerative work for period aggregating more than eight or 20 hours a week – Whether incapacity from war – caused injuries “alone” prevented the veteran from undertaking remunerative work – Whether the veteran genuinely sought to engage in remunerative work – Applicant incapable of undertaking remunerative work for periods aggregating more than eight hours – Applicant had no further work opportunities, suffers from non-service related conditions – Applicant fails 'alone' test – No evidence to show that Applicant sought to genuinely seek alternative remunerative work – reviewable decision 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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Singh v Minister for Home Affairs & Anor

[\[2019\] AATA 73](#)

[\[2019\] FCA 905](#)

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