



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 26/2019

1 July 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

Recent developments	3
Practice Direction 'Giving Documents or Things to the AAT' updated.....	3
AAT Recent Decisions	4
Citizenship.....	4
Compensation	4
Freedom of Information	5
Migration.....	6
National Disability Insurance Scheme.....	7
Practice and Procedure.....	8
Social Services.....	8
Appeals.....	9
Appeals lodged.....	9
Appeals finalised	9

Recent developments

Practice Direction 'Giving Documents or Things to the AAT' updated

The AAT's Registry in Western Australia will now locally process applications for review in the Migration and Refugee Division.

The Practice Direction titled *Giving Documents or Things to the AAT* has been updated to enable applications to the Migration and Refugee Division to be faxed to the AAT's Registry in Western Australia.

The updated Practice Direction has effect on and from 1 July 2019 and can be located under the 'Resources' tab on our [website](#).

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

[Khaled and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 1412 (26 June 2019); Senior Member M Griffin QC

CITIZENSHIP – refusal of application for citizenship by conferral – where Applicant has a permanent or enduring physical or mental incapacity – where insufficient evidence of permanent or enduring physical incapacity – where substantial evidence of permanent or enduring mental incapacity – where no causal connection between Applicant's incapacity and incapacities listed at paragraph 21(3)(d) of the Australian Citizenship Act 2007 (Cth) – decision affirmed

[Singh and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 1406 (24 June 2019); Senior Member R Pintos-Lopez

CITIZENSHIP – application for citizenship by conferral – where citizenship application refused – good character requirement – driving offences – drink driving – driving whilst disqualified – property damage – minor traffic infringements – whether applicant of good character – mental and moral qualities – applicant's failure to disclose certain offences on application for citizenship – applicant's untruthfulness in witness statement – applicant's history of offending – applicant not of good character – decision affirmed

Compensation

[Arbon and Comcare](#) (Compensation) [2019] AATA 1390 (21 June 2019); Mr M O'Loughlin, Member & Mr A George, Member

COMPENSATION – whether gym/hydrotherapy obtained in relation to the accepted condition – whether gym/hydrotherapy reasonable treatment – decision under review affirmed

[Aylett and Comcare](#) (Compensation) [2019] AATA 1474 (26 June 2019); Deputy President A G Melick AO SC

COMPENSATION – liability for medical expenses – determinations ceasing liability for medical expenses – whether material contribution to Applicant's condition by employment – reasonableness of treatment – massage treatment – physiotherapy treatment – decision under review affirmed

[Cartajena and Comcare](#) (Compensation) [2019] AATA 1410 (24 June 2019); Mr A Maryniak QC, Member

COMPENSATION – acute anxiety reaction – post-traumatic stress disorder – whether the Applicant suffers an injury – where Respondent accepted liability under s 14 – where Respondent subsequently denied liability under s 16 – where Respondent denied liability under ss 24 and 27

[Cook and Telstra Corporation Limited](#) (Compensation) [2019] AATA 1511 (27 June 2019); D K Grigg, Member

COMPENSATION - employees - whether applicant's hearing loss is an "injury" or "disease" under the Safety, Rehabilitation and Compensation Act 1988 – whether there has been an increase in the degree of permanent impairment suffered by the applicant, of 5% or more, as a result of his accepted noise induced hearing loss such that further compensation for permanent impairment and non-economic loss is payable under sections 24 and 27 of the Act - decision under review affirmed

[Karabolovska and Comcare](#) (Compensation) [2019] AATA 1346 (3 June 2019); Mrs J C Kelly, Senior Member

WORKERS' COMPENSATION – whether Respondent is liable for aggravation of vision impairment (bilateral) – contemporaneous documentation does not support Applicant's account of history – decision affirmed - Respondent previously accepted liability for aggravation of major depressive disorder - whether the Respondent is presently liable to pay medical expenses and incapacity payments in respect of previously accepted liability – Applicant has underlying psychological condition – exacerbation from work related injury has ended – decision affirmed

[Olds and Comcare](#) (Compensation) [2019] AATA 1477 (27 June 2019); Senior Member A Poljak

COMPENSATION – workers compensation – right hip – claim for medical treatment and incapacity – surgery – whether total hip replacement reasonable medical treatment – applicant continued to experience symptoms – other medical treatment options exhausted – evidence of improvement following surgery – decision under review set aside and substituted – Achilles tendon – Plasma Rich Platelet (PRP) injections not appropriate treatment – decision under review affirmed

[Woodfield and Telstra Corporation Limited](#) (Compensation) [2019] AATA 1473 (26 June 2019); Deputy President A G Melick AO SC

COMPENSATION – whether symptoms contributed to by employment to requisite degree – subacromial bursitis – decision under review affirmed

Freedom of Information

[Grass and Secretary, Department of Home Affairs](#) (Freedom of information) [2019] AATA 1415 (25 June 2019); Senior Member C Puplick AM

Freedom of Information Act – whether applicant's birth date should be amended – whether information is incomplete, incorrect, out of date or misleading - whether there was sufficient evidence of the applicant's birth date – consideration of the authenticity of documents produced - decision under review affirmed

Migration

[De Ruyter and Minister for Home Affairs](#) (Migration) [2019] AATA 1392 (21 June 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category visa – violent and serious criminal offending – failure to pass good character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[GCRM and Minister for Home Affairs](#) (Migration) [2019] AATA 1394 (24 June 2019); Senior Member B J 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

[Ghazaryan and Minister for Home Affairs](#) (Migration) [2019] AATA 1514 (27 June 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Armenia – Class BC Subclass 100 Partner Visa – failure to pass character test – Ministerial Direction No. 79 applied – decision under review affirmed

[Hopkins and Minister for Home Affairs](#) (Migration) [2019] AATA 1393 (24 June 2019); Senior Member D J Morris

MIGRATION – applicant was holder of Class BF Transitional (Permanent) visa – mandatory cancellation – visa cancelled following conviction carrying sentence for more than 12 months – failure to pass character test – history and nature of criminal offending – supply of prohibited drug – consideration of ministerial Direction No. 79 – primary considerations – other considerations – balancing exercise – previous visa warning – reviewable decision affirmed

[McMahon and Minister for Home Affairs](#) (Migration) [2019] AATA 1532 (26 June 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – non-expedited matter – special category TY 444 visa – where visa was cancelled under s 501(3A) because Applicant had a substantial criminal record and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – risk of harm to Australian community – best interests of minor children – expectations of Australian community – decision under review affirmed

[Pinder and Minister for Home Affairs](#) (Migration) [2019] AATA 1398 (21 June 2019); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – nature of harm – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – 24 years since last offence – best interests of minor children – decision under review set aside and substituted

[Read and Minister for Home Affairs](#) (Migration) [2019] AATA 1404 (25 June 2019); Senior Member D J Morris

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – failure to pass the character test – whether there is another reason why the cancellation decision should be revoked pursuant to section 501CA(4)(b)(ii) of the Migration Act 1958 – Ministerial Direction No. 79 applied – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – reviewable decision set aside and substituted

[ZKYG and Minister for Home Affairs](#) (Migration) [2019] AATA 1414 (5 June 2019); Senior Member B J Illingworth

MIGRATION – refusal to grant a visa – s 501 character test applied – whether discretion to refuse visa should be exercised – considerations in Direction 79 – whether considerations weigh in favour of refusing visa – decision under review affirmed

National Disability Insurance Scheme

[FRCT and National Disability Insurance Agency](#) [2019] AATA 1478 (24 June 2019); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary support – where participant diagnosed with autism spectrum disorder requiring substantial support – early childhood intervention – ABA therapy – speech therapy – keyworker model – whether proposed supports are reasonable and necessary supports as defined in subsection 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – where ABA therapy 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 – where speech therapy 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 – where keyworker model not comparable support – best practice – where tension between parents' preference that ABA therapy and speech therapy is provided in a clinical setting and best practice that prefers therapy to be provided in natural environments – decision set aside and remitted

[WKZQ and National Disability Insurance Agency](#) [2019] AATA 1480 (24 June 2019); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary support – where participant diagnosed with autism spectrum disorder requiring substantial support – early childhood intervention – ABA therapy – speech therapy – keyworker model – whether proposed supports are reasonable and necessary supports as defined in subsection 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – where ABA therapy 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 – where speech therapy 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 – where keyworker model not comparable support – best practice – where tension between parents' preference that ABA therapy and speech therapy is provided in a clinical setting and best practice that prefers therapy to be provided in natural environments – decision set aside and remitted

Practice and Procedure

[Bornecrantz and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1471 (1 May 2019); Deputy President A G Melick AO SC

SOCIAL SECURITY – qualification for age pension – residency requirements – 10 years qualifying Australian residence – considerations in s 7(3) of the Social Security Act – Tribunal satisfied
Applicant did not satisfy residency requirements

PRACTICE AND PROCEDURE – dismissal – dismissal if fails to proceed with application or comply with a direction within a reasonable time – dismissal if Tribunal satisfied that no reasonable prospect of success

[Carver and Comcare](#) (Compensation) [2019] AATA 1534 (28 June 2019); Ms S Taglieri SC, Member

PRACTICE AND PROCEDURE – summons – summons to third party to produce documents – amount of fees and allowances payable in relation to compliance with summons – reasonable expenses – payable for appearance at direction of Tribunal – payable for production of documents

[Evans and Tax Practitioners Board](#) (Taxation) [2019] AATA 1408 (19 June 2019); Senior Member Mr C Furnell

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – tax practitioners board – prospects of success – consequences for applicant – consequences for respondent – public interest - whether substantive application would be rendered nugatory if stay order were not granted - application refused

[United Business College Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 1389 (20 June 2019); Senior Member Mr C Furnell

PRACTICE AND PROCEDURE — stay granted — application to vary stay — removal of condition — prospects of success - public interest - consequences for parties - consequences on application for review considered by Tribunal — variation not granted

Social Services

[Darwiche and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1476 (27 June 2019); Professor R McCallum AO, Member

SOCIAL SECURITY – disability support pension – right lower limb condition – mental health condition – where right lower limb condition fully diagnosed, treated and stabilised – where mild functional impairment – where mental health condition not diagnosed, treated or stabilised during the claim period – 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
Azizi and Minister for Foreign Affairs	[2018] AATA 1871
Leau and Minister for Home Affairs	[2019] AATA 843
Loch and Secretary, Department of Education and Training	[2019] AATA 1101
PHMK and Minister for Home Affairs	[2019] AATA 1002
VFWQ and Minister for Home Affairs	[2019] AATA 1096

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v ZZRP	[2018] AATA 2240	[2019] FCA 952
Lim v Comcare	[2018] AATA 4354	[2019] FCAFC 104



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](#).