



Administrative
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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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AAT Recent Decisions

The following decisions were recently delivered by the AAT in the General, FOI, NDIS, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. 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. If the decision is to be summarised, this will be noted. Click on the links for direct access to the full text of the decision.

Citizenship

[Ahmadi and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 1567 (1 July 2019); Senior Member BJ Illingworth

CITIZENSHIP – application for citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to identity – inconsistency in evidence – credibility – identity satisfied – decision under review set aside and remitted

[BWGZ and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1645 (3 July 2019); Senior Member C Puplick AM

CITIZENSHIP – cancellation of approval for Australian citizenship by conferral – whether the applicant is not of good character – consideration of false statements – consideration of the authenticity of documents – decision under review set aside and remitted

[Kozal and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 1571 (24 June 2019); Professor R McCallum AO, Member

CITIZENSHIP – application for Australian citizenship by conferral – suffered from a permanent or enduring physical or mental incapacity which exempted him from sitting the citizenship test – application for citizenship was refused – exemption from sitting citizenship test – must satisfy the Tribunal that the applicant has a mental incapacity – permanent or enduring – if the Applicant chooses to, he is required to sit and pass the citizenship test – decision under review is affirmed

[Maez and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1647 (4 July 2019); Senior Member C Puplick AM

CITIZENSHIP – Extension of time application – whether there is an acceptable explanation for the delay – whether applicant rested rights – merits of substantial application – extension of time application refused

Compensation

[Kearns and Comcare](#) (Compensation) [2019] AATA 1631 (2 July 2019); Senior Member L Kirk

WORKERS COMPENSATION – whether the Applicant continues to suffer the effects of an accepted condition – whether the Applicant continues to suffer the effects of a second accepted condition – whether an aggravation or ailment was contributed to in material degree by employment – whether an aggravation or ailment was contributed to in a significant degree by employment – decisions under review affirmed

[McKenzie-Smith and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 1644 (4 July 2019); Ms D Mitchell, Member

VETERANS' AFFAIRS – military compensation – whether non-service related injury was aggravated out of or in the course of the Applicant's defence service – decision under review affirmed

[Mununggurr and Comcare](#) (Compensation) [2019] AATA 1564 (28 June 2019); Senior Member T Tavoularis

JURISDICTION – COMPENSATION – whether the Applicant is entitled to permanent impairment compensation under ss 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 ('the SRC Act') for Post Traumatic Stress Disorder ('PTSD') and Major Depressive Disorder ('MDD') – where liability has been accepted under s 14 of the SRC Act for PTSD – whether permanent impairment compensation can extend to MDD – liability limited to PTSD – no jurisdiction to determine whether the Applicant is entitled permanent impairment compensation for MDD under ss 24 and 27 of the SRC Act

Migration

[Do and Minister for Home Affairs](#) (Migration) [2019] AATA 1591 (2 July 2019); Ms A Burke AO, Member

MIGRATION – refusal of visa on character test – criminal record – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk of reoffending – best interests of minor children – expectations of the Australian community – decision under review set aside

Practice and Procedure

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

[Vidovic and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1627 (26 June 2019); Dr M Evans, Senior Member

PRACTICE AND PROCEDURE – Interlocutory – application for review of a decision of the Social Services and Child Support Division of the Tribunal – unlimited portability – dismissal application under s 42B(1) Administrative Appeals Tribunal Act 1975 (Cth) – whether frivolous, vexatious – successful decision on second review would be of no practical benefit to the Applicant – application dismissed pursuant to s 42B(1)(a)

Social Services

[BQPH and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1563 (26 June 2019); Dr M Evans, Senior Member

SOCIAL SECURITY – Family Tax Benefit (FTB) – whether Tribunal has jurisdiction to review a decision in the absence of a written extension of time application – whether Tribunal’s jurisdiction flexible – whether Applicant’s FTB entitlement should be offset against debts already owed to the Commonwealth – whether severe financial hardship – decision under review set aside and substituted

[Cirkel and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1646 (25 June 2019); Mr A G Melick AO SC, Deputy President and The Hon. S Parry, Member

SOCIAL SECURITY – disability support pension – whether fully diagnosed, treated and stabilised – whether impairments attract 20 points or more – decision under review affirmed

[FYNZ and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1628 (1 July 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether applicant entitled to be paid disability support pension while overseas – where applicant an Australian resident – whether applicant ceased to be an Australian resident – where applicant found to have ceased to be an Australian resident – where applicant again became an Australian resident – portability provisions – where pension not payable for two years to a person who becomes an Australian resident again – start date

[Hillan and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1589 (2 July 2019); Ms 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

[Welcker and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1566 (27 June 2019); Senior Member Professor PA Fairall

SOCIAL SECURITY – suspension of Sickness Allowance – limited portability period – whether applicant entitled to the portability provisions under section 1217 of the Social Security Act 1991 – meaning of the term “eligible medical treatment” – whether applicant’s temporary absence from Australia was for the purpose of seeking eligible medical treatment of a kind that is not available in Australia – decision under review affirmed

SOCIAL SECURITY – Family Tax Benefit debt owed to the Commonwealth – whether the applicant was entitled to receive Family Tax Benefit while overseas – whether the applicant provided ongoing care and maintained involvement in the day-to-day decision-making of his son while overseas – whether debt should be recovered, waived or set aside – decision under review affirmed

Taxation

[Ultimate Vision Inventions Pty Ltd and Innovation and Science Australia](#) (Taxation) [2019] AATA 1633 (27 June 2019); Mr A. M QC, Member

TAXATION – research and development tax incentive – design and development of an integrated health and fitness program and cloud based decision support systems – whether R&D activities – decision under review affirmed

[YCNM and Commissioner of Taxation](#) (Taxation) [2019] AATA 1592 (1 July 2019); Senior Member L Hesse

TAXATION – characterisation of settlement payment made by insurer under deed of release – claim under group salary continuance insurance policy – complaints about conduct of insurer – whether the settlement sum is ordinary income – whether CGT exemptions in s 118-37 or s 118-300 apply – settlement sum apportionable – decision set aside and remitted for reconsideration

Veterans' Affairs

[Bourke and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 1597 (3 July 2019); Senior Member The Hon. M Groom

VETERANS' AFFAIRS – veterans' entitlements – preliminary questions – whether claimed condition of vestibular migraine covered by statement of principles – applicable statement of principles – Statement of Principles No 8 of 2018 – Statement of Principles No 57 of 2009 – migraine – vestibular migraine – claimed condition not covered by either statement of principles

[Graham and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 1568 (28 June 2019); Senior Member MJ McGrowdie

VETERANS' AFFAIRS – Army service for approximately 11 years – claim for cervical, thoracic and lumbar spondylosis and osteoarthritis of the hips – being overweight/obese claimed to have been related to these conditions – where being overweight/obese was connected to service – being engaged in activities involving extreme forward flexion claimed to be related to the lumbar spondylosis and connected to service – decision set aside and substituted

[Topic and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2019] AATA 1569 (25 June 2019); Ms A Burke AO, Member

VETERANS' AFFAIRS – whether claimed condition arose out of war-service – Statement of Principles concerning osteoarthritis – whether condition connected with service on the balance of probabilities – claimed condition not service-caused – 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
Karabolovska and Comcare	[2019] AATA 1346
Lee and Minister for Home Affairs	[2019] AATA 871
TVVT and Minister for Home Affairs	[2019] AATA 824
YKSB and Minister for Home Affairs	[2019] AATA 759
Wekerle and Minister for Home Affairs	[2019] AATA 630

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
NBCM v Minister for Home Affairs	[2018] AATA 2387	[2019] FCA 1013
VKTT v Minister for Home Affairs	[2018] AATA 3377	[2019] FCA 1018

Statements of Principles

This section of the *Bulletin* provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from on **22 July 2019**:

Irritable bowel syndrome (Balance of Probabilities) – No. 66 of 2019

<https://www.legislation.gov.au/Details/F2019L00860>

Irritable bowel syndrome (Reasonable Hypothesis) – No. 65 of 2019

<https://www.legislation.gov.au/Details/F2019L00858>

Renal stone disease (Balance of Probabilities) – No. 70 of 2019

<https://www.legislation.gov.au/Details/F2019L00944>

Renal stone disease (Reasonable Hypothesis) – No. 69 of 2019

<https://www.legislation.gov.au/Details/F2019L00943>

Schistosomiasis (Balance of Probabilities) – No. 62 of 2019

<https://www.legislation.gov.au/Details/F2019L00945>

Schistosomiasis (Reasonable Hypothesis) – No. 61 of 2019

<https://www.legislation.gov.au/Details/F2019L00946>

Strongyloidiasis (Balance of Probabilities) – No. 64 of 2019

<https://www.legislation.gov.au/Details/F2019L00889>

Strongyloidiasis (Reasonable Hypothesis) – No. 63 of 2019

<https://www.legislation.gov.au/Details/F2019L00888>

Subarachnoid haemorrhage (Balance of Probabilities) – No. 68 of 2019

<https://www.legislation.gov.au/Details/F2019L00948>

Subarachnoid haemorrhage (Reasonable Hypothesis) – No. 67 of 2019

<https://www.legislation.gov.au/Details/F2019L00947>

Amended Statements of Principles

The AAT has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They take effect from **22 July 2019**:

Amendment Statement of Principles concerning aortic aneurysm – No. 71 of 2019

<https://www.legislation.gov.au/Details/F2019L00960>

Amendment Statement of Principles concerning aortic aneurysm – No. 72 of 2019

<https://www.legislation.gov.au/Details/F2019L00961>

Amendment Statement of Principles concerning morbid obesity – No. 76 of 2019

<https://www.legislation.gov.au/Details/F2019L00881>

Amendment Statement of Principles concerning morbid obesity – No. 75 of 2019

<https://www.legislation.gov.au/Details/F2019L00880>

Amendment Statement of Principles concerning osteoarthritis – No. 74 of 2019

<https://www.legislation.gov.au/Details/F2019L00959>

Amendment Statement of Principles concerning osteoarthritis – No. 73 of 2019

<https://www.legislation.gov.au/Details/F2019L00958>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the Repatriation Medical Authority **will be revoked** on **22 July 2019**:

Irritable bowel syndrome – No. 28 of 2011

<https://www.legislation.gov.au/Details/F2011L00766>

Irritable bowel syndrome – No. 27 of 2011

<https://www.legislation.gov.au/Details/F2011L00783>

Renal stone disease – No. 66 of 2010

<https://www.legislation.gov.au/Details/F2010L02305>

Renal stone disease – No. 65 of 2010

<https://www.legislation.gov.au/Details/F2010L02304>

Schistosomiasis – No. 87 of 2010

<https://www.legislation.gov.au/Details/F2010L02843>

Schistosomiasis – No. 86 of 2010

<https://www.legislation.gov.au/Details/F2010L02842>

Strongyloidiasis – No. 89 of 2010

<https://www.legislation.gov.au/Details/F2010L02845>

Strongyloidiasis – No. 88 of 2010

<https://www.legislation.gov.au/Details/F2010L02844>

Subarachnoid haemorrhage – No. 68 of 2010

<https://www.legislation.gov.au/Details/F2010L02307>

Subarachnoid haemorrhage – No. 67 of 2010

<https://www.legislation.gov.au/Details/F2010L02306>



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