



Administrative
Appeals Tribunal

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

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

[Peters and Child Support Registrar](#) (Child support second review) [2019] AATA 1719 (5 July 2019); Senior Member K Millar

CHILD SUPPORT – child support debt – departure prohibition order – whether applicant satisfies criteria for revocation of departure prohibition order – whether discretion to revoke departure prohibition order should be exercised – decision under review affirmed

Citizenship

[Musawi and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1724 (8 July 2019); Senior Member C Puplick AM

CITIZENSHIP – Revocation of citizenship by conferral – whether person would be rendered stateless – whether contrary to the public interest for the person to remain a citizen – multiple offences – robbery in company – prior offences – larceny – possession of unauthorised pistol – goods suspected stolen in/on premises – homophobic assault - decision to revoke affirmed

[TXQW and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 1765 (9 July 2019); R Maguire, Member

CITIZENSHIP – revocation of Australian citizenship under s 34(2) of the Act – whether the Minister had statutory power to grant the applicant citizenship – whether the applicant was of good character – the applicant pled guilty to one count of indecent treatment of a child under 16 with circumstances of aggravation and one count of indecent treatment of a child under 16 – decision under review affirmed

Compensation

[Stefaniak and Comcare](#) (Compensation) [2019] AATA 1866 (12 July 2019); Senior Member D O'Donovan

WORKERS COMPENSATION – insidious onset of pubic related groin pain – whether the applicant suffers from a diagnosable condition - whether condition contributed to by employment to the requisite degree – evidence of expert witnesses – whether the applicant is entitled to compensation in the absence of any physiological change, pathology or a known diagnosis – decision set aside and substituted

Education and Research

[Claredale Academy Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 1869 (12 July 2019); Ms K. Parker, Member

Vocational Education and Training - cancellation of registered training organisation (RTO) - rejection of application for registration as a provider of courses to overseas students - non-compliance with legislative regime, standards and national code – whether sufficient qualified and skilled trainers and assessors available to deliver courses – whether failure to cooperate with the regulator – “fit and proper person” requirements - whether business properly managed its financial affairs and maintained proper business records - financial viability - some effort made to bring the RTO into compliance - misleading statements provided by high managerial agents and executive officers to the regulator – insufficient insight into past non-compliant conduct - decisions affirmed

Migration

[MTJB and Minister for Home Affairs](#) (Migration) [2019] AATA 1768 (8 July 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – Refugee Class XB 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 – Non-refoulement – Direction No.75 – decision under review affirmed

[O’Rourke and Minister for Home Affairs](#) (Migration) [2019] AATA 1727 (8 July 2019); T Eteuati, Member

MIGRATION – refusal of application for Bridging visa under section 501(1) – Applicant failed to pass the character test under section 501(6)(a) - whether the discretion to refuse to grant the Bridging visa should be exercised – operation of section 501F – application of Direction No. 79 – decision under review set aside and remitted for reconsideration

National Disability Insurance Scheme

[WRMF and National Disability Insurance Agency](#) [2019] AATA 1771 (8 July 2019); Deputy President B W Rayment OAM QC

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – definition of support – definition of reasonable and necessary – sexual therapy – whether sexual therapy is a reasonable and necessary support – particular circumstances of the applicant – decision set aside and remitted

Practice and Procedure

[Al-Taie and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1720 (5 July 2019); Senior Member Professor P A Fairall

EXTENSION OF TIME – principles to be applied – where substantial period of inaction – where reasonable explanation for delay – merits of substantive matter – extension of time granted

[Burdack and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1865 (12 July 2019); Senior Member D O'Donovan

SOCIAL SECURITY – disability support pension – application for second tier review to the general division of the Tribunal - interlocutory request for an extension of time - prescribed time for making application – faxing of application to Tribunal – evidence of receipt of application by Tribunal - whether the applicant made an application within the prescribed time

[Dimitropoulos and Australian Securities and Investments Commission](#) [2019] AATA 1775 (10 July 2019); Mr P W Taylor SC, Senior Member

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act s 37(2) – application for notice requiring lodgement of witness statement instructions and draft witness statement – general assertions of relevance to witness credit – scope of the "may be relevant" criterion – relevance of decision maker's obligation to lodge relevant documents – discretion not to require lodgement of potentially relevant documents

[Newey and Comcare](#) (Compensation) [2019] AATA 1772 (9 July 2019); Deputy President S A Forgie

PRACTICE AND PROCEDURE – application for release from implied undertaking – whether documents subject to implied undertaking – whether release sought for use collateral or ulterior to that for which it was obtained – implied undertaking applies

[Site Skills Group Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 1870 (12 July 2019); Deputy President R I Hanger QC

STAY APPLICATION – Registered Training Organisation – Audit - Identified non-compliance with Registered Training Organisation Standards – stay application – consent of the parties - whether stay order should be amended – applicant for amended stay order refused.

[Stirling Skills Training \(Inc\) and Australian Skills Quality Authority](#) [2019] AATA 1721 (5 July 2019); Deputy President Boyle

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – prospects of success – consequences for the Applicant – detriment to students – consequences for the Respondent – public interest – whether substantive application would be rendered nugatory if stay order were not granted – stay order to remain in place

Social Services

[Cheatham and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1770 (9 July 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether impairments are fully diagnosed, treated and stabilised – whether applicant's impairments attracts 20 points or more under the Impairment Tables – emphysema – lower limb condition – back condition – program of support – decision affirmed

[Fern and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1773 (11 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

[Karam and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1769 (9 July 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – newstart allowance – cancellation of payment – activity test – whether applicant entitled to relief from activity test – principal carer of at least one child – whether engaged in suitable work for 30 hours per fortnight – decision under review set aside and remitted

[Lymbery; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 1868 (12 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 set aside and substituted

[Mueller and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1774 (11 July 2019); Mr W Frost, Member

SOCIAL SECURITY – Farm Household Allowance – overpayment – whether there was an overpayment of Farm Household Allowance – whether Applicant is required to repay overpayment – decision under review affirmed

[Qunton and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1725 (9 July 2019); Senior Member D R Davies

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

Taxation

[Hill and Commissioner of Taxation](#) (Taxation) [2019] AATA 1723 (8 July 2019); Deputy President P Britten-Jones and Mr S Griffiths, Member

Allowable deductions – Losses – Losses incurred in carrying on a business – Indicia of carrying on a business – Indicia of carrying on a share trading business – Taxpayer engaged in purchase and sale of shares – Deduction for loss disallowed – Whether taxpayer carrying on share trading business – Consideration of indicia – No system and regularity of trades – Lack of sophistication – No engagement of professional assistance despite having no relevant qualifications – Income Tax Assessment Act 1997 (Cth), s 8–1 – The Tribunal affirms the decision under review

[Jacobs and Commissioner of Taxation](#) (Taxation) [2019] AATA 1726 (9 July 2019); D K Grigg, Member

TAXATION – superannuation excess transfer balance tax liability – whether discretion to waive – decision under review affirmed.

Veterans' Affairs

[Woolley and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements)
[2019] AATA 1867 (12 July 2019); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – military compensation – claim for patellofemoral syndrome of right and left knee – where the veteran completed warlike, non-warlike and peacetime service in the Army – whether the veteran's condition is a service injury or disease – where the veteran underwent weight bearing activities – decision under review varied – chondromalacia patella condition of the left knee is a service disease.

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

Yucel and Minister for Home Affairs

[\[2018\] AATA 3364](#)

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Flores v Minister for Home Affairs

[\[2018\] AATA 1264](#)

[\[2019\] FCA 1043](#)



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