



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 29/2019**

**22 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](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Bankruptcy .....	3
Citizenship .....	3
Education and Research .....	4
Migration .....	4
National Security .....	4
Practice and Procedure .....	4
Social Services .....	5
Taxation .....	6
<b>Appeals .....</b>	<b>7</b>
Appeals lodged .....	7
Appeals finalised .....	7

# 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.

## Bankruptcy

[Miao and Inspector-General in Bankruptcy](#) [2019] AATA 1921 (17 July 2019); Senior Member R Pintos-Lopez

BANKRUPTCY – whether to refuse to review a decision of a trustee who had filed a notice of objection to the discharge of the Applicant from bankruptcy – failure to produce documents to the trustee on request – conduct of the trustee - decision affirmed.

## Citizenship

[Bulrice and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1871 (12 July 2019); Senior Member C Puplick AM

CITIZENSHIP - application for citizenship by conferral - refusal of citizenship - whether applicant maintains a close and continuing association with Australia - application of Citizenship Policy - decision set aside and remitted

[Mohsin and Minister for Home Affairs](#) (Citizenship) [2019] AATA 1999 (18 July 2019); Deputy President The Hon. John Pascoe AC CVO

CITIZENSHIP – citizenship by conferral – delegate refused application for citizenship – document provided found to be fraudulent - whether satisfied of identity of applicant – whether applicant is of good character – decision set aside and remitted

[Velychko and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2000 (16 July 2019); Senior Member K Raif

CITIZENSHIP – revocation of Australian citizenship – Applicant guilty of furnishing document that contained a false or misleading statement or information under Migration Act – guilty of making false or misleading statement under Citizenship Act – whether revocation of citizenship is in the public interest – consideration of the “public interest” – whether discretion to revoke citizenship should be exercised – decision under review affirmed

## Education and Research

[PSVN and Secretary, Department of Education and Training](#) [2019] AATA 1912 (9 July 2019); Senior Member B Stefaniak AM RFD

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting – whether special circumstances apply – skin condition – whether applicant’s circumstances made their full impact on or after the census date – where medical condition made their full impact on applicant before the census date – where no special circumstances – decision affirmed

## Migration

[ZNBG and Minister for Home Affairs](#) (Migration) [2019] AATA 1872 (9 July 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 character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision set aside and substituted

## National Security

[FLSZ and Director-General of Security](#) [2018] AATA 5900 (4 May 2018); Deputy President S A Forgie, Senior Member E Fice and Senior Member A Nikolic AM CSC

NATIONAL SECURITY – adverse security assessment – cancellation of visa – relevance of particular prescribed administrative action - decision affirmed

[ZXYM and Director-General of Security](#) [2019] AATA 2004 (19 July 2019); Deputy President J W Constance, Deputy President B W Rayment QC OAM and Senior Member A Poljak

NATIONAL SECURITY - adverse security assessment - danger to security of Australia - ideology in support of politically motivated violence - consuming and sharing extremist material online - supportive of Islamic State of Iraq and the Levant (ISIL) - recommendation for cancellation of Partner visa - decision affirmed

## Practice and Procedure

[DDMY and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2002 (18 July 2019); Deputy President S A Forgie

PRACTICE AND PROCEDURE – AUSTRAC information - interaction of obligation to lodge documents under section 37 of the Administrative Appeals Tribunal Act 1975 and the Tribunal’s inability to require production of any document containing AUSTRAC information or disclosure of AUSTRAC information

PRACTICE AND PROCEDURE – whether the Conclusion reached in the Identity Assessment Report cannot be relied on for it may be influenced by the content of passages redacted from the report available to the applicant and the Tribunal – whether the applicant has a reasonable opportunity to present a case and whether there is denial of procedural fairness

[El Haroun and Child Support Registrar](#) (Child support) [2019] AATA 1920 (3 July 2019); Dr L Bygrave, Member

CHILD SUPPORT – departure prohibition order – where applicant applied for Departure authorisation certificate – where original application refused – period for Departure Authorisation Certificate elapsed – Tribunal unable to make any order of utility – application dismissed

[Gamble and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1923 (19 June 2019); Ms A Burke AO, Member

PRACTICE AND PROCEDURE – application for extension of time – delay of 7 1/2 months in lodging application - whether reasonable excuse for delay - no reasonable excuse for extensive delay - where prejudice would be incurred by respondent and public by allowing extension of time - where prospects of success do not weigh in favour applicant - not reasonable in all the circumstances to allow extension of time

[Pito and Comcare](#) (Compensation) [2019] AATA 1878 (12 July 2019); R West, Member

COSTS – decisions set aside – order that compensation be paid pursuant to section 14 of the Safety, Rehabilitation and Compensation Act – costs ordered in favour of the Applicant pursuant to section 67 of the Safety, Rehabilitation and Compensation Act 1988

[Whitlock and Comcare](#) (Compensation) [2019] AATA 1911 (16 July 2019); Senior Member L Kirk

PRACTICE AND PROCEDURE - application for dismissal – abuse of process – fraudulent conduct and deception in prosecuting the claim - public confidence in the decision-making of the Tribunal – breach of obligation under s 33(1AB) of the AAT Act – the Tribunal’s power to dismiss applications under s 42B(1)(c) - application for dismissal refused

## **Social Services**

[DLRN and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1922 (16 July 2019); K Parker, Member

SOCIAL SECURITY – disability support pension – back condition – post-traumatic stress disorder – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised and likely to persist for more than two years – impairments did not attract 20 points or more under the Impairment Tables – eligibility requirements not met - decision affirmed

[Evans and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1998 (18 July 2019); W Frost, Member

SOCIAL SECURITY – Disability Support Pension – medical condition – lower limb condition – greater trochanteric pain syndrome - upper limb condition - osteoarthritis – past shoulder fracture – cerebellar ataxia - whether the Applicant’s impairment can be assigned 20 points or more under the Impairment Tables – whether the Applicant’s condition is fully diagnosed, treated and stabilised – decision under review affirmed

[Irvine and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2001 (19 July 2019); Dr S Fenwick, Senior Member

SOCIAL SECURITY – application for disability support pension – whether applicant qualified pursuant to s 94 Social Security Act 1991 – multiple impairments – whether applicant’s impairments rated at 20 points or more under the Impairment Tables – intellectual function assessed using screening tool – decision under review affirmed

[Prsa and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1978 (18 July 2019); Dr I Alexander, Senior Member

SOCIAL SECURITY – Disability Support Pension – whether applicant qualified for DSP during claim period – whether condition fully diagnosed, treated, stabilised and likely to persist for more than two years – whether impairment attracts 20 points or more under the Impairment Tables – whether applicant has a continuing inability to work – whether applicant had a ‘severe’ impairment – decision affirmed

[Wignall and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 1979 (18 July 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

## **Taxation**

[Howard and Commissioner of Taxation](#) (Taxation) [2019] AATA 1910 (11 July 2019); Deputy President I Molloy

TAX – deemed dividend – whether dividend was a loan or income – whether the dividend applied to the 2009 or the 2010 income tax year – exercise of a discretion – reasonable grounds – whether penalty should be remitted in full or in part – whether shortfall interest charge should be remitted in full or in part – decision under review affirmed

[SDRQ and Commissioner of Taxation](#) (Taxation) [2019] AATA 2003 (19 July 2019); Deputy President I R Molloy

TAXATION – capital gains tax – disposal of shares in companies – whether a capital gains tax loss occurred – lack of contemporaneous evidence – carry forward capital gains loss – market value of the shares – meaning of ‘market value’ – transfer not at arm’s length – hypothetical purchaser – remission of penalty – recklessness – decision varied

# 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
<b>Alstom Transport Australia Pty Ltd and Comptroller-General of Customs</b>	<a href="#">[2019] AATA 1308</a>
<b>Clearihan and Repatriation Commission</b>	<a href="#">[2019] AATA 1339</a>
<b>MDXJ and Secretary, Department of Social Services</b>	<a href="#">[2019] AATA 177</a>
<b>PKBV and Minister for Home Affairs</b>	<a href="#">[2019] AATA 683</a>
<b>PSVN and Secretary, Department of Education and Training</b>	<a href="#">[2019] AATA 1912</a>
<b>Western Institute of Technology Pty Ltd and Australian Skills Quality Authority</b>	<a href="#">[2019] AATA 657</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>GPO18 v Minister for Home Affairs</b>	<a href="#">[2018] AATA 4353</a>	<a href="#">[2019] FCA 1067</a>
<b>Sadruga v Minister for Home Affairs</b>	<a href="#">[2019] AATA 119</a>	<a href="#">[2019] FCA 1078</a>
<b>ZGWQ v Minister for Home Affairs</b>	<a href="#">[2019] AATA 264</a>	<a href="#">[2019] FCA 1096</a>



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](mailto: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](#).