



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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# 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

[NLBD and Child Support Registrar](#) (Child support second review) [2020] AATA 35 (17 January 2020); Senior Member C Puplick AM

CHILD SUPPORT – percentage of care – no agreed pattern of care – actual care – delegated care – inconsistent evidence – care period – cost percentages – revocation of percentage of care determination – decision under review set aside and substituted

## Citizenship

[Crotty and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 39 (21 January 2020); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – application for Australian citizenship by descent brought by Applicant's mother – where Applicant was born outside of Australia – whether mother has been 'present in Australia' for a total period of at least two years in accordance with the Act – whether living overseas in Australian diplomatic missions can be considered as being 'present in Australia' – statutory interpretation – decision affirmed

## Compensation

[Faltusz and Telstra Corporation Ltd](#) (Compensation) [2019] AATA 5995 (12 December 2019); Deputy President A G Melick AO SC

WORKERS COMPENSATION – Safety, Rehabilitation and Compensation Act – ailment suffered by an employee – ailment occurring while on leave – whether ailment was heart attack or angina attack – whether applicant's employer significantly contributed to the applicant's ailment – decision under review affirmed

[Rope and Comcare](#) (Compensation) [2020] AATA 59 (22 January 2020); Deputy President G Humphries AO

COMPENSATION – somatic symptom disorder – two separate claims – whether the applicant is entitled to compensation for psychological medical treatment – reasonableness of psychological treatment considered – decision under review affirmed – whether the applicant is entitled to compensation for medical expenses for Deglycerinated Liquorice – decision under review set aside and substituted

## Education and Research

[Sapkota and Secretary, Department of Education](#) [2020] AATA 61 (17 January 2020); Dr N A Manetta, Senior Member

HIGHER EDUCATION – VET FEE-HELP Assistance Scheme – application for remission of VET FEE-HELP debt – special circumstances – whether circumstances made their full impact on the applicant until on or after the census date – where circumstances relied on by the applicant made their full impact on the applicant before the census date – decision under review affirmed

## Migration

[Can and Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs](#) (Migration) [2020] AATA 37 (20 January 2020); Dr S Fenwick, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Turkey – Class AH Subclass 101 (Child) visa – multiple convictions – intentionally cause serious injury – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[Lawler and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 62 (24 January 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class BF Transitional (Permanent) Visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review affirmed

[LDDW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 60 (23 January 2020); Senior Member D J Morris

MIGRATION – mandatory cancellation of Class BF Transitional (Permanent) visa – applicant is Salvadoran citizen – applicant fails character test by operation of law – sexually based offences involving a child – delegate decides not to revoke mandatory cancellation – consideration by the Tribunal under ministerial Direction No. 79 – primary considerations – protection of Australian community – best interests of minor children in Australia affected by decision – expectations of Australian community – other considerations – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – is there another reason to revoke mandatory cancellation of visa – decision under review affirmed

[MNL R and Minister for Home Affairs](#) (Migration) [2020] AATA 63 (6 January 2020); Deputy President P Britten-Jones

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – serious offending against women - whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – non-refoulement obligations – decision under review affirmed

### [WGKS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 38 (16 January 2020); Senior Member C J Furnell

MIGRATION – Applicant convicted by a final judgment of a particularly serious crime – whether Applicant a danger to the Australian community – nature and extent of risk posed – limited evidence of plans to address root causes of criminality – prospects of rehabilitation contingent on various factors – mitigating factors – Applicant suffers from mild intellectual disability – impact of homelessness and drug dependency – applicability of Direction 75 – decision under review affirmed

### [XRXL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2019] AATA 5984 (23 December 2019); Senior Member D O’Donovan

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – substantial criminal record under s 501(7) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – minor children – strength nature and duration of ties – impediments to applicant if removed – risk of re-prosecution on return to China – decision under review affirmed

## **Practice and Procedure**

### [Kukulovski and A Committee convened under section 40-45 of the Insolvency Practice Schedule \(Corporations\)](#) [2020] AATA 40 (6 January 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of decision to terminate registration as liquidator – whether stay necessary to preserve the efficacy of the review proceedings – reduced ability to earn income – ability to pay for legal representation – hardship already suffered from long investigation process – prospects of success – cancellation an excessive outcome – effect on interested persons – family obligations – difficulty finding other work – impact on relationship with national practice – junior partner able to take over supervisory work – professional development undertaken – public interest – operation of the regulatory system – no dishonesty or fraud – want of competence or diligence still significant in a regulated profession – stay refused

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of decision to publish reasons for decision – where reasons of the committee may include speculation – public interest not affected where the applicant is no longer able to practice as a registered liquidator – publicity from publication of report may be hard to undo if applicant successful on review – stay granted

PRACTICE AND PROCEDURE – CONFIDENTIALITY APPLICATION – public interest –

parties to be able to explain why applicant is unable to practice as a registered liquidator – Tribunal proceedings to take place in public – where public may be deprived of knowledge expected to be published in a regulated profession – confidentiality orders refused

## Taxation

[ACN 154 520 199 Pty Ltd \(In Liq\) and Commissioner of Taxation](#) (Taxation) [2019] AATA 5981 (20 December 2019); Deputy President B J McCabe and Senior Member G Lazanas

TAXATION – GST – input tax credits – gold industry – creditable acquisition – whether applicant made first supply of that precious metal after its refining – meaning of precious metal – meaning of refining – whether ordinary or trade meaning – interpretation of word in statutory context – general anti-avoidance provisions – whether taxpayer engaged in scheme – whether taxpayer obtained a GST benefit – whether an entity that entered into or carried out the scheme or part of the scheme did so with the sole or dominant purpose of the taxpayer getting a GST benefit from the scheme – whether the principal effect of the scheme or of part of the scheme is that the taxpayer gets the GST benefit from the scheme – round robin arrangement – objection decision regarding assessments of net amount of GST affirmed

TAXATION – ADMINISTRATION – administrative penalty – recklessness – failure to take reasonable care – objection decision regarding rates of penalty and decision not to remit penalty 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
<b>ACN 154 520 199 Pty Ltd (In Liq) and Commissioner of Taxation</b>	<a href="#">[2019] AATA 5981</a>
<b>BKSF and Comcare</b>	<a href="#">[2019] AATA 4893</a>
<b>Koka and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 5289</a>
<b>KYMM and Minister for Home Affairs</b>	<a href="#">[2019] AATA 5174</a>
<b>MKBL and Minister for Home Affairs</b>	<a href="#">[2019] AATA 5292</a>
<b>Rehman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4424</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>ZYZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2018] AATA 3967</a>	<a href="#">[2020] FCA 28</a>



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