



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

[Stenberg and Child Support Registrar](#) (Child support) [2019] AATA 1759 (7 May 2019); R Ellis, Member

CHILD SUPPORT – application for extension of time – satisfactory explanation for the short delay – no merit – extension of time refused

[Rennell and Kidd](#) (Child support) [2019] AATA 1739 (9 May 2019); F Hewson, Member

CHILD SUPPORT – non-agency payments – no mutual intention payments were in lieu of child support – prescribed payment for school books and uniforms – payment to be credited – decision under review set aside and substituted

[Werden and Jerome](#) (Child support) [2019] AATA 1747 (14 May 2019); W Kennedy, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – income from family trust – special needs of the child by way of orthodontic treatment – decision under review set aside and substituted

[Mourtada and Child Support Registrar](#) (Child support) [2019] AATA 1737 (15 May 2019); K Buxton, Member

CHILD SUPPORT – percentage of care – court orders not complied with for a short period – whether care determinations should have been revoked and new determinations made – decision under review set aside and substituted

[Adams and Macangus](#) (Child support) [2019] AATA 2187 (21 May 2019); F Hewson (Presiding), Member and P Noonan, Member

CHILD SUPPORT – opt-in arrears – whether there were unpaid amounts – application for collection of unpaid amounts should be accepted – decision under review affirmed

## Citizenship

[Giuricich and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2039 (22 July 2019); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – general residence requirement – where applicant spouse of Australian citizen – where applicant has Australian citizen children – where applicant had extended periods of absence from Australia in four years immediately before the citizenship application – ministerial discretion to treat periods overseas as a period in which the applicant was present in Australia as a permanent resident – whether close and continuing association with Australia during period of absence – where no intention to reside in Australia – decision affirmed

## Compensation

[Dirou and Comcare](#) (Compensation) [2019] AATA 2118 (19 July 2019); Senior Member T Tavoularis

COMPENSATION – claim for injury arising out of Applicant’s employment – where liability for compensable injury accepted by Respondent – whether the Applicant continues to suffer from conditions arising out of her compensable injury – whether Applicant entitled to compensation for reasonable medical treatment, incapacity to work, and household assistance as a result of her compensable injury – Applicant does not suffer from conditions arising out of her compensable injury – Decision under review affirmed

[Knox and Comcare](#) (Compensation) [2019] AATA 2196 (24 July 2019); Deputy President Boyle

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether the Applicant suffered an injury under s 5A – whether the Applicant suffered from a disease for the purposes of s 5A(1)(a) – whether the Applicant suffers from an ailment or an aggravation of an ailment that was contributed to, to a significant degree, by the Applicant’s employment – whether suffering pain is, in itself or in conjunction with an underlying pathological condition suffered by the Applicant, an ailment or an aggravation of an ailment – Applicant’s pain as an aggravation of an ailment – decision under review is set aside and substituted

## Migration

[1801858](#) (Migration) [2019] AATA 1702 (23 May 2019); L Holub, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine intention to stay temporarily – medically unfit to depart Australia – credibility issues – use of visa to maintain ongoing residence – multiple visa applications – history of non-compliance – unlawful status – can access services in Lebanon for mental health – decision under review affirmed

[Kuppusamy](#) (Migration) [2019] AATA 1803 (23 May 2019); K Raif, Senior Member

MIGRATION – cancellation – Skilled (Provisional) (Class VF) visa – Subclass 476 (Skilled – Recognised Graduate) – ground for cancellation – incorrect information in visa application – bogus documents – academic qualifications – consideration of discretion – role of migration agent – responsibility of visa holder to ensure accuracy of application – grant of visa based on incorrect information – decision under review affirmed

[Lin](#) (Migration) [2019] AATA 1974 (24 May 2019); J Owen, Senior Member

MIGRATION – Other Family (Migrant) (Class BO) visa – Subclass 116 (Carer) – capacity to participate in hearing – dementia – support from daughter increasingly unsustainable – assistance reasonably obtained from welfare, nursing or community services – language barriers – TeoChow dialect – cultural needs – personal preferences – fear of ‘strangers’ in the home – comprehensive ACAT assessment not undertaken – 24-hour care – Home Care package – unique or exceptional circumstances – Ministerial Intervention requested – decision under review affirmed

[MMKD and Minister for Home Affairs](#) (Migration) [2019] AATA 2197 (24 July 2019); Mr T Eteuati, Member

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – Applicant failed to pass the character test – whether there is another reason to revoke the mandatory cancellation of the Applicant’s visa – considerations in Direction 79 – decision under review affirmed

[NWLH and Minister for Home Affairs](#) (Migration) [2019] AATA 2198 (23 July 2019); Deputy President JW Constance

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – Direction No. 79 – primary considerations – protection of Australian community from criminal or other serious conduct – nature and seriousness of conduct – risk to Australian community – best interests of minor children – expectations of Australian community – other considerations – strength, nature and duration of ties to Australia – impediments if removed from Australia – risk to Australian community unacceptable – decision under review affirmed

[Sharma](#) (Migration) [2019] AATA 1716 (23 May 2019); S Witts, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – Federal Circuit Court remittal – ground for cancellation – enrolment – not enrolled in a registered course – consideration of discretion – mental health issues – responsibility of visa holder – significant breach – decision under review affirmed

[Xiao](#) (Migration) [2019] AATA 1640 (24 May 2019); M Ison, Senior Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – genuine position – Customer Service Manager – genuine business – sponsor’s business has no physical office space – not entitled to appear before the Tribunal – consideration of discretion – purpose of visa grant – decision under review affirmed

[Zhou](#) (Migration) [2019] AATA 1971 (24 May 2019); R Gagliardi, Member

MIGRATION – Contributory Parent (Migrant) (Class CA) visa – Subclass 143 (Contributory Parent) – health requirement – free from certain disease or condition – member of family unit – “one fails, all fail” – timing of divorce – reasons for marriage breakdown not convincing – contrived to circumvent health requirement – decision under review affirmed

## **National Disability Insurance Scheme**

[Ditchfield and National Disability Insurance Agency](#) [2019] AATA 2121 (23 July 2019); Ms K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – leg length discrepancy – whether substantially reduced functional capacity – mobility – “commonly used items” – decision to set aside

[Pearson and National Disability Insurance Agency](#) [2019] AATA 2120 (19 July 2019); Mrs JC Kelly, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – whether the correct or preferable decision is to revoke the Applicant’s access to the National Disability Insurance Scheme – whether Applicant meets requirements under s 24 or s 25 of the National Disability Insurance Scheme Act 2013 (Cth) – whether Applicant’s conditions are impairments – whether impairments are permanent or likely to be permanent – whether impairment(s) result in substantially reduced functioning as set out in s 24(1)(c) of the Act – Applicant’s permanent impairment does not result in reduced functioning – s 24 requirements not met – whether Applicant meets early intervention requirements under s 25 of the Act – long standing conditions – interventions sought unlikely to benefit Applicant – s 25 requirements not met – reviewable decision affirmed

## **Refugee**

[1607505](#) (Refugee) [2019] AATA 1446 (11 June 2019); T Flood, Member

REFUGEE – protection visa – Pakistan – political opinion – Muttahida Qaumi Movement (MQM) – affiliation to MQM London – particular social group – single women – family’s links to the Altaf group – applicants’ level of involvement in MQM activities – claimed past harm by military and para-military groups – extortion attempts on business – no real chance of serious harm – means to subsist – decision under review affirmed

[1610842](#) (Refugee) [2019] AATA 1418 (12 June 2019); P Hunter, Member

REFUGEE – protection visa – Mauritius – particular social group – mentally ill people in Mauritius – availability of mental health facilities – free access – does not amount to systematic and discriminatory conduct – standard of mental health services – Brown-Sequard Hospital – previous experience – subjective fear of re-admission – does not constitute serious harm – concerted effort to seek treatment – family support – employment prospects in Mauritius – economic prosperity – decision under review affirmed

[1906210](#) (Refugee) [2019] AATA 2123 (3 June 2019); M Hawkins, Member

REFUGEE – protection visa – Congo – application for visa invalid – no decision on merits of visa – not a reviewable decision – not a valid application – no jurisdiction to recommend ministerial intervention – decision under review set aside – decision under review substituted

[1907863](#) (Refugee) [2019] AATA 1407 (13 June 2019); C Smolicz, Member

REFUGEE – protection visa – Bulgaria – applicant claim for compelling and compassionate circumstances – discrimination – widow and unaccompanied female – applied for protection for ministerial intervention – decision under review affirmed

## Passports

[Thompson and Minister for Foreign Affairs](#) [2019] AATA 2172 (24 July 2019); Dr P McDermott RFD, Deputy President

PASSPORT – review of the Minister’s decision to refuse to issue the applicant with a passport pursuant to s 14 of the Australian Passports Act 2005 – where there is evidence the applicant committed child sex offences and was in the possession of child pornography – where the applicant denies committing child sex offences – consideration of the applicant’s risk of re-offending, remorse, rehabilitation and recidivism – decision under review affirmed

## Practice and Procedure

[Podger and Migration Agents Registration Authority](#) [2019] AATA 2119 (5 July 2019); Senior Member CJ Furnell

PRACTICE AND PROCEDURE – whether the Tribunal has jurisdiction – whether there is a decision – meaning of decision under s 3(3) of the Administrative Appeals Tribunal Act 1975 – application of deeming provisions – the Tribunal does not have jurisdiction in respect of the application for review

## Professions and Trades

[Australian Appaloosa Association Ltd and Australian Securities & Investments Commission](#) [2019] AATA 2195 (25 July 2019); Mr W Frost, Member

BUSINESS NAMES REGISTRATION – Business Names Registration Act 2011 (Cth) – objection to registration of business name – whether business name is available for registration – whether business names are ‘identical or nearly identical’ – decision under review affirmed

[Shmuel and Tax Practitioners Board](#) [2019] AATA 2168 (23 July 2019); Senior Member The Hon. M Groom

Applicant’s registration as tax agent cancelled – failure to comply with personal tax obligations – failure to disclose bankruptcy – failure to respond to Tax Practitioner Board enquiries – fit and proper person – professional code of conduct – consideration of personal circumstances – decision affirmed

## Social Services

[Hall and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2037 (22 July 2019); The Hon. R Baldwin, Member

SOCIAL SECURITY – rent assistance – where rent assistance cancelled – payment in arrears – whether applicant sought review of the decision within 13 weeks of being notified of the decision – where applicant sought review of decision not to pay rent assistance outside the 13 week period – decision affirmed

[Harland and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2117 (17 July 2019); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – whether applicant qualifies for disability support pension pursuant to section 94 of the Social Security Act 1991 – permanent medical conditions – applicant's impairments total twenty points under the Impairment Tables – whether applicant participated in a program of support in the three years prior to lodging his claim for DSP – whether applicant has a continuing inability to work – decision under review affirmed

[Hejazi and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2116 (23 July 2019); Ms K Parker, Member

SOCIAL SECURITY – disability support pension – neck, left arm, right ankle and back conditions – whether conditions were permanent – whether conditions were fully diagnosed, treated and stabilised and likely to persist for more than two years – whether impairments arising from permanent conditions attracted 20 points or more under the Impairment Tables – eligibility requirements not met – decision affirmed

[Kochergen and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2213 (25 July 2019); Mr IF Thompson, Member and Mr G Hallwood, Member

SOCIAL SECURITY – disability support pension – whether respondent's medical conditions were fully diagnosed, fully treated and fully stabilised during the assessment period – whether the respondent has a severe impairment – decision under review set aside and substituted that respondent is not qualified for disability support pension

[Secker and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2115 (21 June 2019); Senior Member NA Manetta

SOCIAL SECURITY – pensions benefits and allowances – Disability Support Pension – whether conditions are fully diagnosed, treated and stabilised – whether 20 points from conditions – decision under review affirmed



## Taxation

[Byron Pty Ltd and Commissioner of Taxation](#) (Taxation) [2019] AATA 2042 (17 July 2019); Ms G Lazanas, Senior Member

TAXATION AND REVENUE – goods and services tax – entitlement to claim input tax credits – whether creditable acquisitions made – meaning of supply – meaning of acquisition – whether applicant liable to provide consideration lack of evidentiary base – administrative penalty – whether conduct involved recklessness – whether applicant is entitled to remission of penalty – objection decision affirmed

PRACTICE AND PROCEDURE – application for revocation of confidentiality order made following hearing of Part IVC review application – request for private hearing under s 14ZZE – confidentiality order restricting any information tending to reveal the identity of the witness – interests of witness – evidence given by witness voluntarily – witness without legal representation – witness informed of privilege against self-incrimination during adjournment and subsequently asserts privilege against self-incrimination – application granted

[Campbell and Commissioner of Taxation](#) (Taxation) [2019] AATA 2043 (22 July 2019); Ms DK Grigg, Member

TAX – whether trust money distributed to a beneficiary properly characterised as assessable income – whether default income tax assessments issued by the ATO excessive – taxpayer's burden to prove default assessments excessive – whether ATO had obligation to ensure default assessments correctly made – whether administrative penalty correctly imposed under section 284-75(3) of Schedule 1 of the Taxation Administration Act 1953 – whether discretion should be exercised to remit the penalty – 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
<b>GCRM and Minister for Home Affairs</b>	<a href="#">[2019] AATA 1394</a>
<b>Girardi and Comcare</b>	<a href="#">[2019] AATA 502</a>
<b>Mununggurr and Comcare</b>	<a href="#">[2019] AATA 1564</a>
<b>YVTG and Minister for Home Affairs</b>	<a href="#">[2019] AATA 934</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>None lodged</b>		



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