



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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto: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.

## Citizenship

[Dau and Minister for Home Affairs \(Citizenship\) \[2019\] AATA 2313 \(30 July 2019\)](#), Senior Member A Poljak

CITIZENSHIP – Citizenship by conferral – residence requirements – whether the applicant had a close and continuing relationship with Australia – de facto partner of an Australian citizen – where applicant not overseas with Australia citizen de facto partner – where reasons why applicant outside Australian for a lengthy period of time not related to de facto relationship – decision affirmed

[Ur Rehman and Minister for Home Affairs \(Citizenship\) \[2019\] AATA 2344 \(1 August 2019\)](#), Senior Member C Puplick AM

CITIZENSHIP – application for citizenship by conferral – refusal – good character requirement – failure to disclose alleged wife and son in citizenship application – whether Applicant was obliged to disclose – decision set aside and remitted

## Compensation

[Brideson by guardian Lynette Brideson and Australian Capital Territory \(Compensation\) \[2019\] AATA 2314 \(31 July 2019\)](#), Deputy President G Humphries AO

WORKER'S COMPENSATION – accepted condition of post-traumatic stress disorder – whether a psychiatric assistance dog is a form of medical treatment or an aid for the purposes of the Act – whether the psychiatric assistance dog obtained at the direction of a legally qualified medical practitioner – whether the psychiatric assistance dog is reasonable to obtain – where Tribunal faced with uncertain and vague evidence as to the

medical effects of the psychiatric assistance dog – psychiatric assistance dog is not medical treatment for purposes of the Act – whether psychiatric assistance dog is an aid under the Act – statutory construction – decision under review affirmed

[Cartajena and Comcare \(Compensation\) \[2019\] AATA 2345 \(25 July 2019\)](#), Mr A. Maryniak QC, Member

COMPENSATION - costs – multiple applications heard together – mixed results for Applicant – two decisions set aside – partial costs ordered in favour of the Applicant pursuant to section 67 of the Safety, Rehabilitation and Compensation Act 1988

**[Evans and Military Rehabilitation and Compensation Commission \(Veterans' entitlements\) \[2019\] AATA 2215 \(10 July 2019\)](#)**, Mr W Frost, Member

PRACTICE AND PROCEDURE – compensation - application to dismiss on basis of no reasonable prospect of success – past award of common law damages - whether s 48(4) of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 precluded claim for compensation – tribunal satisfied that there is no reasonable prospect of success – application for review dismissed

**[Naylor and Comcare \(Compensation\) \[2019\] AATA 2339 \(1 August 2019\)](#)**, Dr P McDermott RFD, Deputy President

JURISDICTION - Section 57 Notice under the Safety Rehabilitation and Compensation Act 1988 (Cth) – Independent Medical Examination - Objection to Notice - Reasonable excuse – Suspension – Administrative Appeals Tribunal has no jurisdiction

## **Corporations**

**[Ellis and Australian Securities & Investment Commission \[2019\] AATA 2346 \(2 August 2019\)](#)**, Ms D K Grigg, Member

COMPANY NAMES – whether Ministerial consent should be given to use the word “trustee” in a company name – application of the Guidelines for Ministerial Consent to Body Corporate Names under the Corporations Act 2001 – whether the “applicant” under the Guidelines for Ministerial consent is the yet to be incorporated company or the proposed director – decision under review affirmed.

## **Migration**

**[Boyce and Minister for Home Affairs \(Migration\) \[2019\] AATA 2218.\(25 July 2019\)](#)**, Mr Theodore Tavoularis, Senior Member

MIGRATION – non revocation of mandatory cancellation of Class TY, Subclass 444 Special Category (Temporary) visa – where Applicant failed to pass the character test – sentenced to 12 months' imprisonment or more – whether there is another reason to revoke the mandatory cancellation of the subject visa – application of Ministerial Direction No 79 – application of the Primary and Other Considerations in Part C of Ministerial Direction No 79 – not another reason to revoke the mandatory cancellation of the subject visa – Decision under review affirmed

[HGBY and Minister for Immigration and Border Protection \(Migration\) \[2019\] AATA 2352 \(2 August 2019\)](#), Deputy President P Britten-Jones

MIGRATION — Mandatory visa cancellation — Request for revocation — Failure to pass the character test — Substantial criminal record — Request for revocation refused — Appeal to Administrative Appeals Tribunal — Whether there are other reasons to revoke the visa cancellation — Protection of the Australian community — Dishonesty offences — Breaches of bail, intervention order and good behaviour bond — Driving offences — Domestic violence — Best interests of the children — Expectations of the Australian community — International non-refoulement obligations — Fears of harm — Strength, nature and duration of ties — Impact of non-revocation on family members who are Australian citizens — Extent of impediments if removed — Migration Act 1958 (Cth), ss 501, 501CA — Revocation of mandatory visa cancellation

[TRAN and Minister for Immigration and Border Protection \(Migration\) \[2019\] AATA 2338 \(29 July 2019\)](#), Senior Member K Raif

MIGRATION – Class BC Subclass 100 Partner (Migrant) visa – mandatory cancellation – failure to pass the character test – criminal convictions – whether there is another reason why the original cancellation decision should be revoked pursuant to section 501CA(4)(b)(ii) of the Migration Act 1958 – Ministerial Direction No. 79 – primary considerations – protection of the Australian community – the best interests of minor children in Australia affected by the decision – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review set aside and substituted

[Umi and Minister for Home Affairs \(Migration\) \[2019\] AATA 2316 \(31 July 2019\)](#), Senior Member A. Nikolic AM CSC

MIGRATION – visa cancellation – citizen of Samoa - failure to pass the character test – criminal history between 1999 and 2013 – convictions for multiple violent offences – considerations at Part C of the Ministerial Direction No. 79 applied – decision affirmed

## **Practice and Procedure**

[Australian National College Pty Ltd and Australian Skills Quality Authority \[2019\] AATA 2221 \(3 July 2019\)](#), Ms Anna Burke AO, Member

PRACTICE AND PROCEDURE – application to Stay decision of Australian Skills Quality Authority – decision to reject renewal application as a registered training provider – decision to reject renewal application of CRICOS – whether prospects of success – consequences for Applicant – public interest – whether review would be rendered nugatory — Stay application granted with conditions

[Construction Industry Training Australia Pty Ltd and Australian Skills Quality Authority \[2019\] AATA 2219 \(29 July 2019\)](#), Deputy President Boyle

PRACTICE AND PROCEDURE – application for stay of decision under s 41(2) of the Administrative Appeals Tribunal Act 1975 – relevant considerations – is prospects of success a relevant consideration? – consequences of not granting a stay – parties affected – is hearing rendered nugatory? – public interest – conditions attaching to stay – stay order to remain in place

## Social Services

[Abdulhussein and Secretary, Department of Social Services \(Social services second review\) \[2019\] AATA 2214 \(29 July 2019\)](#), Deputy President The Hon. John Pascoe AC CVO

SOCIAL SECURITY – Newstart Allowance – Carer Payment – undeclared income – unexplained cash deposits - where applicant had not declared ownership of an investment property – whether property needed to be disclosed – whether constructive trust existed – decision set aside and remitted – decision affirmed

[Chevell and Secretary, Department of Social Services \(Social services second review\) \[2019\] AATA 2342 \(2 August 2019\)](#), Mrs J C Kelly, Senior Member

SOCIAL SECURITY – whether Applicant was overpaid social security payment – whether amount of debt overpaid is due to the Commonwealth – whether all or part of each or any of the debts can be waived or written off - Applicant was overpaid debt - overpayment not due solely to administrative error by the Commonwealth - debt recoverable at law – not satisfied that Applicant has no capacity to pay - Applicant's whereabouts are not unknown - not satisfied that it is not cost effective for the Commonwealth to take action to recover the debt - Applicant knowingly failed to comply with obligation to notify income - discrepancy in total of debts assessed post hearing - reviewable decision set aside and matter remitted for recalculation of debts

[Dennis and Secretary, Department of Social Services \(Social services second review\) \[2019\] AATA 2347 \(18 June 2019\)](#), Mr C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – alcohol dependency – mental health – qualification period – Impairment Tables – not fully diagnosed, treated and stabilised – program of support – decision affirmed

[Jones and Secretary, Department of Social Services \(Social services second review\) \[2019\] AATA 2343 \(2 August 2019\)](#), Mrs J C Kelly, Senior Member

SOCIAL SECURITY – whether Applicant was overpaid a debt – whether amount of debt overpaid is due to the Commonwealth – whether all or part of each or any of the debts can be waived or written off - Applicant was overpaid debt - overpayment not due to Commonwealth administrative error - debt recoverable at law - not found that Applicant has no capacity to pay - Applicant's whereabouts are not unknown - not found that it is not cost effective for the Commonwealth to take action to recover the debt - Applicant knowingly failed to comply with obligation to notify income - discrepancy in debt assessed post hearing - reviewable decision set aside in part and remitted for recalculation

[Miller; Secretary, Department of Social Services and \(Social services second review\) \[2019\] AATA 2315 \(31 July 2019\)](#); Mr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension – mental health conditions – whether fully diagnosed, treated and stabilised – whether impairment attracts rating of 20 points or more under the Impairment Tables – whether Respondent has a continuing inability to work – decision affirmed

[Parley and Secretary, Department of Social Services \(Social services second review\) \[2019\] AATA 2216 \(26 July 2019\)](#), Mr S Evans, Member

SOCIAL SECURITY – eligibility for disability support pension – lower back damage and sciatica nerve damage – whether applicant’s impairments are rated 20 points or more under the Impairment Tables – applicant unable to satisfy the qualification criteria under s 94 of Social Security Act 1991 – decision under review affirmed

[Vo and Secretary, Department of Social Services \(Social services second review\) \[2019\] AATA 2341 \(2 August 2019\)](#), The Hon. R Baldwin, Member

SOCIAL SECURITY – whether applicant was a member of a couple at the relevant date – whether applicant is separated under one roof with former partner – whether there is a special reason why the applicant should not be treated as a member of a couple – decision affirmed

## **Taxation**

[Fitzmaurice and Commissioner of Taxation \(Taxation\) \[2019\] AATA 2217 \(26 July 2019\)](#), Deputy President Mr P Britten-Jones

TAXATION — Superannuation — Self-managed Super Fund — Contravention of statutory imposed obligations by the responsible officer of the body corporate — Lending money to members — Breach of “sole purpose” test — Early release of benefits — Financial hardship — Late lodgement and failure to lodge annual returns — failure to maintain investments at “arm’s length” — Failing to keep up-to-date market valuation of the major asset of the fund — Failure to keep records — Superannuation Industry (Supervision) Act 1993 (Cth), ss 31, 35AE, 35B, 35C, 35D, 62, 65, 103, 104, 105, 109, and 126A — Decision affirmed.

## **Trade and Commerce**

[Good Earth Oils Pty Ltd and Australian Trade and Investment Commission \[2019\] AATA 2353 \(2 August 2019\)](#), Deputy President J Sosso

TRADE AND COMMERCE – EXPORT MARKET GRANTS – whether the Applicant satisfies the prescribed eligibility criteria for a grant under the Export Market Development Grants Act 1997 – whether the Applicant’s business or a part of its business is similar to Energreen Nutrition Australia Pty Ltd, to such an extent that the Applicant’s business should be treated as a continuation of Energreen Nutrition Australia Pty Ltd – decision under review affirmed.

## Veterans' Affairs

### [Cox and Repatriation Commission \(Veterans' entitlements\) \[2019\] AATA 2340 \(1 August 2019\)](#),

Dr M Evans, Senior Member

VETERANS' ENTITLEMENTS – whether Applicant's cryptococcal meningitis resulting in blindness is defence caused – whether depressive disorder is defence caused – no applicable Statement of Principles for cryptococcal meningitis – standard of proof – meaning of reasonable satisfaction – whether material before the Tribunal raises a connection on the balance of probabilities between the Applicant's cryptococcal meningitis resulting in blindness and the Applicant's defence service – whether a defence caused injury or disease pursuant to s 70(5)(d) of the Veterans' Entitlements Act 1986 (Cth) – contributed to in a material degree - reasonable satisfaction standard - conflicting expert evidence – whether medical evidence affected by hindsight bias – procedural fairness issues arising from the timing of witnesses – 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

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CASE NAME	AAT REFERENCE
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**None lodged**

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
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**Child Support Registrar v MQMV**

[\[2018\] AATA 2924](#)

[\[2019\] FCA 1171](#)

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**Doan v Minister for Home Affairs**

[\[2019\] AATA 169](#)

[\[2019\] FCA 1172](#)

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**Minister for Home Affairs v YZXB**

[\[2019\] AATA 69](#)

[\[2019\] FCA 1134](#)

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**Wang v Australian Securities and Investments Commission**

[\[2018\] AATA 1405](#)

[\[2019\] FCA 1178](#)

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