



# AAT Bulletin

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The *AAT Bulletin* is a fortnightly 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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# Recent news

***Correction – Please note the last edition’s ‘End of year arrangements’ contained incorrect information in relation to offices opening in some states and territories. The information is now updated below for your convenience.***

## End of year arrangements

The AAT will be closed on the following days:

- Friday 25 December 2020
- Monday 28 December 2020
- Friday 1 January 2021

Our offices, except for Canberra and Hobart, will be open from Tuesday 29 December to Thursday 31 December 2020.

If the AAT or the agency that made the original decision have provided a date by which an application or documents must be submitted, you should consider using our [online lodgement facilities](#) so that you don’t miss your deadline.

If you intend to send documents by post, please be aware there may be delays in postal delivery during this time.

Contact the AAT on 1800 228 333 or visit [www.aat.gov.au](http://www.aat.gov.au) for more information.

## Last edition for 2020 and first edition for 2021

This edition of the Bulletin is the last edition for 2020.

The first edition of the Bulletin for 2021 will be on **11 January 2021**.

We wish you all a safe and happy Christmas season.

# 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

[BPLB and Child Support Registrar](#) (Child support second review) [2020] AATA 5103 (9 December 2020); Mr S Evans, Member

CARE PERCENTAGE – where applicant disputes his care percentage of 38% – where parties agree that care takes place as per Federal Court Orders – where parties interpret the Court orders differently – five nights per fortnight – half of school holidays – 20 school term fortnights – 6 school holiday fortnights – where Tribunal finds applicant has 142 nights of care – decision under review affirmed

## Citizenship

[Li and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 5071 (16 December 2020); Mr S Evans, Member

CITIZENSHIP – Australian citizenship by conferral – refusal – whether Applicant was likely to reside in or continue to reside in Australia or maintain a close and continuing relationship with Australia – Tribunal must not approve – decision affirmed

## Compensation

[Bone and Australian Postal Corporation](#) (Compensation) [2020] AATA 5104 (17 December 2020); Deputy President AG Melick AO SC

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 - whether the Applicant suffered an injury defined by the Act – was the injury a disease as defined by the Act – was the disease significantly contributed to by employment – result of reasonable administrative action – was the action undertaken in a reasonable manner – decision affirmed

## Education and Research

[King Educational Service Pty Ltd trading as Kinggdom Institute of Management and Australian Skills Quality Authority](#) [2020] AATA 5105 (10 December 2020); Deputy President SA Forgie

VOCATIONAL EDUCATION AND TRAINING – registration refused on basis of lack of compliance with legislative requirements – time at which to consider legislative requirements – Tribunal’s power to impose conditions – decision set aside and decision substituted.

VOCATIONAL EDUCATION AND TRAINING – registration refused on basis of lack of compliance with legislative requirements – time at which to consider legislative requirements – consideration of a risk management approach when relevant – decision affirmed.

## Migration

[Grima and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 5074 (16 December 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Malta – Class BB Subclass 155 Five Year Resident Return visa – failure to pass good character test – extensive criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[Kekulandala and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 5075 (2 November 2020); Deputy President G Humphries AO

MIGRATION – decision of the delegate to refuse to grant the applicant a visa pursuant to subsection 501(1) of the Migration Act 1958 – whether the applicant passes the character test – where there is a risk that the applicant will engage in criminal conduct in Australia pursuant to subsection 501(6)(d)(i) of the Migration Act 1958 – applicant does pass the character test – in the alternative, whether the discretion to refuse to grant the visa should be exercised – application of Direction 79 – protection of the Australian community – expectations of the Australian community – international non-refoulment obligations – impact on family members – impact on victims – extent of impediments if removed – strength, nature and duration of ties – discretion should be exercised – decision under review remitted with directions

[TGWR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 5076 (16 December 2020); Mr R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category 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

## National Disability Insurance Scheme

[Farrall and National Disability Insurance Agency](#) [2020] AATA 5077 (14 December 2020); Deputy President SA Forgie

NATIONAL DISABILITY INSURANCE SCHEME – identification of decision under review – may be more than one request for review of a reviewable decision – jurisdiction to review decision to approve statement of participant supports

[VGCP and National Disability Insurance Agency](#) [2020] AATA 5107 (11 December 2020); Deputy President SA Forgie

NATIONAL DISABILITY INSURANCE SCHEME – objection to questions asked of Allied Health Professionals – relevance to assessment of reasonable and necessary supports – what are reasonable and necessary supports determined by reference to a participant’s impairments that meet the disability requirements under s 24 or the early intervention requirements under s 25

## Practice and Procedure

[Christensen and Australian Capital Territory](#) (Compensation) [2020] AATA 5059 (15 December 2020); Senior Member D O’Donovan

PRACTICE AND PROCEDURE – extension of time – decision to cease payment of compensation under the Safety Rehabilitation and Compensation Act – attended solicitor after period for applying for review had expired – solicitor misunderstood nature of claim and failed to apply to Tribunal for review – error only picked up when counsel became involved – further delay in making application – no resting on rights – no actual prejudice – whether there is unfairness or unsettling of compliant applicants if extension granted – whether case weak or hopeless – application granted

[Kuchlmayr and Australian Capital Territory](#) (Compensation) [2020] AATA 5072 (24 November 2020); Deputy President G Humphries AO

PRACTICE AND PROCEDURE – dismissal pursuant to subsection 42A(4) of the Administrative Appeals Tribunal Act 1975 – whether the Tribunal has jurisdiction to review a decision made pursuant to section 42C of the Administrative Appeals Tribunal Act 1975 – Tribunal does not have jurisdiction to review decision – application for review dismissed

[Paunovic and Australian Capital Territory](#) (Compensation) [2020] AATA 5070 (16 December 2020); Mr W Frost, Member

Interlocutory decision - dismissal under s 42B(1)(a) AAT Act – dismissal after a reconsideration of own motion decision is made – when an application becomes vexatious – workers compensation – liability under SRC Act – written reasons after oral decision

## **Professions and Trades**

[Sabbagh and Tax Practitioners Board](#) [2020] AATA 5106 (17 December 2020); Senior Member RL Hamilton SC

TAX AGENT – prohibition on applying for registration as a tax agent – prohibition of five years – breach of Code of Professional Conduct – failure to honestly disclose convictions – fit and proper person requirements – failure to disclose tax obligations – TASA – prohibition period reduced – decision under review varied

## **Social Services**

[Stegemann and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 5061 (14 December 2020); Mr G Hallwood, Member

SOCIAL SECURITY – Disability Support Pension – DSP – Whether medical conditions fully diagnosed, fully treated and fully stabilised – Whether conditions awarded 20 points under the Impairment Tables in the qualification period – Whether severe impairment – Whether continuing inability to work – Decision under review is set aside

## **Veterans' Affairs**

[Canuto and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 5073 (16 December 2020); Deputy President IR Molloy

VETERANS' ENTITLEMENTS – application for special rate of pension – whether capable of undertaking remunerative employment exceeding an aggregate 8 hours per week – whether last remunerative work ceased due to war-caused injury or war-caused disease alone – whether loss of income or wages as a result of war-caused injury or war-caused disease alone – consideration of termination from previous employment – eligibility for special rate pension not met – decision 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 [AustLI](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

## Appeals lodged

CASE NAME	AAT REFERENCE
<b>Crick and Comcare</b>	<a href="#">[2020] AATA 4483</a>
<b>He and Secretary, Department of Social Services</b>	<a href="#">[2020] AATA 1491</a>
<b>He and Secretary, Department of Social Services</b>	<a href="#">[2020] AATA 1848</a>
<b>Holloway and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 4558</a>
<b>MDXJ and Secretary, Department of Social Services</b>	<a href="#">[2020] AATA 2520</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Dzik v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 3498</a>	<a href="#">[2020] FCA 1794</a>
<b>Mundele v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4968</a>	<a href="#">[2020] FCAFC 221</a> <a href="#">[2020] FCA 526</a>
<b>Mununggurr v Comcare</b>	<a href="#">[2019] AATA 1564</a>	<a href="#">[2020] FCA 1786</a>
<b>Repatriation Commission v Fill</b>	<a href="#">[2020] AATA 1913</a>	<a href="#">[2020] FCA 1812</a>
<b>Sesalim v Secretary, Department of Social Services</b>	<a href="#">[2020] AATA 11</a>	<a href="#">[2020] FCA 1815</a>



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