



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 32/2019**

**12 August 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.

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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.

## Aviation

[Vranic and Civil Aviation Safety Authority](#) [2019] AATA 2367 (2 August 2019); Senior Member R Cameron and Dr S Lewinsky, Member

CIVIL AVIATION – Medical standards 1 and 2 – Refusal to issue the Applicant with a Class 1 and Class 2 Medical Certificate – Applicant refuses to obtain psychiatric report – Reviewable decision affirmed

## Child Support

[KFSV and Child Support Registrar](#) (Child support second review) [2019] AATA 2427 (6 August 2019); Senior Member C Puplick AM

CHILD SUPPORT – percentage of care – Federal Circuit Court consent orders – parenting agreement – child care arrangements – meaning of "actual care" – decision under review set aside

[WQSX and Child Support Registrar](#) (Child support second review) [2019] AATA 2373 (2 August 2019); The Hon. John Pascoe AC CVO, Deputy President

CHILD SUPPORT – review of decision of Social Services and Child Support Division – percentage of care – where father claimed the child lived entirely with him for the relevant period – contradictory documentary evidence – where mother had made a later notification of a change of care with Child Support Registrar – decision affirmed

[Kenyon and Kenyon](#) (Child support) [2019] AATA 1730 (1 May 2019); M Martellotta, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – court orders not complied with – interim period initially applied – decision under review affirmed

[Vartanian and Solvej](#) (Child support) [2019] AATA 1695 (8 May 2019); A Schiwy, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – real estate properties owned by family trust – decision under review set aside and substituted

[Gomer and Farran](#) (Child support) [2019] AATA 1698 (23 April 2019); J Longo, Member

CHILD SUPPORT – non-agency payment – prescribed payment of rent on former family home – whether discretion to refuse to credit an amount should be exercised – decision under review affirmed

[Merton and Braden](#) (Child support) [2019] AATA 1742 (30 April 2019); R Ellis, Senior Member

CHILD SUPPORT – acceptance of application for administrative assessment – whether application should have been accepted – parties living together in a de facto relationship at the time of application – decision under review set aside and substituted

[Brigham and Child Support Registrar](#) (Child support) [2019] AATA 1688 (30 April 2019); J Thomson, Member

CHILD SUPPORT – refusal of extension of time to object – applicant did not rest on their rights – no merit to substantive issue – decision affirmed

## **Citizenship**

[El Mobayed and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2447 (7 August 2019); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – permanent or enduring physical or mental incapacity – whether applicant suffered from permanent or enduring physical or mental incapacity – whether applicant not capable of demonstrating a basic knowledge of the English language – consideration of medical evidence – whether grounds for excluding certain medical evidence under the Citizenship Policy – where applicant suffering from an enduring mental incapacity meaning that he was not capable of a basic understanding of the English language at that time – decision set aside and remitted

[Khan and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2364 (30 July 2019); Deputy President Boyle and Mr S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – general residence requirement – Australian citizen – application of Ministerial discretion – spouse or de facto partner – reviewable decision affirmed

[Sriskandarajah and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2374 (6 August 2019); Mr R Maguire, Member

CITIZENSHIP – citizenship application refusal – good character – providing false or misleading information – applicant did not disclose previous passport and National ID Card – decision under review affirmed

## Compensation

[Ascic and Comcare](#) (Compensation) [2019] AATA 2476 (9 August 2019); Dr M Evans, Senior Member

COMPENSATION – Workers' Compensation – Commonwealth employee – whether Comcare liable to pay compensation – psychological injury – depression – acute paranoid reaction to perceived stress in employment – permanent impairment – whether impairment became permanent prior to 1 December 1988 – Compensation (Commonwealth Government Employees) Act 1971 did not provide for the payment of lump sum compensation for psychological conditions – whether there has been a new impairment suffered on or after 1 December 1988 – decision under review affirmed

[Hurley and Australian Capital Territory](#) (Compensation) [2019] AATA 2450 (8 August 2019); Deputy President J Sosso

COMPENSATION – ailment – major depression – whether claimed condition significantly contributed to, to a significant degree, by the Applicant's employment – presence of employment and non-employment factors – whether Respondent exposed to unacceptable degree of prejudice in relation to how the Applicant's claim was particularised and the delay involved – requirements of s 53 of the Act considered – requirements of s 53 of the Act are met – decision under review set aside and substituted

PRACTICE AND PROCEDURE – nature of the Tribunal's practice in workers' compensation matters – scope of inquisitorial nature – whether Respondent was "surprised" or "ambushed" at the Hearing

[Neuendorf and Australian Postal Corporation](#) (Compensation) [2019] AATA 2430 (6 August 2019); Deputy President J Sosso

COMPENSATION – accepted injury of lumbar strain – whether the accepted condition has resolved – Respondent no longer liable in respect of medical expenses under s 16 or for injury resulting in incapacity under s 19 – Applicant not suffering from a work-related annular tear – Applicant not suffering from WPI of 10% or more and not liable to pay compensation for permanent impairment under ss 24 and 27 – Applicant not suffering from a work-related disease pursuant to s 5B – decisions under review affirmed

[Swindale and Comcare](#) (Compensation) [2019] AATA 2426 (7 August 2019); Deputy President RI Hanger AM QC

COMPENSATION – Whether Comcare is liable to pay compensation – whether Comcare is liable for a claimed psychological condition - massage treatment – anti-depressants as treatment for a back condition – where psychological condition diagnosed significantly after accident – decision under review affirmed

[TMPR and Comcare](#) (Compensation) [2019] AATA 2451 (8 August 2019); Senior Member L Kirk

WORKERS' COMPENSATION – psychological injury - whether the Applicant continues to suffer the effects of an accepted condition – whether the accepted condition continues to be contributed to in a material degree by the work-related event – whether liability exists to pay compensation for medical expenses and incapacity for work having regard to the statutory test relevant to sections 16 and 19 of the Safety, Rehabilitation and Compensation Act 1988 – decision under review set aside and remitted

## Migration

[Davey and Minister for Home Affairs](#) (Migration) [2019] AATA 2371 (6 August 2019); Mr A Maryniak QC, Member

MIGRATION – visa refusal on character grounds – whether the Applicant passes the character test – more than minimal or remote chance the Applicant will reoffend – the Applicant does not pass the character test – whether the visa application should be refused – weighing of primary and other considerations – decision set aside and remitted with direction

[Galuvao and Minister for Home Affairs](#) (Migration) [2019] AATA 2425 (22 July 2019); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – whether the discretion to revoke the cancellation should be exercised – Ministerial Direction No. 79 – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of minor children in Australia – expectations of the Australian Community – other considerations – strength, nature and duration of ties – impediments to removal – dangerous driving occasioning death – dangerous driving occasioning grievous bodily harm – set aside and substituted

[Lansdowne and Minister for Home Affairs](#) (Migration) [2019] AATA 2448 (7 August 2019); Mr T Eteuati, Member

MIGRATION – Non-revocation of mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – Applicant does not pass character test – whether there is another reason why the mandatory cancellation of the Applicant’s visa should be revoked – consideration and application of Ministerial Direction No 79 – decision under review affirmed

[Mahmood](#) (Migration) [2019] AATA 1796 (23 May 2019); K Raif, Senior Member

MIGRATION – cancellation – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – ground for cancellation – risk to safety of Australian community or individual – charged with possession of child abuse material – pleaded guilty – risk of further offending exists – consideration of discretion – very serious offence – purpose of visa not fulfilled – 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

[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

[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

[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

## Practice and Procedure

[DVFW and Comcare](#) (Compensation) [2019] AATA 2376 (8 July 2019); Mrs JC Kelly, Senior Member

Summons for production of documents – objection to production – application of s 10(D) of the Family Law Act 1975 – admissibility of evidence arising from family counselling in Tribunal proceedings – documents relevant to proceedings on the face – objection to production disallowed

[Nicolson and Minister for Finance](#) [2019] AATA 2363 (5 August 2019); Senior Member BJ Illingworth

PRACTICE AND PROCEDURE – application for extension of time to lodge an application for review – explanation for delay – prospects of success – prejudice to respondent – extension of time granted

## Professions and Trades

[Coogan and Tax Practitioners Board](#) [2019] AATA 2432 (6 August 2019); Senior Member A Poljak

TAX AGENT REGISTRATION – application for a stay of the decision under review – termination of applicant's registration as a tax agent – failure to comply with taxation laws – interim stay order in operation – prospects of success – consequences to the applicant – the public interest – consequences for the respondent in carrying out its functions – whether the review would be rendered nugatory if a stay were not granted – stay application refused – interim stay discharged

## Refugee

[1604816](#) (Refugee) [2019] AATA 2351 (29 April 2019); R Shanahan, Member

REFUGEE – protection visa – Iran – religion – agnosticism – interest in Baha'i faith – claimed Christian conversion – imputed political opinion – attendance at political rallies in Australia – credibility issues – sole purpose of strengthening refugee claim – particular social group – failed asylum seekers from the West – discrimination against women in general – decision under review affirmed

[1608734](#) (Refugee) [2019] AATA 2312 (9 May 2019); T Flood, Member

REFUGEE – protection visa – Pakistan – religion – Shia Muslim – race – Pashtun Turi – political opinion – anti-Taliban – Sunni extremists – community volunteer – educated – profession – real chance of harm extends to entire country – decision under review remitted

[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

[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

## **Social Services**

[Apostolides and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2375 (2 August 2019); Mr IF Thompson, Member

SOCIAL SECURITY – disability support pension – whether conditions fully diagnosed, treated and stabilised – requirements of a program of support – whether continuing inability to work – decision affirmed

[Bourke and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2365 (5 August 2019); Ms Anna Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – from cervical degeneration, bilateral hip condition, bowel cancer, chronic major depressive disorder, and hypothyroidism – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review set aside and substituted



[Burgess and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2429 (7 August 2019); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension cancellation – rejection of carer payment – lump sum compensation for workplace injury – whether a lump sum preclusion period applies – length of preclusion period – reduction of preclusion period for special circumstances – payments treated as though not having been made – whether special circumstances apply – untreated diagnosis of pathological gambling – whether gambling was a lifestyle choice – decision set aside and substituted

[Flenady and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2478 (9 August 2019); Ms DK Grigg, 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 – whether continuing inability to work – decision under review affirmed

[Frese and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2474 (9 August 2019); Dr I Alexander, Senior Member

SOCIAL SECURITY – Disability Support Pension – whether applicant qualified for DSP during qualification 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 – decision affirmed

[McDonnell and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2477 (9 August 2019); Ms D Mitchell, Member

SOCIAL SECURITY – Family Tax Benefit – overpayment – where no administrative error – where no special circumstances – decision under review affirmed

[Pearson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2475 (9 August 2019); The Hon. John Pascoe AC CVO, Deputy President

SOCIAL SECURITY – Disability Support Pension – whether applicant qualified for DSP during qualification period – whether condition fully diagnosed, treated, stabilised – whether impairment attracts 20 points or more under the Impairment Tables – decision affirmed

[Townsend and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2449 (8 August 2019); Ms D Mitchell, Member

SOCIAL SECURITY – disability support pension cancellation – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables at the date of cancellation – decision under review affirmed

## **Taxation**

[Biswas and Commissioner of Taxation](#) (Taxation) [2019] AATA 2372 (5 August 2019); Senior Member Ehrlich QC

INCOME TAX – application for review of an objection decision – taxable income during the tax year ended 30 June 2017 – lump sum payment in arrears for underpaid wages – lump sum assessed as taxable income – where Applicant qualified for a tax rebate – whether Applicant was also eligible or entitled for medicare levy rebate or other relief in that income year – decision affirmed

[QTWG and Commissioner of Taxation](#) (Taxation) [2019] AATA 2428 (24 July 2019); Deputy President SA Forgie

TAXATION – application for review of an objection decision – whether Commissioner had power to amend assessments – whether assessments excessive – whether assessment of administrative penalty amounts excessive – whether applicant has discharged burden – decision remitted in part and otherwise 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>Hopkins and Minister for Home Affairs</b>	<a href="#">[2019] AATA 1393</a>
<b>WRMF and National Disability Insurance Agency</b>	<a href="#">[2019] AATA 1771</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comcare v Banerji</b>	<a href="#">[2018] AATA 892</a>	<a href="#">[2019] HCA 23</a>
<b>Hunt v Repatriation Commission</b>	<a href="#">[2018] AATA 1110</a>	<a href="#">[2019] FCA 1191</a>
<b>Kassem v Minister for Home Affairs</b>	<a href="#">[2018] AATA 4383</a>	<a href="#">[2019] FCA 1196</a>
<b>Lochtenberg v Commissioner of Taxation</b>	<a href="#">[2018] AATA 4667</a>	<a href="#">[2019] FCA 1167</a>
<b>Victorian Building Authority v Andriotis</b>	<a href="#">[2017] AATA 378</a>	<a href="#">[2018] FCAFC 24</a> <a href="#">[2019] HCA 22</a>
<b>Zyaran v Minister for Home Affairs &amp; Anor</b>	<a href="#">[2018] AATA 3785</a>	<a href="#">[2019] FCA 1205</a>



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