



# 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.

## Citizenship

[Anjum and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2510 (13 August 2019); Senior Member C Puplick AM

CITIZENSHIP – citizenship by conferral – failure to meet residence requirement – whether the Applicant meets the residency requirement - whether the Applicant is likely to reside in Australia or maintain a close and continuing association with Australia – decision set aside and remitted

[Mishra and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 2479 (2 August 2019); Senior Member R Cameron

CITIZENSHIP – whether general residence requirement met – spousal discretion - whether Applicant has close and continuing association with Australia – business interests – relationship with universities – decision set aside and remitted

[Zahidy and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 2431 (21 June 2019); Senior Member N A Manetta

CITIZENSHIP – application for Australian citizenship – whether applicant meets the “good character” requirement – applicant engaged in misleading conduct with Department of Immigration – discussion of application of Australian Citizenship Policy in determining whether applicant meets “good character” requirement – Tribunal satisfied that applicant meets the “good character” requirement – decision under review set aside and substituted

## Compensation

[O'Callaghan and Comcare](#) (Compensation) [2019] AATA 2511 (13 August 2019); Mr S Webb, Member

COMPENSATION – right ankle injury claim – osteoarthritis - causation - nature and conditions of employment – reliability of applicant's uncorroborated evidence – employment contribution not 'to a significant degree' – no physical injury in the primary sense – decision affirmed

COMPENSATION – psychological injury claim – psychological ailment not significantly contributed to by employment – no mental injury – decision affirmed

[Poignand and Comcare](#) (Compensation) [2019] AATA 2706 (16 August 2019); Deputy President G Humphries AO

COMPENSATION – aggravation of major depression – whether Mr Poignand suffered an injury or an aggravation of an injury by incidents in 2014 and 2016 – whether liability excluded in either incident on the basis of being reasonable administrative action performed in a reasonable manner in respect of his employment – Tribunal finds that the 2014 incident meets the reasonable administrative action exclusion – Tribunal finds that the 2016 incident was not done in respect of Mr Poignand’s employment and liability exists as at that date – decision under review varied

PRACTICE AND PROCEDURE – scope of Tribunal’s jurisdiction to make a decision under s 19 of the Act where the reviewable decision and the initial claim for compensation does not address that question in an express or implied manner – where material before the Tribunal may demonstrate Mr Poignand’s incapacity for work – absence of contextual submissions

## Customs

[Solu Pty Ltd and Comptroller-General of Customs](#) [2019] AATA 2584 (15 August 2019); Senior Member A Poljak

CUSTOMS AND EXCISE – customs duty – duty paid under protest – tariff classification of subject goods – aluminium extrusions in profile – interpretation of Customs Tariff Act 1995 – identity of goods in their condition as imported – whether cutting subject goods to size after importation affects classification – whether subject goods are materials not parts – specific design features and characteristics of subject goods for intended use - application of tariff concession order – decision under review set aside and remitted

## Education and Research

[It All Starts Here Family Day Care Scheme Pty Ltd and Secretary, Department of Education](#) [2019] AATA 2512 (13 August 2019); Senior Member A Poljak

CHILDCARE – family assistance law – child care benefit – cancellation of approval as an approved child care service – breach of conditions of provider approval – overseas children and educators - late reporting and enrolments – overlapping sessions – absences before and after care – exceeding educator limit – exceeding educator to child ratios – suitable person to operate a child care service – appropriate sanction – egregious breaches - provided child care in circumstances where not lawfully allowed – given rise to risks for the safety, health and wellbeing of children – governance arrangements systematically flawed - decision affirmed

[Stoner and Secretary, Department of Education and Training](#) [2019] AATA 2509 (21 June 2019); Senior Member N A Manetta

HIGHER EDUCATION SUPPORT – FEE-HELP- remission of debt – whether the applicant’s circumstances were beyond the applicant’s control – whether applicant’s circumstances made their full impact on or after the census date - whether special circumstances exist – decision under review affirmed

## Migration

[Ikupu and Minister for Home Affairs](#) (Migration) [2019] AATA 2545 (13 August 2019); Senior Member D O'Donovan and Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – 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 – impact on victims – impediments to applicant if removed – decision under review affirmed

## National Disability Insurance Scheme

[NVWC and National Disability Insurance Agency](#) [2019] AATA 2506 (13 August 2019); Senior Member R Cameron

NATIONAL DISABILITY INSURANCE SCHEME – mobility scooter – assistive technology – reasonable and necessary support – maintenance and repair – decision varied

## Practice and Procedure

[Ad Astra Institute Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 2514 (13 August 2019); K Parker, Member

VOCATIONAL EDUCATION AND TRAINING - stay application - decisions under review to cancel registrations – interests of persons affected by the review – stay application refused

[Bhatti and Commissioner of Taxation](#) (Taxation) [2019] AATA 2482 (6 August 2019); Deputy President B J McCabe

PRACTICE AND PROCEDURE – applicant failed to attend directions hearing – application for review dismissed – application for reinstatement – the applicant had been given multiple opportunities to comply with directions – extensive delay in application – likelihood of further default and delay - reinstatement application refused

[Costopoulos and Secretary, Department of Human Services](#) (Social services second review) [2019] AATA 2483 (10 July 2019); Brigadier A G Warner, Member

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review of decision of Department of Human Services authorised review officer of

20 September 2018 – significant delay – awareness of appeal rights – explanation not compelling – poor prospects of success of substantive application – alternative avenue of relief – Tribunal not satisfied that reasonable in all the circumstances to grant extension of time – application for extension of time refused

[DVFW and Comcare](#) (Compensation) [2019] AATA 2366 (7 June 2019); Mrs J C Kelly, Senior Member

PRACTICE AND PROCEDURE – release from implied undertaking in relation to summonsed documents – documents produced under summons for substantive proceedings – summonsed documents used by Respondent and delegates as part of claims management of accepted condition – documents not used for collateral purpose – summonsed documents not subject to implied undertaking - Tribunal is part of claims management process – release from implied undertaking not required

[Tregale and National Disability Insurance Agency](#) [2019] AATA 2513 (12 August 2019); Senior Member The Hon. M Groom

PRACTICE AND PROCEDURE – request by applicant to issue summons to reviewable decision maker – probative value of evidence to be given – request refused

## **Social Services**

[Callaghan and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2704 (16 August 2019); Deputy President The Hon. J Pascoe AC CVO

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 – where impairment is severe and attracts 20 points under a single table - decision set aside and substituted

[Graham and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2480 (2 August 2019); Senior Member A Poljak

SOCIAL SECURITY – Family Tax Benefit – whether applicant entitled to family tax benefit top ups and supplement payments – whether applicant's partner lodged income tax return by the statutory date – whether special circumstances prevented lodgement by statutory date – no special circumstances – decision affirmed

[Harfouche and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2484 (9 August 2019); Brigadier A G Warner, Member

SOCIAL SECURITY – Newstart Allowance (NSA) – failing to comply with requirement – whether applicant has been notified – whether notice is reasonable – whether Tribunal is not satisfied that applicant had a reasonable excuse – whether NSA payable – suspension or cancellation – decision under review set aside and substituted – applicant's NSA be suspended for the period 15 June 2016 to 7 December 2016

[Mahmodi and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2507 (19 July 2019); Mr I F Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether impairment rating of 20 points or more existed under the Impairment Tables – whether there was a "continuing inability to work" – reports of medical practitioners considered – decision under review affirmed

[Primmer and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 2508 (7 August 2019); The Hon. R Baldwin, Member

SOCIAL SECURITY – disability support pension – whether applicant qualifies for disability support pension pursuant to section 94 of the Social Security Act 1991 – whether applicant’s impairments total twenty points or more under the Impairment Tables – whether applicant participated in a program of support in the three years prior to lodging his claim for DSP – whether participation in the Commonwealth Rehabilitation Services ‘Return to Work’ program satisfies the requirements for active participation in a program of support – whether applicant has a continuing inability to work – decision under review affirmed

[Snaith and Secretary, Department of Social Services](#) (Social services second review) [2019]  
AATA 2544 (15 August 2019); D Mitchell, Member

SOCIAL SECURITY – Assurance of Support – Debt – family breakdown - whether write off – whether waiver – special circumstances not found – 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
<b>ZXYM and Director-General of Security</b>	<a href="#">[2019] AATA 2004</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Douglass v Commissioner of Taxation</b>	<a href="#">[2018] AATA 3729</a>	<a href="#">[2019] FCA 1246</a>
<b>Fortunatow v Commissioner of Taxation</b>	<a href="#">[2018] AATA 4621</a>	<a href="#">[2019] FCA 1247</a>
<b>GKQK v Minister for Home Affairs</b>	<a href="#">[2019] AATA 614</a>	<a href="#">[2019] FCA 1223</a>
<b>Howard v Comcare</b>	<a href="#">[2017] AATA 2381</a>	<a href="#">[2019] FCA 1031</a>
<b>Pohahau v Minister for Home Affairs</b>	<a href="#">[2019] AATA 106</a>	<a href="#">[2019] FCA 1243</a>

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