



# 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

[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

[Conway and Vitali](#) (Child support) [2019] AATA 1732 (9 May 2019); A Schiwy, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – capital gain in past year resulted in high assessed income – decision under review set aside and substituted

[Mahmoud and Child Support Registrar](#) (Child support) [2019] AATA 2709 (19 August 2019); Senior Member K Millar

CHILD SUPPORT – application for review of refusal to issue departure authorisation certificate – application for dismissal - where departure prohibition order in force – where no security given for applicant's return to Australia – whether certificate should be issued on humanitarian grounds – decision under review set aside and remitted

[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

[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

[Nguyen and Child Support Registrar](#) (Child support) [2019] AATA 2773 (7 August 2019); Emeritus Professor P A Fairall, Senior Member

CHILD SUPPORT – application for review of refusal to issue departure authorisation certificate – where decision refusing to issue departure authorisation certificate made on a date on which, by operation of s 72N of the Child Support (Registration and Collection) Act 1988 (Cth), the Respondent was precluded from issuing a departure authorisation certificate – no reasonable prospects of success – application dismissed

[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

### **Citizenship**

[Al-Ahmed and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2707 (15 August 2019); W Forest, Member

PRACTICE AND PROCEDURE – citizenship – application to dismiss on basis of no reasonable prospect of success – where applicant has outstanding criminal charges – whether the Tribunal has the power to adjourn matter until criminal proceedings resolved – Tribunal satisfied that there is no reasonable prospect of success - application for review dismissed

[Zarib and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2707 (19 August 2019); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship – citizenship test – whether applicant has permanent or enduring physical or mental incapacity – PTSD – limited evidence of treatment – Tribunal not satisfied of applicant's lack of English proficiency – decision under review affirmed

### **Compensation**

[Franks and Comcare](#) (Compensation) [2019] AATA 2802 2715 (15 August 2019); Deputy President B W Rayment OAM QC

COMPENSATION – commonwealth employees – death of employee – compensation to dependants – accepted claim for workers compensation – Guillain-Barre syndrome – nephrotic syndrome – whether Guillain-Barre syndrome caused nephrotic syndrome resulting in death – whether underlying frailty was caused by Guillain-Barre syndrome resulted in death – whether death of the employee would have otherwise occurred at a significantly later time – other diseases contributing to death – insufficient medical knowledge to establish a link – decision affirmed

[Powell and Comcare](#) (Compensation) [2019] AATA 2715 (19 August 2019); Senior Member Linda Kirk

WORKERS COMPENSATION – psychological injury – whether the Applicant suffers an 'ailment', or an 'aggravation' of an 'ailment' as defined in s 4 of the Safety, Rehabilitation and Compensation Act – Whether the ailment or aggravation of an ailment was contributed to, to a significant degree, by her employment – whether any 'disease' was suffered as a result of a 'reasonable administrative action' taken in a reasonable manner with respect to the Applicant's employment – whether the Respondent is liable to pay compensation – decision under review affirmed

[WCNC and Comcare](#) (Compensation) [2019] AATA 2777 (21 August 2019); Mr S Webb, Member

COMPENSATION – applications for review of decisions denying compensation in respect of accepted injury – request to attend a medical examination in the course of proceedings – application of s 57 of the Safety, Rehabilitation and Compensation Act 1988 – particulars of the examination not specified in the notice – requirement for specificity to enable compliance or trigger sanction – purported refusal to attend unspecified examination – conditional agreement to attend – ongoing negotiations – meaning of ‘reasonable excuse’ – rights not presently suspended – stay application held over – orders made

[Wonson and Comcare](#) (Compensation) [2019] AATA (21 August 2019); Deputy President J W Constance

WORKERS COMPENSATION – application for review of decision to affirm earlier determination denying liability to pay compensation to Applicant in respect of claimed injury – where Applicant suffered a “disease” within the meaning of the Safety, Rehabilitation and Compensation Act 1988 (Cth) s 5B – adjustment disorder with depressed and anxious mood – whether Applicant for purposes connected with her employment made a wilful or false representation(s) that she did not suffer, or had not previously suffered, the disease – whether Applicant suffered the disease “as a result of reasonable administrative action taken in a reasonable manner in respect of [the Applicant’s] employment” – refusal to reclassify leave – Applicant would not have suffered disease but for reasonable administrative action – decision under review affirmed

## Education and Research

[United Business College Pty Ltd and Minister for Education](#) [2019] AATA 2778 (20 August 2019); Senior Member C Furnell

Vocational Education and Training – registration cancelled – application to change registration denied – non-compliance with legislative regime, standards and national code – decision affirmed

## Health

[Hendy and Secretary, Department of Health](#) [2019] AATA 2713 (31 July 2019); Senior Member N A Manetta

PHARMACIES – approval for supply of pharmaceutical benefits – decision of Australian Community Pharmacy Authority not to recommend proposed pharmacy for approval – minimum distance requirements from nearest approved pharmacies – proposed premises less than required minimum distances from other approved pharmacies – application of Pharmacy Location Rules in interpreting minimum distance requirements – decision under review affirmed

## Migration

[FKQF and Minister for Home Affairs](#) (Migration) [2019] AATA 2712 (16 August 2019); Senior Member C Puplick AM

MIGRATION – visa refusal on character grounds – failure to pass character test – substantial criminal record – whether the visa application should be refused – Ministerial Direction No. 79 – weighing of primary and other considerations – decision set aside and remitted with direction

[XTZM and Minister for Home Affairs](#) (Migration) [2019] AATA 2776 (6 March 2019); O'Loughlin, Member

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision under review affirmed

[1725514](#) (Migration) [2019] AATA 2564 (24 April 2019); R Gagliardi, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Sponsored Family stream – genuine temporary stay – previous Visitor visa refused – applicant's wife refused student visa – wife undertaken English language course – compliance with previous visa conditions – concerns large transfers of money not genuine or consistent – concerns applicant's motives in visiting and staying – transferable work skills – attempt to secure long-term future in Australia – not satisfied intention to stay temporarily – decision under review affirmed

[1618668](#) (Migration) [2019] AATA 2628 (2 May 2019); S Burford, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – insufficient evidence of relationship – invalid marriage at time of application – review applicant under 18 – criteria to assess is for de facto relationship – inconsistent and limited evidence – decision under review affirmed

[1817982](#) (Migration) [2019] AATA 2656 (1 April 2019); K Chapman, Member

MIGRATION – Contributory Parent (Migrant) (Class CA) visa – Subclass 143 (Contributory Parent) – death of second named applicant who did not meet criteria – withdrawal of second applicant from tribunal review – first applicant meets health criteria – decision under review remitted

[1800824](#) (Migration) [2019] AATA 2710 (2 May 2019); T Quinn, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 – not enrolled in registered course for nine months – medical issues – mental health issues – relationship breakdown – limited evidence – no compelling need to remain in Australia – strong ties to Australia – decision under review affirmed

[1804530](#) (Migration) [2019] AATA 2711 (18 April 2019); H Claringbold, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – Bangladesh – unlawful non-citizen – not a relevant eligible non-citizen – protection visa refused – seeking ministerial intervention – no application for substantive visa – decision under review affirmed

## **Refugee**

[1722514](#) (Refugee) [2019] AATA 2486 (12 April 2019); M Hawkins, Member

REFUGEE – cancellation – protection visa – Iran – non-compliance – incorrect information – bogus documents – voluntary return and residence in Iran – inconsistent and paucity of evidence – decision under review affirmed

[1604403](#) (Refugee) [2019] AATA 2489 (4 June 2019); R Smidt, Member

REFUGEE – protection visa – China – Religion – practicing Christians – imputed religious beliefs – particular group – children born and raised in Australia – particular social group – children born to Chinese nationalists – one child policy – decision under review affirmed

[1619461](#) (Refugee) [2019] AATA 789 (4 January 2019); N Burns, Member

REFUGEE – Protection visa – Sri Lanka – mixed and interreligious marriage – Muslim – Buddhist – religiously based persecution by Bodu Bala Sena – credible witness – decision under review remitted

[1501692](#) (Refugee) [2019] AATA 1457 (17 January 2019); D Dragovic, Senior Member

REFUGEE – protection visa – Ethiopia – imputed political opinion – father defiant of regime – family members arrested – terrorism related charges – convicted in absentia – veracity of documents in front of Tribunal – implementation of laws of general application – political change in receiving country – decision under review remitted

[1702142](#) (Refugee) [2019] AATA 171 (18 January 2019); C Smolicz, Member

REFUGEE – protection visa – Zimbabwe – particular social group – single women in Zimbabwe – victim of sexual violence – government employee as perpetrator – prevalence of gender-based violence – decision under review remitted

## **National Disability Insurance Scheme**

[Cox and National Disability Insurance Agency](#) [2019] AATA 2774 (2 July 2019); L Bygrave, Member

EXTENSION OF TIME – principles to be applied – where applicant rested on her rights – where prejudice to the respondent caused by the delay – where no evidence to support a finding on the substantive merits of the application – extension of time refused

## **Social Services**

[Chapman and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2714 (19 August 2019); S Evans, Member

SOCIAL SECURITY – eligibility for disability support pension – whether impairments fully diagnosed, fully treated and stabilised – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – mental health condition – bilateral epicondylitis and tendonitis – angina pectoris – diabetes – hypertension – hyperlipidaemia – applicant unable to satisfy the qualification criteria under s 94 of Social Security Act 1991 – decision under review affirmed

[Kora and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2714 (22 August 2019); S Evans, Member

SOCIAL SECURITY – eligibility for disability support pension – physical & psychological impairments – applicant unable to satisfy qualification criteria under s 94 of Social Security Act 1991 – impairments not fully diagnosed, treated or stabilised – decision under review affirmed

[McDonnell and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2477 (9 August 2019); Senior Member N A Manetta

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension – no program of support participation prior to applicant’s claim for disability support pension – whether impairment rating of 20 points or more existed under a single Impairment Table – medical witness’s opinion evidence purported to assign impairment points – decision under review affirmed.

[Van Den Bosch and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2705 (19 August 2019); Dr I Alexander, Senior Member

SOCIAL SECURITY – debt – whether applicant has a debt to the Commonwealth due to overpayment of age pension – whether a property should have been disclosed to Centrelink to be included in calculations for assets test – whether debt can be waived or written off – decision affirmed

## **Taxation**

[Firefighters Benefit Fund of WA Inc and Commissioner of Taxation](#) (Taxation) [2019] AATA 2775 (20 August 2019); Deputy President Boyle

TAXATION AND COMMERCIAL DIVISION – s 121 Income Tax Assessment Act 1936 (Cth) – “carrying on the business of insurance” – deeming provision – “is taken...to be” – pre-contract representation – contract between association and members – incorporation of term – implied term – collateral contract – 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 [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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**BTZ19 v Minister for Home Affairs**

[\[2019\] AATA 641](#)

[\[2019\] FCA 1301](#)

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**Karan v Minister for Home Affairs**

[\[2018\] AATA 4480](#)

[\[2019\] FCA 478](#)  
[\[2019\] FCAFC 139](#)

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