



Administrative
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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.

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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

[Al-Asadi and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2957 (23 August 2019); Mr S Evans, Member

CITIZENSHIP – eligibility – refusal to grant Australian citizenship by conferral – whether the applicant is of good character at the time of the decision – whether the Applicant is truthful and honest – providing false or misleading information – providing different date of birth – enduring moral qualities – engaging in immigration fraud – decision under review affirmed

[Zalaf and Minister for Home Affairs](#) (Citizenship) [2019] AATA 2960 (28 August 2019); S Evans, Member

CITIZENSHIP – application for citizenship by conferral – general residence requirement – where applicant spouse of Australian citizen – where applicant has two Australian citizen children – where applicant had extended periods of absence from Australia in four years immediately before the citizenship application – application of ministerial discretion to treat periods overseas as a period in which the applicant was present in Australia as a permanent resident – whether close and continuing association with Australia during period of absence – decision affirmed

Compensation

[Lord and Comcare](#) (Compensation) [2019] AATA 2965 (30 August 2019); Deputy President The Hon. John Pascoe AC CVO

COMPENSATION – injury – ailment – where applicant suffered from a mental ailment – where injury was significantly contributed to by applicant's employment – whether injury was suffered due to the employer's reasonable administrative action taken in a reasonable manner – decision affirmed

[Vallance and Comcare](#) (Compensation) [2019] AATA 2959 (27 August 2019); Deputy President The Hon. John Pascoe AC CVO

COMPENSATION – workers compensation for injuries – generalised anxiety disorder – where liability was initially accepted – where respondent later determined that the applicant no longer suffered from the condition – whether applicant continued to suffer from an injury – decision affirmed

Corporations

[Wilkins and Australian Securities and Investments Commission](#) [2019] AATA 2946 (22 August 2019); Mr P W Taylor SC, Senior Member

CORPORATIONS – review of banning order prohibiting the applicant from engaging in any credit activities for a period of three years – alleged contravention of prohibition on giving misleading information etc – applicant alleged to have falsely stated loan applicants held funds in investment accounts and had no superannuation fund balance – applicant alleged to have mis-stated the amount claimed to be held in the investment accounts – no proper basis to conclude the applicant knew the amounts in the loan applications were overstated – applicant directly responsible for mischaracterisation of assets – whether applicant knowingly or recklessly provided false information – meaning of “false in a material particular” – decision set aside and substituted

Migration

[Barber and Minister for Home Affairs](#) (Migration) [2019] AATA 2945 (23 August 2019); Senior Member A Nikolic AM CSC

MIGRATION – mandatory visa cancellation – citizen of New Zealand – Absorbed Person visa – multiple criminal convictions between 1987 and 2017 – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

Practice and Procedure

[Gildersleeve and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2955 (4 July 2019); Brigadier A G Warner, Member

PRACTICE AND PROCEDURE – application for reinstatement and application for an extension of time – whether application dismissed in error – application for reinstatement refused – whether reasonable in all circumstances to extend time for making application for review – factors – length of delay significant – explanation for delay not satisfactory – prejudice – poor prospect of success of Applicant’s substantive application – potential alternative avenue of relief – Tribunal not satisfied that reasonable in all circumstances to grant extension of time – application refused

[Lesianawai and Minister for Home Affairs](#) (Migration) [2019] AATA 2947 (22 August 2019); T Eteuati, Member

PRACTICE AND PROCEDURE - cancellation of Applicant’s visa under s 501(2) of the Migration Act 1958 – application for review dismissed as being made out of time – whether the Tribunal has power to reinstate application – whether application dismissed in error - whether notification letter was affected by error identified in *DFQ17 v Minister for Immigration and Border Protection* [2019] FCAFC 64 – whether the Applicant was effectively notified of the cancellation decision in accordance with regulation 2.55 of the Migration Regulations 1994 – application dismissed

[O'Sullivan and P&O Maritime Services Pty Ltd](#) (Compensation) [2019] AATA 2966 (13 August 2019); Deputy President Boyle

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act 1975 (Cth) – objection by the Applicant to the Respondent's inspection of material produced under summons – whether the documents relate to the proceedings such that there is a real possibility that they may assist in the resolution of issues in the proceedings – privacy of medical records – implicit surrender would apply in the case of claim against an employer under the Seafarers Rehabilitation and Compensation Act 1992 (Cth) – error in summons corrected – objection disallowed

[Williamson and National Disability Insurance Agency](#) [2019] AATA 2944 (20 August 2019); Deputy President S A Forgie

PRACTICE AND PROCEDURE – request for decision to be made under s 42C(3) of the Administrative Appeals Tribunal Act 1975 (AAT Act) – where review date in plan has passed – where ongoing funding of supports needed while application for review before Tribunal – whether respondent has power to vary decision made under s 33(2) of National Disability Insurance Scheme Act 2013 – whether ss 26, 34D(1) and (3), 42C(1) and (3) or 42D of the AAT Act appropriate vehicles – s 42D or new plan entirely appropriate vehicles – further consideration adjourned

Social Services

[Darwich and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2956 (26 August 2019); Senior Member L Kirk

SOCIAL SECURITY – disability support pension – qualification for payment – whether the applicant has physical, intellectual or psychiatric impairments – whether the applicant's conditions were fully diagnosed, treated and stabilised – whether the impairments attract 20 points or more – Impairment Tables – decision affirmed

[Hall and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2964 (30 August 2019); Senior Member A Poljak

SOCIAL SECURITY – carer allowance – start date of payment – whether applicant taken to have made a claim on the date she contacted the department – no written notice of contact – claim made more than 13 weeks after contact – decision affirmed

[Hewawasam Revulge and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2943 (23 August 2019); A Wood, Member

SOCIAL SECURITY – newstart allowance – special benefit – self-employment in owner operated business – actual or deemed unemployment during the qualification period – decision under review affirmed

[Upjohn and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2963 (29 August 2019); Senior Member L Kirk

SOCIAL SECURITY – Youth Allowance – debt – student start-up scholarship – undertaking full time study – write off debt – waiver of debt arising from sole administrative error – waiver in special circumstances – decision under review is set aside and substituted

[Wadeson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2967 (9 August 2019); Dr I Alexander, Senior Member

SOCIAL SECURITY – Disability Support Pension – whether the applicant qualifies for DSP pursuant to section 94 of the Social Security Act 1991 – whether the applicant’s impairments are fully diagnosed, treated and stabilised – whether the applicant’s impairments total twenty points or more under the Impairment Tables – whether the applicant has a continuing inability to work – decision under review affirmed

[Yousif and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 2962 (28 August 2019); Senior Member L Kirk

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

Taxation

[Ariss and Commissioner of Taxation](#) (Taxation) [2019] AATA 2958 (23 August 2019); Dr M Evans, Senior Member

TAXATION – income tax – whether trust distributions ordinary income and/or personal services income – whether Part IVA applies – entitlement to income tax deductions – whether Applicant entitled to clerical deductions for income attributed to spouse – whether deductions unreasonable amount paid to a related person – whether Applicant entitled to deduction for payments made to an associate – whether Applicant entitled to deductions for personal superannuation contributions – entitlement to income tax deduction for travel expenses where reimbursement already made – whether Respondent out of time to amend assessments – limited amendment period – whether Applicant beneficiary under a trust – whether any person entered into or carried out a scheme for the sole or dominant purpose of the individual obtaining a scheme benefit – decision under review affirmed

[Torresi and Commissioner of Taxation](#) (Taxation) [2019] AATA 2954 (14 June 2019); Mr A Maryniak QC, Member

TAXATION – Taxation Administration Act 1953 – Failure to lodge income tax return – Imposition of administrative penalty – Decision not to exercise discretion to remit any part of administrative penalty – Decision under review affirmed

Veterans' Affairs

[Turner and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 2961 (29 August 2019); Dr I Alexander, Senior Member and Mr S Evans, Member

VETERANS' AFFAIRS – travelling expenses claims – where claims received after the statutory twelve month time limit – whether exceptional circumstances exist – applicant incapacitated during claim period – decision set aside and substituted

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
Ascic and Comcare	[2019] AATA 2476
Ghazaryan and Minister for Home Affairs	[2019] AATA 1514
Pito and Comcare	[2019] AATA 1347
SDRQ and Commissioner of Taxation	[2019] AATA 2003
Stefaniak and Comcare	[2019] AATA 1866
Tucker and Comcare	[2019] AATA 1136
Ultimate Vision Inventions and Innovation and Science Australia	[2019] AATA 1633

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
CHJK v Minister for Home Affairs	[2019] AATA 584	[2019] FCA 1330
Linfox Australia Pty Ltd v Commissioner of Taxation of the Commonwealth of Australia	[2019] AATA 222	[2019] FCAFC 131



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