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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.

Child Support

[Adams and Macangus](#) (Child support) [2019] AATA 2187 (21 May 2019); F Hewson (Presiding), Member and P Noonan, Member

CHILD SUPPORT – opt-in arrears – whether there were unpaid amounts – application for collection of unpaid amounts should be accepted – decision under review affirmed

[Ananyev and Ananyev](#) (Child support) [2019] AATA 1692 (10 May 2019); J Thomson, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – whether liable parent unable to work due to medical condition – redirection of family trust income to current partner – decision under review set aside and substituted

[Dwight and Dwight](#) (Child support) [2019] AATA 2185 (14 May 2019); K Buxton, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – date of effect of objection decision – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist – decision under review set aside and substituted

[Holst and Marinos](#) (Child support) [2019] AATA 1746 (20 May 2019); M Baulch, Member

CHILD SUPPORT – particulars of the administrative assessment – whether additional income earned since separation should be excluded from parent's adjusted taxable income – decision under review affirmed

[Tucker and Kenyon](#) (Child support) [2019] AATA 1696 (1 May 2019); Hamilton-Noy, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – child residing with her grandmother during the week but mother continued to exercise overall responsibility – decision under review affirmed

[Wentworth and Child Support Registrar](#) (Child support second review) [2019] AATA 3319 (6 September 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 – decision under review affirmed

Citizenship

[Kumar and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3273 (5 September 2019); Senior Member D O'Donovan

IMMIGRATION & CITIZENSHIP – refusal to grant citizenship by conferral – Ministerial discretion – administrative error - unlawful non-citizenship

Compensation

[Blandon and Australian Capital Territory](#) (Compensation) [2019] AATA 3277 (5 September 2019); Deputy President G Humphries AO

COMPENSATION – chronic pain syndrome – whether Mr Blandon suffers from claimed condition – whether Mr Blandon's chronic pain syndrome condition results in permanent impairment – nature of assessment of whole person impairment considered – manner of assessment of impairments pursuant to s 24 of the Safety, Rehabilitation and Compensation Act 1988 – one decision under review affirmed, second decision set aside and substituted

[Ramirez-Gamonal and Comcare](#) (Compensation) [2019] AATA 3321 (6 September 2019); Mr S Webb, Member Presiding and Dr P Fricker OAM, Member

WORKERS' COMPENSATION – accepted left foot injury – plantar fasciitis – decision denying present liability for medical treatment expenses and incapacity for work compensation payments – nature of accepted injury – meaning of 'injury', 'ailment' and 'disease' – examination of physiological changes and factors contributing to onset symptoms – inflammation – evidence of micro traumas and pathophysiological changes – employment duties a significant contributing factor – persistence of symptoms and physiological changes – examination of contributory causes – persistence of 'injury' resulting in impairment and incapacity – liability to pay compensation – purposive construction of 'results from', 'as a result of' and 'in relation to' standards of causation - standards of causation for purposes of determining liability or entitlement not to be conflated with definitional tests for the purposes of determining the existence of an 'injury' – partial incapacity for work 'as a result of' an 'injury' – medical treatment 'in relation to an injury' – entitlement to compensation continues - decision set aside

Migration

[Brown](#) (Migration) [2019] AATA 3130 (17 June 2019); F Simmons, Member

MIGRATION – Federal Circuit Court Remittal – Partner (Migrant) (Class BC) – Subclass 100 (Spouse) – application was not received within prescribed timeframe – notification was defective – Tribunal erred in finding that the review application was lodged out of time –applicant and sponsor have a mutual commitment – genuine spousal relationship – decision under review remitted

[CHONG](#) (Migration) [2019] AATA 2873 (13 June 2019); M Jackson, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) visa – genuine temporary entrant – factors that impaired academic progress – changed area of study – cancelled courses – incentive to return to home country – decision under review remitted for reconsideration

[De Vera](#) (Migration) [2019] AATA 2840 (6 June 2019); V Plain, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) visa – genuine temporary entrant – intention to return to home country – circumstances of decision to change study path – evidence of enrolment in an approved course – value of new studies – immigration history – incentive to return to home country – decision under review remitted for reconsideration

[Imran](#) (Migration) [2019] AATA 2758 (20 June 2019); K Synon, Member

MIGRATION – cancellation – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – validity of s 375A certificate – DIBP internal process and policy advice – ground for cancellation – non-commencement of employment – genuine effort to commence that employment – consideration of discretion – circumstances beyond applicant's control – Department's failure to notify of visa grant – awareness of visa status – departing Australia – contact with the Department – reliance in good faith – paper-based application – decision under review set aside

[MJNN and Minister for Home Affairs](#) (Migration) [2019] AATA 3205 (28 August 2019); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Applicant's Visa – character test – substantial criminal record – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to Uganda – reviewable decision affirmed

[Ngo](#) (Migration) [2019] AATA 2602 (25 June 2019); J Billings, Senior Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – validity of s 375A certificate – false or misleading information in a material particular – veracity of claimed employment – payment of social insurance as required by law – no corresponding deduction in payslips – side agreement to procure own health insurance – delegate unable to verify health insurance card – 'evidence' for the purpose of PIC 4020 – sufficiently probative – telephone inquiries – no site visit – National Business Registration website – other supporting document – decision under review remitted

[NYYK and Minister for Home Affairs](#) (Migration) [2019] AATA 3204 (3 September 2019); Mr T Eteuati, Member

MIGRATION – refusal of application for Bridging visa under section 501(1) – Applicant failed to pass the character test under section 501(6)(a) – whether the discretion to refuse to grant the Bridging visa should be exercised – application of Direction No. 79 – decision under review affirmed

[SONI](#) (Migration) [2019] AATA 2678 (27 May 2019); D Dragovic, Senior Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – Schedule 3 criteria – application lodged outside of relevant timeframe – compelling reasons for waiver – consequence of separation – credible witnesses – emotional and personal challenges not compelling reasons – fear of harm based on relationship – inter-caste marriage – different religions – independent country information – decision under review remitted

[Wijesooriya Patabandi Muhandiramge](#) (Migration) [2019] AATA 3091 (9 May 2019); A McMurrin, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Accountant (General) (ANZSCO 221111) – nomination not approved – alleged misconduct of migration agent – resided in Australia for 12 years – birth of children in Australia – applicant’s profession in demand in regional area – referred for ministerial intervention – decision under review affirmed

[YKZZ and Minister for Home Affairs](#) (Migration) [2019] AATA 3248 (30 August 2019); Deputy President JW Constance

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – Direction No. 79 – primary considerations – protection of Australian community from criminal or other serious conduct – best interests of minor children – expectations of Australian community – other considerations – international non-refoulement obligations – strength, nature and duration of ties to Australia – impediments if removed from Australia – Applicant unlikely to re-offend – risk to Australian community acceptable – Applicant likely to face considerable impediments if returned to Iran – decision under set aside and substituted with decision revoking the mandatory cancellation

[Zhang](#) (Migration) [2019] AATA 3058 (6 May 2019); K Chapman, Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 892 State/Territory Sponsored Business Owner (Residence) – held lawfully acquired net assets in main business to the value of at least AUD 75,000 at the time of application and for 12 months prior to that – credibility issues – two sets of inconsistent financial records – main business with turnover less than 20,000 – director loan of 80,000 to main business account using mortgage on property – decision under review remitted

National Disability Insurance Scheme

[McKenzie and National Disability Insurance Agency](#) [2019] AATA 3275 (5 September 2019); Senior Member F Meagher

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary support – Operational Guidelines – home modifications – replacement of an air-conditioning system – Multiple Sclerosis – Decision set aside and remitted to the Respondent

Practice and Procedure

[Growers Wine Group Pty Ltd and Wine Australia](#) [2019] AATA 3274 (2 September 2019); Deputy President P Britten-Jones

Administrative Appeals Tribunal – Practice – Application for stay of decision – Decision of Wine Australia to cancel wine export licence – Interests of Australian wine industry outweigh interests of the applicant – Administrative Appeals Tribunal Act 1975, s 41(2)

Professions and Trades

[Taxation Guru Pty Ltd and Gambhir Watts and Tax Practitioners Board](#) [2019] AATA 3249 (4 September 2019); Ms DK Grigg, Member

TAX AGENT REGISTRATION – termination of applicants' registrations as tax agents – application for a stay pending decision under review – prospects of success – public interest – stay applications refused

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

Social Services

[Best and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3203 (3 September 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – rejection – whether applicant sought review of the decision within 13 weeks of being notified of the decision – where applicant sought review of decision more than 13 weeks after being notified of the decision – decision affirmed

[Bilanovic and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3250 (4 September 2019); Brigadier AG Warner, Member

SOCIAL SECURITY – Parenting Payment Single (PPS) – entitlement under s 24 of the Social Security Act 1991 (Cth) – whether Applicant is prevented from pooling resources – whether question of financial difficulty relevant – what is correct date of cancellation of PPS – decision under review set aside and substituted with PPS cancellation from the date Applicant's husband commenced work

[DYBM and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3246 (23 August 2019); Mr P Ranson, Member

SOCIAL SECURITY – Family Tax Benefit (FTB) – percentage of care – care arrangements – decision under review remitted for reconsideration

[El-Mawas and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 3199 (7 August 2019); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – debt arose due to undisclosed jointly owned property - whether all or part of the Applicant debt can be waived or written off - Applicant's evidence lacks clarity, was evasive and inconsistent – Applicant unable to reliably set out circumstances – Applicant currently in receipt of carer allowance with debt repayment deductions – Tribunal not satisfied that the debt did not result wholly or partly from the Applicant knowingly making a false statement or false representation or failing or omitting to comply with a provision of the Act – Tribunal not satisfied that there are special circumstances – Tribunal not satisfied that debt should be waived pursuant to s 1237AAD – Tribunal not satisfied that debt should be written off pursuant to s 1236 – reviewable decision set aside and in substitution it is decided that the Applicant received overpayment of carer

[English and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 3270 (5 September 2019); Ms D Mitchell, 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 – decision under review affirmed

[Hojbota and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 3206 (30 August 2019); Senior Member T Tavoularis

SOCIAL SECURITY – Disability Support Pension – portability – where Respondent had ceased payment of Disability Support Pension to First Applicant and Carer Payment and Allowance to Second Applicant as they exceeded the maximum portability period as prescribed – whether cessation of payments by the Respondent was correct – whether Applicants had an 'accrued' right to extended portability pursuant to the Agreement between Australia and the Republic of Austria on Social Security as amended by the Social Security (International Agreements) Amendment (Republic of Australia) Regulation 2016 – decisions under review affirmed

[Laverick and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 3320 (6 September 2019); Mrs JC Kelly, Senior Member

SOCIAL SECURITY – disability support pension – whether applicant has one or more physical, intellectual or psychiatric impairments – whether condition causing impairment is permanent – applicant suffers from impairments from the conditions of diplopia (double vision), asthma, migraines, tendonitis and sinus condition – whether condition causing impairments are permanent – diplopia not fully treated and stabilised – migraines not fully treated and stabilised – sinus condition not fully diagnosed, treated and stabilised – supraspinatus tendinitis not in issue during the qualification period – asthma fully treated and stabilised - whether applicant has impairment rating of 20 points or more – asthma attracts a rating of zero under Impairment Table 1 – Functions requiring Physical Exertion and Stamina – reviewable decision affirmed

[McKenna and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 3247 (1 August 2019); Brigadier AG Warner, Member and Ms D Fitzgerald, Member

SOCIAL SECURITY – disability support pension – whether applicant's impairments were fully diagnosed, treated and stabilised – whether applicant's impairments attract 20 points under Impairment Tables – continuing inability to work – decision under review affirmed

[McKenzie; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 3271 (4 September 2019); Deputy President P Britten-Jones

SOCIAL SECURITY – Newstart allowance – Debt to Commonwealth due to payment of benefits to which applicant not entitled – Lump sum compensation payment – Compensation preclusion period – Whether debt is waived on the basis of special circumstances – Financial hardship, bankruptcy, ill health and funding for further litigation – Evidence does not support special circumstances – Decision under review set aside

[Rahimzadeh and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3201 (3 September 2019); Dr 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 substantive application has limited prospects of success – extension of time refused

[Snell and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3202 (26 August 2019); Ms M East, Member

SOCIAL SECURITY – Extension of time – s 29 Administrative Appeals Tribunal Act 1975 (Cth) – factors that are relevant when considering an extension of time – length of delay – awareness of appeal rights – prejudice – merits of substantive application – alternative avenues of relief – Tribunal satisfied extension of time reasonable in the circumstances – application of extension of time allowed

Veterans' Affairs

[Kattenberg and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 3251 (4 September 2019); Deputy President RI Hanger AM QC

VETERANS' AFFAIRS – compensation – claim for alcohol use disorder – claim for special rate of pension – whether applicant satisfies the statement of principles concerning alcohol use disorder – whether the applicant by reason of incapacity from a war-caused injury is prevented from continuing to undertake remunerative work – loss of salary or wages – decision relating to alcohol use disorder affirmed – decision relating to special rate of pension set aside and remitted

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 |
|--|----------------------------------|
| Barber and Minister for Home Affairs | [2019] AATA 2945 |
| RWDX and Minister for Immigration and Border Protection | [2019] AATA 123 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|----------------------------------|---|
| AXT19 v Minister for Home Affairs | [2019] AATA 27 | [2019] FCA 1423 |
| Hutchinson v Comcare | [2018] AATA 4357 | [2019] FCA 1440 |
| Khalil v Minister for Home Affairs | [2018] AATA 311 | [2018] FCA 1712 [2019] FCAFC 151 |
| Somba v Minister for Home Affairs | [2018] AATA 1626 | [2018] FCA 1537 [2019] FCAFC 150 |

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

Notification of Investigations relating to existing Statements of Principles

On 29 August 2019, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

The definition of migraine

This investigation will be carried out in the context of the following Statement of Principles Instruments:

Migraine – No. 7 of 2018

<https://www.legislation.gov.au/Details/F2018C00853>

Migraine – No. 8 of 2018

<https://www.legislation.gov.au/Details/F2018L00015>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **23 September 2019**:

Anal fissure (Balance of Probabilities) – No. 88 of 2019

<https://www.legislation.gov.au/Details/F2019L01090>

Anal fissure (Reasonable Hypothesis) – No. 87 of 2019

<https://www.legislation.gov.au/Details/F2019L01089>

Conductive hearing loss (Balance of Probabilities) – No. 82 of 2019

<https://www.legislation.gov.au/Details/F2019L01095>

Conductive hearing loss (Reasonable Hypothesis) – No. 81 of 2019

<https://www.legislation.gov.au/Details/F2019L01093>

Malignant neoplasm of the bladder (Balance of Probabilities) – No. 84 of 2019

<https://www.legislation.gov.au/Details/F2019L01097>

Malignant neoplasm of the bladder (Reasonable Hypothesis) – No. 83 of 2019

<https://www.legislation.gov.au/Details/F2019L01096>

Morton metatarsalgia (Balance of Probabilities) – No. 78 of 2019

<https://www.legislation.gov.au/Details/F2019L01100>

Morton metatarsalgia (Reasonable Hypothesis) – No. 77 of 2019

<https://www.legislation.gov.au/Details/F2019L01098>

Obstructive and reflux nephropathy (Balance of Probabilities) – No. 86 of 2019

<https://www.legislation.gov.au/Details/F2019L01102>

Obstructive and reflux nephropathy (Reasonable Hypothesis) – No. 85 of 2019

<https://www.legislation.gov.au/Details/F2019L01103>

Varicocoele (Balance of Probabilities) – No. 80 of 2019

<https://www.legislation.gov.au/Details/F2019L01099>

Varicocoele (Reasonable Hypothesis) – No. 79 of 2019

<https://www.legislation.gov.au/Details/F2019L01092>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from 23 September 2019:

Hypertension – No. 89 of 2019

<https://www.legislation.gov.au/Details/F2019L01091>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on 23 September 2019:

Anal fissure – No. 74 of 2010

<https://www.legislation.gov.au/Details/F2010L02313>

Anal fissure – No. 73 of 2010

<https://www.legislation.gov.au/Details/F2010L02312>

Conductive hearing loss – No. 8 of 2011

<https://www.legislation.gov.au/Details/F2010L03256>

Conductive hearing loss – No. 7 of 2011

<https://www.legislation.gov.au/Details/F2010L03255>

Malignant neoplasm of the bladder – No 97 of 2011

<https://www.legislation.gov.au/Details/F2017C00770>

Manignant neoplasm of the bladder – No. 96 of 2011

<https://www.legislation.gov.au/Details/F2017C00768>

Morton’s metatarsalgia – No. 93 of 2010

<https://www.legislation.gov.au/Details/F2010L02849>

Morton’s metatarsalgia – No. 92 of 2010

<https://www.legislation.gov.au/Details/F2010L02848>

Obstructive and reflux nephropathy – No. 32 of 2011

<https://www.legislation.gov.au/Details/F2011L00769>

Obstructive and reflux nephropathy – No. 31 of 2011

<https://www.legislation.gov.au/Details/F2011L00767>

Varicocele – No. 4 of 2011

<https://www.legislation.gov.au/Details/F2010L03251>

Varicocele – No. 3 of 2011

<https://www.legislation.gov.au/Details/F2010L03250>



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