



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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The Review

The [AAT Review](#) is AAT's monthly e-newsletter which will allow you to keep up to date with recent news and help you get to know more about the Tribunal. It also includes short, plain English summaries of a range of the Tribunal's recent decisions.

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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

[Alemu and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3352 (9 September 2019); Senior Member Emeritus Professor P A Fairall

CITIZENSHIP – application for citizenship by conferral – refusal – good character requirement – Drink driving offences – stalk/intimidate intend fear of physical/mental harm – recklessly wound another person – common assault – affray – decision affirmed

[Han and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3325 (6 September 2019); Senior Member C Puplick AM

CITIZENSHIP – refusal – exercise of discretion under section 24 of Australian Citizenship Act to refuse approval – applicant under the age of 16 – definition of responsible parents – application of citizenship policy – convention on the rights of a child – consideration of best interests of Applicant – decision affirmed

[Kalakoda and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3408 (11 September 2019); The Hon. John Pascoe AC CVO, Deputy President

CITIZENSHIP – application for citizenship by conferral – where application was refused on the basis of character – where applicant's children are taken to have made applications in their own right – where children's applications refused according to department policy – domestic violence offence – whether applicant is a person of good character – decisions set aside and remitted

[Lee and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3365 (29 August 2019); Senior Member L Kirk

CITIZENSHIP – application for citizenship by conferral – whether Applicant satisfies the special residence requirement under section 22B of the Citizenship Act 2007 (Cth) – whether Applicant engaged in the work of 'a member of the crew of an aircraft' – statutory construction – legislative purpose and context of special resident requirement – decision under review affirmed

Compensation

[Day and Comcare](#) (Compensation) [2019] AATA 3323 (6 September 2019); Dr S Fenwick, Senior Member

COMPENSATION – Adjustment Disorder – whether the ailment is classified as an injury or a disease – ailment is a disease – whether the disease was contributed to, to a significant degree, by the Applicant's employment – significant contribution established – whether reasonable administrative action exclusion applies – condition arose from reasonable administrative action undertaken reasonably – decision affirmed

[Doherty and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 3322 (17 July 2019); Member, K Parker

COMPENSATION – jurisdiction – issue sought to be agitated was not the subject of the decision under review – issue sought to be agitated was the subject of a previous application before the Tribunal – previous application withdrawn by applicant and taken to have been dismissed – not open to Applicant to seek reinstatement of the previous application – present application misconceived – present application dismissed

Migration

[TCBK and Minister for Home Affairs](#) (Migration) [2019] AATA 3427 (13 September 2019); Senior Member K Raif

MIGRATION – mandatory cancellation of visa – failure to pass character test – criminal record – whether the discretion to revoke the cancellation should be exercised – Direction No. 79 – primary considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – where applicant is owed protection obligations – decision affirmed

[Vargas and Minister for Home Affairs](#) (Migration) [2019] AATA 3409 (13 September 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of Class BC Subclass 100 Partner visa – where Applicant does not pass the Character test – sentenced to term of imprisonment for 12 months or more – whether there is another reason to revoke the cancellation decision – application of Direction 79 – consideration and application of Primary and Other Considerations in Part C of Direction 79 – decision set aside and substituted

[XJLR and Minister for Home Affairs](#) (Migration) [2019] AATA 3406 (11 September 2019); Senior Member M Griffin QC

MIGRATION – cancellation of visa on character grounds – applicant not of good character – whether the decision to cancel the visa should be revoked – other reasons for revocation – protection of the Australian community – history of offences – firearm, domestic violence and traffic offences – applicant likely to reoffend – revocation in best interests of minor child – expectations of the Australian community – prima facie expectation affected by circumstances of the case – expectation against the applicant due to criminal history and risk of reoffending – other considerations in applicant's favour – protection of the Australian community paramount – decision affirmed

National Disability Insurance Scheme

[KDYG and National Disability Insurance Agency](#) [2019] AATA 3411 (10 September 2019); Mrs J C Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – whether the Applicant meets the requirements for access to the Scheme – whether the Applicant's impairment(s) are permanent – Applicant's medical history and treatment considered – Applicant's impairment(s) are permanent – whether the Applicant's impairment(s) result in substantially reduced functional capacity to undertake learning, self-care and self-management – Applicant's impairment(s) result in substantially reduced functional capacity to undertake self-care – Applicant likely to require support under NDIS for her lifetime – reviewable decision set aside and substituted

Practice and Procedure

[Chew and Tax Practitioners](#) [2019] AATA 3410 (22 August 2019); Deputy President Bernard J McCabe

PRACTICE AND PROCEDURE – TAX AGENT REGISTRATION – application for a stay of a decision to terminate tax agent registration – merits of the substantive application – prospects of success – no prejudice to the respondent – public interest – whether the review would be rendered nugatory if stay not granted – stay application refused

Social Services

[Mani and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3431 (13 September 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – knee pain – depression – back pain – right arm pain – gastro-oesophageal reflux – whether applicant had an impairment rating of 20 points or more under the Impairment Tables – where knee pain and depression fully diagnosed but not fully treated and stabilised during the claim period – where insufficient medical evidence of functional impairment of back pain, right arm pain and gastro-oesophageal reflux – decision affirmed

[Prothero and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3407 (11 August 2019); Senior Member P E Nolan

SOCIAL SECURITY – DISABILITY SUPPORT PENSION – whether Applicant had conditions that were fully diagnosed, treated and stabilised during the relevant period – whether Applicant had 20 impairment points – Decision under review affirmed

[Quiggin and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3324 (9 September 2019); Senior Member Emeritus Professor P A Fairall

SOCIAL SECURITY – age pension – debt – overpayment of benefits – where age pension was initially granted in error – where age pension is later cancelled – where debt to the Commonwealth is then raised due to the payment of age pension – whether the Applicant met the assets test – decision to cancel age pension affirmed – whether debt can be waived – whether special circumstances exist – whether debt arose solely due to administrative error – decision set aside and substituted

[Thompson and Secretary, Department of Health](#) (Social services) [2019] AATA 3429 (13 September 2019); Dr L Bygrave, Member

AGED CARE – decision to assess rental income from former principal home for aged care means tested fee – whether applicant entered residential care prior to 1 January 2016 – whether “pre-entry leave” and “making arrangements to enter an aged care service” are separate requirements – where “making arrangements to enter an aged care service” is plain language translation of pre-entry leave and not separate requirement – where applicant entered aged care after 1 January 2016 – decision affirmed

Taxation

[Smithson & Baye Pty Ltd and Australian Securities and Investments Commission](#) (Taxation) [2019] AATA 3405 (12 September 2019); Deputy President I Molloy

TAX AND COMMERCIAL – ASIC – Loan agreements – code-regulated loans – cancellation of Australian credit licence – National Consumer Credit Protection Act (NCCPA) – whether a notice or exemption under the NCCPA should be granted – whether conditions or undertakings are appropriate – remittal – decision under review affirmed – notice or exemption under the NCCPA refused – ASIC to consider further application(s) for exemption if lodged.

[Zaghloul and Commissioner of Taxation](#) (Taxation) [2019] AATA 3351 (9 September 2019); Deputy President Boyle

TAXATION AND COMMERCIAL – taxation objection decision – compensation lump sum payment under Workers' Compensation and Injury Management Act 1981 (WA) – prescribed amount – whether the compensation payment is assessable income – compensation payment is assessable income – objection disallowed

Veterans' Affairs

[Adams and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 3326 (6 September 2019); Deputy President J Sosso

VETERANS' AFFAIRS – service pension – post-traumatic stress disorder – service related incapacity – pension payable at the general rate – whether the Applicant is entitled to payment of a service at either the intermediate or special rate – 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

CASE NAME	AAT REFERENCE
Ikupu and Minister for Home Affairs	[2019] AATA 2545

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Wiggins	[2017] AATA 785	[2019] FCA 1465
DGBK v Minister for Home Affairs & Anor	[2019] AATA 243	[2019] FCA 1479



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