



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 38/2019**

**23 September 2019**

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

---

## 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.

[Subscribe](#) to be sent The Review every month.

---

# Contents

<b>AAT Recent Decisions</b> .....	<b>3</b>
Child Support.....	3
Citizenship.....	3
Compensation .....	4
Education and Research.....	5
Freedom of Information.....	6
Migration.....	6
National Disability Insurance Scheme.....	7
Practice and Procedure.....	8
Refugee.....	8
Social Services.....	9
Taxation.....	10
<b>Appeals</b> .....	<b>11</b>
Appeals lodged.....	11
Appeals finalised .....	11

# 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

[Bywaters and Jinks](#) (Child support) [2019] AATA 1691 (2 June 2019); K Millar, Senior Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – whether the financial resources of the liable parent are fairly represented in the administrative assessment – withdrawal from superannuation decision under review set aside and remitted for reconsideration

[Nash and Nash](#) (Child support) [2019] AATA 1735 (22 May 2019); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made - court orders not complied with - reasonable action taken - interim period applied – whether special circumstances exist - decision under review affirmed

[Reagan and Sadowski](#) (Child support) [2019] AATA 2184 (23 May 2019); Y Webb, Member

CHILD SUPPORT – non-agency payment – whether payments made to third parties were in lieu of child support – intention of both parents – decision under review affirmed

[Stenberg and Child Support Registrar](#) (Child support) [2019] AATA 1759 (7 May 2019); R Ellis, Member

CHILD SUPPORT – application for extension of time - satisfactory explanation for the short delay - no merit - extension of time refused

[Wallace and Howell](#) (Child support) [2019] AATA 1734 (21 May 2019); P Jensen, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – whether child has special needs – whether parent's reduction in income was for the purpose of affecting the child support assessment - no ground for departure - application to depart is refused - decision under review affirmed

## Citizenship

[Leong and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3641 (18 September 2019); Senior Member C Puplick AM

CITIZENSHIP - application for citizenship by conferral - refusal of citizenship – whether applicant is likely to reside or continue to reside in Australia - whether applicant maintains a close and continuing association with Australia - application of Citizenship Policy - decision set aside and remitted

[Seo and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3649 (19 September 2019); Senior Member C Puplick AM

CITIZENSHIP – refusal – whether applicant of good character – possess amount of precursor prescribed by regulations – conceal serious indictable offence of another person – consideration of applicant’s character – decision set aside and remitted

[Von Horsten and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3610 (16 August 2019); Senior Member Dr N A Manetta

CITIZENSHIP – special residence requirements – s 22B(1)(a) – s 22B(1)(b) – whether applicant’s employment required regular travel outside Australia – meaning of “required to regularly travel outside Australia because of that work” – where applicant’s contract of employment obliged him to travel regularly outside of Australia – where applicant regularly travelled outside of Australia for part of the four years preceding application for citizenship – decision under review set aside and decision substituted that applicant satisfied ss 22B(1)(a) and 22B(1)(b) – remitted to respondent for consideration of remaining criteria

## **Compensation**

[Kemp and Comcare](#) (Compensation) [2019] AATA 3552 (10 September 2019); Deputy President B W Rayment OAM QC

WORKERS’ COMPENSATION – claim for compensation in respect of ‘bilateral sensorineural hearing loss’ – whether applicant suffers from a permanent impairment – whether applicant entitled to compensation – whether calculation of applicant’s hearing loss exceeds 5% binaural hearing loss threshold criteria – decision under review set aside and remitted

[Kirk and Comcare](#) (Compensation) [2019] AATA 3556 (17 September 2019); Deputy President R I Hanger AM QC

COMPENSATION – whether Comcare is liable to pay compensation for medical treatment under section 16 of the Safety, Rehabilitation and Compensation Act 1988 – general practitioner consultations – pharmaceuticals – decision under review affirmed

COMPENSATION – whether the Applicant suffered an ailment or aggravation thereof which arose out of, or in the course of, employment – whether an ailment or aggravation thereof was contributed to in a material degree by employment – whether an ailment or aggravation was contributed to in a significant degree by employment - widespread disc degeneration – osteoarthritis – decision under review affirmed

[Reece and Comcare](#) (Compensation) [2019] AATA 3499 (16 September 2019); Mr A Maryniak QC, Member

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – whether cushioned thongs constitute “medical treatment” – where cushioned running shoes accepted as compensable – decision under review varied

[Riley and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 3501 (6 September 2019); Deputy President J W Constance

WORKERS COMPENSATION - defence-related claim - whether Applicant entitled to compensation in respect of claimed injury of bladder cancer - whether Applicant's bladder cancer contributed, to a significant degree, by Applicant's military service - employment involving exposure to beryllium through use of jason pistol - whether bladder cancer is a disease caused by beryllium - Respondent did not establish that Applicant's exposure to beryllium did not contribute, to a significant degree, to his contraction of bladder cancer - decision under review set aside and substituted

[XRLC and Comcare](#) (Compensation) [2019] AATA 3553 (10 September 2019); Deputy President B W Rayment OAM QC

WORKERS' COMPENSATION – claim for medical expenses and incapacity payments – persistent depressive disorder – ‘significant degree’ test applied – whether applicant’s employment significantly contributed to his psychological injury – whether applicant continues to be entitled to compensation for the cost of medical treatment obtained in relation to compensable injury – whether applicant continues to be incapacitated from work as a result of the compensable injury – decision under review set aside and remitted

[ZXCF and Comcare](#) (Compensation) [2019] AATA 3572 (17 September 2019); Senior Member Dr M Evans

Compensation – Workers’ Compensation – Commonwealth employee – whether Comcare liable to pay compensation – Post Traumatic Stress Disorder – therapeutic treatment – at the direction of a legally qualified medical practitioner – craniosacral therapy – nutritional supplements – whether the treatment is medical treatment – whether the treatment is obtained in relation to an accepted injury – whether the treatment was reasonable for the Applicant to obtain in the circumstances – Clinical Framework – relevance of Clinical Framework – decision set aside and substituted with a new decision – costs awarded

## **Education and Research**

[Brighton Pacific Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 3645 (19 September 2019); Deputy President I Hanger AM QC

HIGHER EDUCATION - registered training organisation – non-compliance with regulatory standards – PRISMS – student complaints - decision to cancel the applicant’s registration under the National Vocational Education and Training Regulator Act 2011 – decision under review set aside - decision to cancel the applicant’s registration under the Education Services for Overseas Students Act 2000 – decision under review set aside – conditions on registration - decision to refuse the applicant’s application to change its CRICOS registration – decision under review affirmed

[Faisal and Secretary, Department of Education and Training](#) [2019] AATA 3608 (17 September 2019); Senior Member B Pola

HIGHER EDUCATION – FEE-HELP debt – application for re-crediting – whether special circumstances exist – decision under review affirmed

[Khan and Secretary, Department of Education](#) [2019] AATA 3609 (18 September 2019); W Frost, Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting – whether special circumstances apply – whether applicant’s circumstances made their full impact on or after the census date – whether circumstances are beyond the applicant’s control – whether circumstances make it impracticable to complete units of study – no special circumstances – decision affirmed

## Freedom of Information

[Xenophon and Secretary, Department of Defence](#) (Freedom of information) [2019] AATA 3667 (20 September 2019); Deputy President Justice S Kenny

FREEDOM OF INFORMATION – request for access to documents – whether documents or parts of documents exempt under ss 33a(iii) or 33(a)(ii) – whether disclosure would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth or the defence of the Commonwealth – decision under review varied in so far as documents, or parts of documents, have subsequently been disclosed or rendered irrelevant by agreement of the parties and in other respects affirmed in so far as it concerned the exemption under s 33(a)(iii)

## Migration

[1913740](#) (Migration) [2019] AATA 3150 (6 June 2019); S Conwell, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – acceptable arrangements to depart Australia – vague departure plans – passport renewal – inactivity during previous Bridging visas – requirements of the Ministerial intervention subclauses – decision under review affirmed

[Akbar](#) (Migration) [2019] AATA 3401 (8 July 2019); A Mercer, Member

MIGRATION – Skilled Independent (Permanent) (Class SI) visa – Subclass 189 (Skilled Independent) – minimum taxable income requirement – gross income exceeded threshold – salary packaging arrangement – did not fall within any of the exemption categories – decision under review affirmed

[Juru](#) (Migration) [2019] AATA 3545 (21 June 2019); S Lee, Member

MIGRATION – Employer Nomination (Permanent) – Subclass 186 Employer Nomination Scheme – false or misleading information – criminal convictions – grounds for refusal not made – decision under review remitted

[NLJV and Minister for Home Affairs](#) (Migration) [2019] AATA 3646 (18 September 2019); T Eteuati, Member

MIGRATION – mandatory cancellation of Applicant’s visa under s 501(3A) – Applicant failed to pass the character test - whether there is another reason why cancellation decision should be revoked - application of Direction No. 79 – consideration of Australia’s international non-refoulement obligations – decision affirmed

[PAUDEL](#) (Migration) [2019] AATA 3301 (23 July 2019); K Raif, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Post-Study Work stream – Australian study requirement – study duration – Master of Business Administration (MBA) – Master of Professional Accounting (MPA) – two distinct qualifications – each being of 78 weeks duration – completed concurrently – completed the same subjects to obtain the two qualifications – registered separately on CRICOS – recognition of prior learning – decision under review remitted

[Seymour](#) (Migration) [2019] AATA 3254 (15 March 2019); L Mojsin, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – near relative offshore – applicant’s father in United Kingdom – no contact with biological father – common law presumption of death – benefit of the doubt – no contact with father for over 7 years – nothing in documents that would allow father to be traced – decision under review remitted

[Stowers and Minister for Home Affairs](#) (Migration) [2019] AATA 3640 (19 September 2019); Senior Member M Griffin QC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category visa – serious criminal offending – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – whether risk of applicant engaging in criminal conduct in Australia – protection of the Australian community from criminal or other serious conduct – the best interests of minor children – expectations of the Australian community – other considerations – Ministerial Direction No. 79 applied – decision set aside and substituted

## **National Disability Insurance Scheme**

[BGBZ and National Disability Insurance Agency](#) [2019] AATA 3505 (13 September 2019); Senior Member F Meagher

NATIONAL DISABILITY INSURANCE SCHEME – where participant in scheme is a child – where more than one person has parental responsibility under section 75(1) – whether determination should be made that one person have parental responsibility under section 75(3) for the purposes of the National Disability Insurance Scheme Act 2013 – decision under review set aside and substituted

[Hiney and National Disability Insurance Agency](#) [2019] AATA 3643 (10 September 2019); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – Review of statement of participant supports – reasonable and necessary supports – applicant sought review of statement of participant supports to allow for access to preferred prosthetist – no alteration to existing funding supports necessary following alternative transition funding by another agency – plan review date – statement of participant supports varied to change plan’s review date – decision under review varied

## Practice and Procedure

[Gao and Tax Practitioners Board](#) [2019] AATA 3651 (19 September 2019); D K 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

[1610845](#) (Refugee) [2019] AATA 3418 (4 June 2019); T Flood, Member

REFUGEE – protection visa – Pakistan – political opinion – Pakistan People’s Party – office bearer of the youth wing – pro-children’s education and/or women’s rights – adverse attention from Taliban and/or PLMN – family members harassed – applicant did not appear before the Tribunal – veracity of claims cannot be tested – decision under review affirmed

[1616989](#) (Refugee) [2019] AATA 3416 (4 June 2019); N Goetz, Member

REFUGEE – protection visa – Bangladesh – particular social group – wealthy Bangladeshi – allegedly kidnapped and harmed in demand for ransom – returnees from Australia – perception of wealth – assimilation into Australian society – credibility issues – vague and contradictory claims – delay in applying for protection visa – omission of key claim in original application – lax approach to the truth – decision under review affirmed

[1806127](#) (Refugee) [2019] AATA 3415 (7 June 2019); N Burns, Member

REFUGEE – cancellation – protection visa – Iran – Ethnicity – Kurdish Faili – gender discrimination – does not accept that discrimination rises to level of serious harm – Iran progressive in relation to women’s rights – returnee/failed asylum seeker – perceived as westernised – does not accept applicant would come to adverse attention of authorities – claim of Stateless – inconsistent and incorrect information – bogus documents – non-compliance – applicant’s failure to provide documentation to support claimed identity – advised to destroy identity documents – best interest of children – decision under review set aside

[1609186](#) (Refugee) [2019] AATA 3333 (29 July 2019); B Darcy, Member

REFUGEE – protection visa – Sri Lanka – political opinion – supporter of the UNP – assaulted by some opposition supporters – fears harm from the UPFA members – no credible evidence – credibility concerns about not applying for asylum – returned to Sri Lanka – remained there for considerable time without being harmed – did not have any genuine or urgent held fears of persecution – claims about political opinion lack reliability and credibility – decision under review affirmed

[1612681](#) (Refugee) [2019] AATA 3278 (30 July 2019); L Hardy, Member

REFUGEE – protection visa – Burkina Faso – imputed political opinion – Congress for Democracy and Progress – witchcraft – feared harm from sorcerer uncle – inconsistent evidence – credibility issues – no real chance of harm – decision under review affirmed



## Social Services

[Campara and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3571 (17 September 2019); Senior Member Mrs J C Kelly

SOCIAL SECURITY – disability support pension – qualification criteria – residency requirements – Applicant resided in Italy during qualification period – Applicant deemed as Australian resident under Italian Agreement – whether Applicant has physical, intellectual or psychiatric impairment – Applicant suffers from myocardial infarction and hypertension, fibromyalgia and obstructive sleep apnoea – whether impairments attract a rating of at least 20 points under the Impairment Tables – myocardial infarction and hypertension fully diagnosed, treated and stabilised – applicant able to walk around a shopping centre or supermarket without assistance, walk from carpark into a shopping centre or supermarket without assistance, use public transport without assistance and perform light day to day household activities – myocardial infarction and hypertension attracts a rating of 10 points under Table 1 – fibromyalgia diagnosed but not fully treated and stabilised – applicant has not undertaken reasonable treatment for fibromyalgia – no rating can be assigned for fibromyalgia – sleep apnoea diagnosed, not fully treated and stabilised – applicant has not taken reasonable treatment for sleep apnoea – no rating can be assigned for sleep apnoea - Applicant is not severely disabled as defined by s 23(4B) of the Social Security Act 1991 – reviewable decision affirmed

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3607 (17 September 2019); Senior Member R Pintos-Lopez

SOCIAL SECURITY – disability support pension – application of Social Security (International Agreements) Act 1999 - decision under review affirmed

[Meltser and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3554 (17 September 2019); Senior Member Emeritus Professor P A Fairall

SOCIAL SECURITY – youth allowance – whether it was correct to pay the applicant youth allowance – whether the applicant was entitled to newstart allowance – where the applicant satisfied the general qualification requirement for youth allowance – where applicant not eligible for receipt of newstart allowance – date of effect of favourable – whether applicant received notification of the original decision – decision affirmed

[Oule and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3504 (30 May 2019); D Mitchell, Member

SOCIAL SECURITY – Parenting Payment – Family Tax Benefit – overpayment – where data match of income occurred – where no administrative error – where no special circumstances – decision under review affirmed

[Schultz and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3502 (16 September 2019); Senior Member P J Clauson AM

SOCIAL SECURITY – Disability Support Pension – whether Applicant had conditions that were fully diagnosed, fully treated and fully stabilised during Relevant Period – whether Applicant had 20 impairment points under the Impairment Tables – mental health condition– decision under review is affirmed

[Stain and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3503 (13 September 2019); Ms A Burke AO, Member

SOCIAL SECURITY – application for indefinite portability for disability support pension – whether qualified – peripheral vascular disease, post-traumatic stress disorder, diabetes, spinal disorder and coronary artery disease – whether impairment severe – attracts rating of 20 points or more under Impairment Tables – continuing inability to work – decision under review affirmed

[YLGJ and Secretary, Department of Health Services](#) (Social services) [2019] AATA 3272 (22 August 2019); Senior Member Emeritus Professor P A Fairall

AGED CARE ACT – where applicant eligible for financial hardship supplement – quantum of financial hardship supplement – where applicant has two thirds share in property – where property is unrealisable assets – where significant expenditure on upkeep of the property by the applicant – what expenses are to be taken into account in considering quantum of hardship supplement – where quantum improperly restricted to considering “essential expenses” – where no justification for excluding certain expenditure items in determining the amount of the supplement – decision set aside and remitted

## **Taxation**

[Greig and Commissioner of Taxation](#) (Taxation) [2019] AATA 3639 (16 August 2019); Senior Member Dr N A Manetta

TAXATION – whether applicant can establish that assessment is excessive or otherwise incorrect – assessment the subject of the review reduced following objection decision – where applicant’s claimed deductions did not reduce taxable income below the amended assessment – application dismissed as having become misconceived or lacking in substance

# 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
<b>Hewawasam Revulge and Secretary, Department of Social Services</b>	<a href="#">[2019] AATA 2943</a>

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Fualau v Minister for Home Affairs</b>	<a href="#">[2018] AATA 3373</a>	<a href="#">[2019] FCA 1545</a>
<b>PQSM v Minister for Home Affairs</b>	<a href="#">[2019] AATA 603</a>	<a href="#">[2019] FCA 1540</a>

---



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).