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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

[YWH and Minister for Home Affairs](#) (Citizenship) [2019] AATA 3906 (25 September 2019); Senior Member C Puplick AM

CITIZENSHIP – refusal – whether applicant of good character – use carriage service to menace/harass/offend – film person's private parts without consent – attempt to stalk/intimidate intend fear of harm (domestic) – drive on road etc while licence suspended – traffic offences – consideration of applicant's character – decision set aside and remitted

Compensation

[Dunston and Comcare](#) (Compensation) [2019] AATA 3772 (17 September 2019); Mr R West, Member

COMPENSATION – aggravated/exacerbation of Myalgic Encephalomyelitis/Chronic Fatigue Syndrome – entitlement to compensation under ss. 16 and 21 of SRC Act – no present liability – permanent impairment – application of the Guide to the Assessment of the Degree of Permanent Impairment – Edition 2.1 and American Medical Association Guides to the Evaluation of Permanent Impairment 5th Edition 2001 – absence of medical evidence to assess degree of impairment

Migration

[BBFD and Minister for Home Affairs](#) (Migration) [2019] AATA 3907 (18 September 2019); Deputy President BW Rayment OAM QC

MIGRATION – refusal of Protection (Class XA) visa – failure to pass the character test – whether discretion to set aside the delegate's decision should be exercised – whether there is any risk of the applicant engaging in future criminal conduct – whether the applicant poses a risk of harm to the Australian community – Direction No. 79 – primary considerations – protection of the Australian community – the best interests of minor children in Australia affected by the decision – expectations of the Australian community – other considerations – where applicant is owed non-refoulement obligations – decision under review set aside

[Dalley and Minister for Home Affairs](#) (Migration) [2019] AATA 3738 (20 September 2019); Senior Member T Tavoularis

MIGRATION – non-revocation of mandatory cancellation of visa – expedited matter – Special Category Class TY Subclass 444 visa – where visa was cancelled under s 501(3A) because Applicant had a substantial criminal record and was serving a full-time term of imprisonment – whether discretion in s 501CA to revoke mandatory cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – risk of harm to Australian community – best interests of minor children – expectations of Australian community – decision under review affirmed

[DFNM and Minister for Home Affairs](#) (Migration) [2019] AATA 3769 (24 September 2019); Deputy President SA Forgie

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – decision set aside

[GWFM and Minister for Home Affairs](#) (Migration) [2019] AATA 3757 (24 September 2019); Senior Member B J Illingworth

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 set aside and substituted

[Kabue and Minister for Home Affairs](#) (Migration) [2019] AATA 3753 (23 September 2019); Dr M Evans, Senior Member

MIGRATION – application for reinstatement of withdrawal application – Applicant subsequently regretted withdrawing application – whether application dismissed in error – withdrawn application of a decision of a delegate of Minister not to revoke mandatory cancellation of Applicant's visa – Applicant's visa cancelled on character grounds under s 501(3A) of the Migration Act 1958 (Cth) – application for reinstatement refused

[Kennedy and Minister for Home Affairs](#) (Migration) [2019] AATA 3770 (24 September 2019); Senior Member The Hon. M Groom

MIGRATION – mandatory cancellation – Direction 79 – New Zealand Citizen – violent offending – armed robbery – robbery – dangerous driving while pursued by police – using threatening words in a public place – decision affirmed

[QBBP and Minister for Home Affairs](#) (Migration) [2019] AATA 3905 (26 September 2019); Senior Member DJ Morris

MIGRATION – mandatory cancellation of visa under s 501(3A) of Migration Act – Class TY Special Category (Subclass 444) Temporary visa – failure to pass the character test – whether there is another reason why the cancellation decision should be revoked – Ministerial Direction No. 79 applied – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – time in Australia before offending commenced – other considerations – reviewable decision affirmed

Professions and Trades

[Jessica Education Centre Pty Ltd and Secretary, Department of Education and Training](#) [2019] AATA 3739 (23 September 2019); Deputy President The Hon. John Pascoe AC CVO

CHILDCARE – education and care services – family assistance law – child care benefit – continued approval of a childcare service – breach of conditions of provider approval – whether sanction should be applied – what sanction is appropriate – decision affirmed

Social Services

[Dilger and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3902 (26 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

[Franklin and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3904 (26 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

[Hoefl and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3758 (24 September 2019); Mr P Ranson, Member

SOCIAL SECURITY – age pension – personal assets – trusts – family company – assets test – asset threshold - designated private company – designated private trusts – attribution of assets – net assets – capital contribution – whether a 50% attribution applies – whether an alternative amount of attribution applies – asset upper limit threshold – whether applicant is entitled to age pension based on assets – decision under review set aside and remitted

[Mani and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA (20 September 2019); Mr 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 – osteoarthritis – fatigue – diabetes – applicant unable to satisfy the qualification criteria under s 94 of Social Security Act 1991 – decision under review affirmed

[Pavkovic and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 3737 (23 September 2019); The Hon. Matthew Groom, Senior Member

SOCIAL SECURITY – disability support pension – where undisclosed deposits made to applicant – whether deposits constitute income – whether overpayment of disability support pension made and debt to Commonwealth arises – whether any or all of debt can be waived or written-off – decision under review remitted

Taxation

[Burns and Commissioner of Taxation](#) (Taxation) [2019] AATA 3860 (24 September 2019); Dr M Evans, Senior Member

TAXATION – application for release from taxation liability – eligible and non-eligible taxation liabilities – Taxation Administration Act 1953 (Cth) – s 340-5 of Schedule 1 – whether taxpayer would suffer serious hardship if he were required to satisfy his taxation liabilities – meaning of phrase “serious hardship” – income/outgoing test – meaning of “reasonable timeframe” in income/outgoing test – assets/liabilities test – other relevant factors in deciding whether to exercise discretion to grant release from taxation liabilities – no serious financial hardship found – poor compliance history – impact of personal circumstances on poor compliance history – reviewable decision affirmed

[Vernik and Commissioner of Taxation](#) (Taxation) [2019] AATA 3754 (9 August 2019); Deputy President Britten-Jones

TAXATION — Superannuation – Retirement phase superannuation income streams – Capped defined benefit income streams – Excess transfer balance – Excess transfer balance tax liability – Whether notice of assessment is excessive or otherwise incorrect – Whether Commissioner has any discretion to adjust the amount of the excess transfer balance tax liability assessed – Income Tax Assessment Act 1997 (Cth), Div 294

Veterans' Affairs

[Trappett and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 3736 (20 September 2019); Deputy President J Sosso

VETERANS AFFAIRS – Veterans' Entitlements – service pension – left shoulder osteoarthritis – rugby league football injury – date of clinical onset – failure to seek medical intervention – no evidence presented to explain failure to obtain medical assistance – decision under review affirmed – subarachnoid haemorrhage – alcohol consumption – operational service – Vietnam – Deledio methodology – decision under review set aside – remitted to Repatriation Commission to assess pension entitlements

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
Hojbota and Secretary, Department of Social Services	[2019] AATA 3206
KLQF and Minister for Home Affairs	[2019] AATA 933
Lum and Minister for Home Affairs	[2019] AATA 935
QTWG and Commissioner of Taxation	[2019] AATA 2428
Wonson and Comcare	[2019] AATA 2779
ZKYX and Minister for Home Affairs	[2019] AATA 1414

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Sutcliffe v Secretary, Department of Social Services	[2018] AATA 382	[2019] FCA 1534



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