



AAT Bulletin

Issue No. 4/2020

3 February 2020

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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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

[Connolly and Judd](#) (Child support) [2019] AATA 5027 (21 October 2019); Y Webb, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – a ground established with regard to the income of liable parent – decision to depart – decision under review set aside and substituted

[Janssen and Toole](#) (Child support) [2019] AATA 5103 (23 October 2019); A Schiwy, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care for the carer parent – no change to the likely pattern of care – decision under review affirmed

CHILD SUPPORT – date of effect of objection decision – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review set aside and substituted

[Duffus and Child Support Registrar](#) (Child support) [2019] AATA 5022 (23 October 2019); J D'Arcy, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay – little merit – weighing all factors the extension of time was correctly refused – decision under review affirmed

[Bissett and Romney](#) (Child support) [2019] AATA 5016 (28 October 2019); Y Webb, Member

CHILD SUPPORT – particulars of the administrative assessment – review of an estimate of income – whether there is an income amount order – the Registrar not prevented from reviewing the estimate – income not accurately determined – decision under review set aside and sent back with direction for reconsideration

[Fryer and Fryer](#) (Child support) [2019] AATA 5019 (31 October 2019); M Kennedy, Member

CHILD SUPPORT – non-agency payment – whether payments made to the payee were in lieu of child support – intention of both parents – mutual intention not established – payments not to be credited – decision under review affirmed

Citizenship

[Al Salim and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2020] AATA 65 (28 January 2020); Senior Member L Kirk

CITIZENSHIP – Australian citizenship by conferral – application refused – whether Applicant likely to reside in Australia or continue to reside in Australia – multiple absences from Australia not inconsistent with intention to continue to reside in Australia – decision under review set aside

Compensation

[Aslimoska and Comcare](#) (Compensation) [2020] AATA 91 (30 January 2020); W Frost, Member

WORKERS' COMPENSATION – hip condition – posterior labrum tear – cartilage injury to right hip – osteoarthritis – whether the Applicant suffers an injury as defined in section 5A of the Safety, Rehabilitation and Compensation Act – whether the Applicant suffers a disease as defined in section 5B of the Safety, Rehabilitation and Compensation Act – whether the ailment or aggravation of an ailment was contributed to, to a significant degree, by the Applicant's employment - whether the Respondent is liable to pay compensation under section 14 of the Safety, Rehabilitation and Compensation Act – decision under review affirmed

[Yates and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 78 (29 January 2020); Senior Member Katter

MILITARY COMPENSATION – when conditions manifested – lumbar spondylosis – osteoarthritis - applicable test for causation – decision under review affirmed

Education and Research

[Barque Institute Pty Ltd and Tertiary Education Quality and Standards Agency](#) [2020] AATA 70 (24 January 2020); Deputy President B J McCabe

TERTIARY EDUCATION REGISTRATION – whether the applicant can be registered as a higher education provider – deemed decision of the Agency – does the applicant satisfy the requirements for registration – compliance with the Threshold Standards – financial viability and sustainability – corporate and academic governance – can undertakings and conditions cure the issues – applicant does not satisfy the Threshold Standards – decision affirmed

[PRO Group Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 100 (31 January 2020); Mr A Maryniak QC, Member

VOCATIONAL EDUCATION AND TRAINING – rejection of application for registration as provider of courses to overseas students – where application now compliant with legislative regime, standards and national code – whether compliance on the papers demonstrates capacity to provide education of a satisfactory standard after numerous attempts at such compliance – risk management approach to considering registration – decision under review affirmed

Migration

[Dalenga Todorova and Minister for Home Affairs](#) (Migration) [2019] AATA 6009 (16 December 2019); The Hon. M Groom, Senior Member

MIGRATION – visa refusal – serious criminal offending – failure to pass the character test – Ministerial Direction 79 – primary considerations – other considerations – decision set aside

[GWSC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 87 (30 January 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Thailand – Class BS Subclass 801 (Spouse) visa – failure to pass good character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[Hadfield and Minister for Home Affairs](#) (Migration) [2020] AATA 94 (29 January 2020); Dr M Evans, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of 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 New Zealand when Applicant has voluntarily returned – reviewable decision affirmed

[Palmer and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 88 (30 January 2020); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – substantial criminal record – another reason why the cancellation decision should be revoked – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – extremely low risk of reoffending – not unacceptable risk – grievous bodily harm by non-violent acts – other consideration – strength, nature and duration of ties – extent of impediments if removed – decision set aside and substituted

[WLZW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 93 (31 January 2020); Senior Member C Puplick AM

MIGRATION – mandatory cancellation of Refugee (Class XB) (subclass 200) visa – failure to pass character test – substantial criminal record – whether there is another reason for the mandatory cancellation to be revoked – Ministerial Direction No. 79 – weighing of primary and other considerations – decision affirmed

[Resch](#) (Migration) [2019] AATA 5478 (2 December 2019); M Brophy, Member

MIGRATION – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – specified work – plant and animal cultivation – applicant's job tasks compared to ANZSIC classification – purposive approach – decision under review remitted

[Thompson](#) (Migration) [2019] AATA 5462 (4 December 2019); N Findson, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – licence, registration or membership of particular professional body – licence not held at time of application, but applicant eligible – licencing process took longer than anticipated – licence subsequently issued – decision under review remitted

[Zhou](#) (Migration) [2019] AATA 5498 (5 December 2019); M Brophy, Member

MIGRATION – Medical Treatment (Class UB) visa – Subclass 602 (Medical Treatment) – genuine intention to stay temporarily for purpose of visa – psychological counselling for adjustment disorder – not currently receiving treatment or taking medication – no evidence of need for ongoing treatment – previous applications by applicant, partner and children, including for protection visa and ministerial intervention – applicant not unfit to depart Australia – request for referral for ministerial intervention – minister’s guidelines for exercise of public interest powers – strong compassionate circumstances – separation from children, including Australian citizen and protection visa holder – no referral for intervention – decision under review affirmed

[Abbasi](#) (Migration) [2019] AATA 5660 (17 December 2019); M McAdam, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Sponsored Family stream – genuine intention to stay temporarily for purpose of visa – visiting family, including newborn baby – previous refugee visa refused – incentives to stay or return – no other family in Australia – elderly parents, siblings and extended family in relatively safe region of Afghanistan – primary visa applicant’s stable employment in the United Arab Emirates, savings in Afghanistan and the UAE, and travel to other countries – review applicant and husband’s accommodation and support of visa applicants – offer of security bond – plans to sponsor other family members in future – decision under review remitted

[Amalia](#) (Migration) [2019] AATA 5665 (18 December 2019); M McAdam, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Tourist stream – genuine intention to stay temporarily for purpose of visa – visiting sister and friends, and holiday – previous travel to Australia on four occasions – subsequent visa refused because employer/travel companion breached visa conditions – notice of refusal sent to old address, so no opportunity to respond at the time – no other family in Australia – husband, elderly mother, other family and stable employment in Indonesia – mother and other family’s previous travel to Australia, with compliance to visa conditions – review applicant and husband’s accommodation and support of visa applicant – review applicant wishes to sponsor other family in the future – decision under review remitted

Practice and Procedure

[AxiCorp Financial Services Pty Ltd and Australian Securities and Investments Commission](#)

[2020] AATA 92 (20 January 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – where review would otherwise be rendered nugatory – impact on business – impact on clients – whether suspension was the correct disciplinary action – stay granted

CONFIDENTIALITY APPLICATION – importance of hearings to be held in public – consideration where a stay has been granted – whether clients have right to know about regulatory action – confidentiality refused

[Cassidy and Australian Securities and Investments Commission](#) [2020] AATA 66 (23 January 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of decision to ban applicant from providing financial services – publication of decision to ban by media release – where applicant is no longer acting as a financial advisor – where applicant in process of selling his business – whether stay necessary to secure the effectiveness of the hearing – where financial penalty and reputational damage – prospects of success – public interest – public's right to know – stay refused

[Karam and Comcare](#) (Compensation) [2020] AATA 64 (24 January 2020); Emeritus Professor P A Fairall, Senior Member

EXTENSION OF TIME – applicant seeking an extension of time to make an application to review a decision – whether application for extension of time is reasonable in all the circumstances – prejudice to the respondent and general public – whether the applicant rested on his rights – merits of the substantial application – extension of time refused

[Kjoller and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 77 (29 January 2020); Senior Member D O'Donovan

SOCIAL SECURITY - Dismissal for failure to comply with a direction – direction to file evidence – failure to comply – failure to proceed with application considered – failure to proceed with application not made out – failure to appear at a directions hearing or an alternative dispute resolution process considered – failure to appear not made out – application dismissed for failure to comply with direction

[Transcon Holding Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2020] AATA 90 (23 January 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decision of Aged Care Quality and Safety Commissioner – decision to revoke approved aged care provider status – prospects of success – consequences for Applicant – public interest – consequences for Respondent – whether review would be rendered nugatory – interests of third parties – stay application refused

Refugee

[1610877](#) (Refugee) [2019] AATA 5901 (21 May 2019); F Meagher, Senior Member

REFUGEE – protection visa – Solomon Islands – victim of domestic physical and sexual abuse – arranged marriage under customary law – bride price – credibility issues – inconsistent evidence – previous travel to Australia without seeking protection – decision under review affirmed

[1831526](#) (Refugee) [2019] AATA 5963 (26 June 2019); M Sripathy, Member

REFUGEE – cancellation – protection visa – stateless – ground for cancellation – provided incorrect answers in visa application – claimed citizenship status – Kuwaiti born Bidoon – Iraqi citizenship – Iraqi Civil Status Card (ICSC) – issuance of Iraqi passports to applicant's children – claimed religion – Sunni – Shia – claimed adverse profile – returned to Iraq on five occasions – compelling family reasons – consideration of discretion – provided ICSC to the Department at the earliest point in time – grant of visa based on applicant's employment rather than claim statelessness – decision if the correct information was known – length of time since the non-compliance – positive actions and integration in the community – decision under review set aside

[1701800](#) (Refugee) [2019] AATA 5751 (16 December 2019); H Sanderson, Member

REFUGEE – protection visa – Nepal – particular social group – perceived family relationship to former royal family because of surname – harassment by people from different political parties, especially Maoists – house burned, husband assaulted, parents in hiding – no personal harm – credibility – inconsistent evidence – genuineness of supporting documents – father’s continued employment, parents’ travel, applicant’s and sibling’s travel to Nepal and applicant’s plans to travel in future – delay in applying for protection – claims of persecution raised only after temporary visa application process expired – decision under review affirmed

[1614060](#) (Refugee) [2019] AATA 5747 (20 December 2019); C Cody, Member

REFUGEE – protection visa – India – religion – first applicant’s father converted several times between Hinduism and Christianity – applicants Christian – threats and attacks on father and first applicant by Hindu religious/political groups – father’s death in one attack – credibility – inconsistent evidence – first applicant’s return to India after working in another country – second applicant’s return after travel to another country and application for protection – no harm to second applicant or children – status of Christians in India – application under review affirmed

[1617127](#) (Refugee) [2019] AATA 5748 (23 December 2019); L Hardy, Member

REFUGEE – protection visa – Pakistan – non-Convention claim – threat of individual criminal revenge – Tehrik-e-Nifaz Fiqah-e-Jafria (TNFJ) – Tehrik-e-Jafaria Pakistan (TJP) – claimed witness to Ashura Day incident in 2013 – Jamia Taleemul Quran mosque and madrassa – credibility concerns – inconsistent evidence – decision under review affirmed

Social Services

[Shand and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 76 (29 January 2020); 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

Trade and Commerce

[Basecape Pty Ltd and Australian Trade and Investment Commission](#) [2020] AATA 68 (23 January 2020); Mrs J C Kelly, Senior Member

TRADE AND COMMERCE – industry assistance – export market development grants – whether the EMDG application is for an eligible product – whether the product is an eligible know-how – whether the product resulted to a substantial extent from research or work done in Australia – Applicant conceptualised product and undertook research and work in Australia – coding of the product undertaken overseas - the Applicant’s concept is the substance of the product – product satisfies s 27 of the EMDG Act – reviewable decision set aside and remitted for reconsideration in accordance with Tribunal’s finding

Veterans' Affairs

[Howard and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 67 (28 January 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – claim for war widow's pension – veteran deceased – death from chronic obstructive pulmonary disease and ischaemic heart disease – Deledio principles – hypothesis connecting the death of the veteran with his operational service – whether hypotheses raised reasonable – Statement of Principles do not uphold hypotheses that the veteran's death is related to service – decision under review affirmed

[Neil and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 89 (30 January 2020); K Parker, Member

VETERANS' ENTITLEMENTS – application for loss of earnings allowance – application lodged out of time – applicant allegedly misinformed and not aware of time limit – further complexity arising due to initial non-acceptance of the claimed injury followed by acceptance two years subsequently – no discretion to extend time under statute – 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

None lodged

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

None finalised



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