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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.

Child Support

[Bromfield and Child Support Registrar](#) (Child support) [2019] AATA 3856 (25 June 2019); K Dordevic, Member

CHILD SUPPORT – refusal to grant an extension of time to object – satisfactory explanation for the delay – arguable merit – weighing all factors the extension of time should be granted – decision under review set aside and substituted

[Dang and Dang](#) (Child support) [2019] AATA 3857 (17 July 2019); S Cullimore, 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 – decision under review affirmed

[Kennedy and Child Support Registrar](#) (Child Support) [2019] AATA 3858 (11 July 2019); Senior Member R Ellis

CHILD SUPPORT – percentage of care – whether a care arrangement applied – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review affirmed

[Lagana and Perez](#) (Child support) [2019] AATA 3851 (8 August 2019); J Longo, Member

CHILD SUPPORT – percentage of care – there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review affirmed

[Sterling and Sterling](#) (Child support) [2019] AATA 3859 (1 July 2019); P Jensen, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – costs of special needs significantly affect the cost of maintaining the child – ground for departure established – decision under review set aside and substituted

Citizenship

[Mohebi and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4098 (8 October 2019); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – citizenship test exemption – whether applicant suffers from a permanent or enduring mental incapacity at the time of application – medical evidence considered – consideration for children under the age of 16 applying in their own right - best interest of the child – decision 2018/4149 under review affirmed and decisions 2018/4148, 4152, 4155 remitted secondary consideration

[WWVK and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4090 (4 October 2019); Mr S Evans, Member

CITIZENSHIP – eligibility – whether applicant meets general residence requirements in s 22(1) of the Australian Citizenship Act 2007 (Cth) – whether discretion in s 22(9) of the Australian Citizenship Act 2007 (Cth) should be exercised – applicant's home during relevant period was Australia - Australia is the single country the applicant spends the most time in - applicant has long association with Australia - applicant has established home in Australia - applicant's intention is to live in Australia – discretion should be exercised in applicant's favour - reviewable decision set aside and matter remitted with direction

Compensation

[Rus and Comcare](#) (Compensation) [2019] AATA 4089 (2 October 2019); Deputy President S A Forgie

COMPENSATION – whether an 'employee' as defined in the Safety, Rehabilitation and Compensation Act 1988 – whether engaged under an enactment – where engaged as a labourer under a contract of service – decision set aside and substituted

Defence

[Redenbach and Commonwealth Superannuation Corporation](#) [2019] AATA 4147 (4 October 2019); Senior Member T Tavoularis

DEFENCE – Defence force retirement and death benefits – classification in respect of incapacity – percentage of incapacity – where Applicant classified as Class C – assessment as to the degree of physical or mental impairment causing invalidity in diminishing the capacity of the Applicant to undertake kinds of civil employment – whether Applicant should have been assessed as having a higher percentage of incapacity – assessment of degree of impairment and percentage of incapacity at time of discharge – decision under review affirmed

Migration

[GYTW and Minister for Home Affairs](#) (Migration) [2019] AATA 4149 (9 October 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Iraq – Class XA Subclass 866 Protection visa – failure to pass good character test – multiple convictions between 2011 and 2016 – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[NGUYEN](#) (Migration) [2019] AATA 3776 (21 June 2019); K Millar, Senior Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – minimum net value requirement – ‘main business’ – ownership interest – interposed trusts – ‘qualifying business’ – offer goods or services ‘to the public’ – supply of medical equipment to one company – number of qualifying businesses – decision under review remitted

[Singh](#) (Migration) [2019] AATA 3989 (13 June 2019); S Lee, Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visas – Subclass 457 (Temporary Work (Skilled)) – applicant ceased employment with the sponsor over 90 days – no new sponsor within the prescribed time period – sponsoring business ceased operating – closure of the 457 program – nomination not approved for new employer – decision under review affirmed

[Sunastra](#) (Migration) [2019] AATA 3991 (23 August 2019); M Urquhart, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine de facto relationship – relationship ceased – sponsorship withdrawn – child of the relationship – birth certificate – results of DNA testing – shared rights and obligations towards the child – decision under review remitted

[Tangsamut](#) (Migration) [2019] AATA 4026 (6 September 2019); J Cripps Watts, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – Cook – nomination not ceased – review application made within 12 months – skills assessment – changes to Subclass 457 visa program – decision under review remitted

[Wangmo](#) (Migration) [2019] AATA 3898 (2 September 2019); N Findson, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 – Post-Study Work stream – Australian study requirement met in required timeframe – holds specified qualification – Bachelor of Engineering – qualification awarded by university specified in instrument – registered course – student visa holder – instruction conducted in English – course duration 2 academic years – completed in 16 months – decision under review remitted

Practice and Procedure

[Hana Group Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 4146 (13 June 2019); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decision of Australian Skills Quality Authority – decision to cancel registration – prospects of success – consequences for Applicant – public interest – consequences for ASQA – whether review would be rendered nugatory – interests of students – stay application refused

[O'Brian and Secretary, Attorney-General's Department](#) [2019] AATA 4189 (11 October 2019); Deputy President Britten-Jones

PRACTICE AND PROCEDURE – Application to dismiss for lack of jurisdiction – Where internal review decision made under s 37 of the Fair Entitlements Guarantee Act 2012 (Cth) – Where no internal review decision made under s 39 of the Fair Entitlements Guarantee Act 2012 (Cth) – Tribunal has no jurisdiction – Application for review dismissed

S & T Income Tax Aid Specialists Pty Ltd trading as Alpha Tax Aid and Tax Practitioners Board (Taxation) [2019] AATA 4099 (9 October 2019); Senior Member A Poljak

PRACTICE AND PROCEDURE – application to stay decision – substantive proceedings concern termination of tax agent registration – factors relevant to the granting of a stay – prospects of success – consequences if stay not granted – public interest – utility of review – stay application granted with conditions

The Applicant 0108 of 2014 and Secretary, Department of Social Services (Social services second review) [2019] AATA 4091 (28 August 2019); Deputy President Boyle

SOCIAL SECURITY – Disability Support Pension – portability of payments – breach of direction – failure within reasonable time to proceed with application – application for review of decision is dismissed – application for indefinite stay of proceedings dismissed

Wilkowski and Minister for Home Affairs (Migration) [2019] AATA 4097 (2 October 2019); S Burford, Member

PRACTICE AND PROCEDURE – cancellation of Applicant's visa under s 501(2) of the Migration Act 1958 – whether application for review out of time – whether the Applicant was effectively notified of the cancellation decision in accordance with regulation 2.55 of the Migration Regulations 1994 – application dismissed

Refugee

1613917 (Refugee) [2019] AATA 3743 (7 February 2019); L Symons, Member

REFUGEE – protection visa – Bangladesh – political opinion – Bangladesh National Party (BNP) – Jatiotabadi Chatradal – student politics – political violence – fear of killing – involvement with BNP in Australia – living in hiding – return visit to Bangladesh – credibility issues – inconsistent evidence – bogus documents – decision under review affirmed

1603879 (Refugee) [2019] AATA 3863 (20 February 2019); J Lindsay, Member

REFUGEE – protection visa – Cambodia – came to Australia to care for sick mother – holds fears for Australian husband's health – fear of emotional and psychological suffering if returned – no claims of prior harm or persecution in Cambodia – decision under review affirmed

1826715 (Refugee) [2019] AATA 3868 (22 February 2019); D McCulloch, Member

REFUGEE – protection visa – Mongolia – particular social group – individuals charged with a serious criminal offence – allegations as to the commissioning of murder – abuse of prisoners and detainees – deficiencies in the prosecutorial and judicial system – decision under review remitted

1609636 (Refugee) [2019] AATA 3832 (29 March 2019); J Pennell, Senior Member

REFUGEE – protection visa – Pakistan – political opinion – Muttahidda Qaumi Movement – applicant fears persecution because he left MQM – medical conditions – no real risk of serious harm – decision under review affirmed

[1515288](#) (Refugee) [2019] AATA 4066 (9 June 2019); C Cody, Member

REFUGEE – protection visa – Nepal – complementary protection – fear of harm from Maoist – mixed race child – particular social group – divorced women – not provided satisfactory evidence to support key claim – credibility issues – delay in seeking protection – not a genuine marriage – right to enter India – open border policy – decision under review remitted

Social Services

[Cooper and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4188 (11 October 2019); 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

[Goh and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4095 (2 October 2019); Brigadier AG Warner, Member and I Fletcher, Member

SOCIAL SECURITY – Paid Parental Leave – whether an effective claim was lodged – whether the Applicant should be granted Paid Parental Leave from 30 November 2017 and not an earlier date – decision under review affirmed.

[Pustul and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4148 (1 October 2019); I Fletcher, Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether Applicant's conditions were fully diagnosed, treated and stabilised – whether Applicant's impairments attract 20 points under Impairment Tables – whether Applicant has severe impairment – continuing inability to work – whether Applicant actively participated in program of support – decision under review affirmed – impairments: sleep disorder; shoulder condition; chronic low back pain; psychological condition

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
Kemp and Comcare	[2019] AATA 3552
Riley and Military Rehabilitation and Compensation Commission	[2019] AATA 3501

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BDQ19 v Minister for Home Affairs	[2019] AATA 152	[2019] FCA 1630
Kristoffersen v Secretary, Department of Social Services	[2019] FCA 1658	[2018] AATA 524
Leone v Minister for Home Affairs	[2018] AATA 3363	[2019] FCA 1610



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