



Administrative
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Bulletin

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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

[Levitas and Child Support Registrar](#) (Child support) [2019] AATA 4233 (18 September 2019); Dr S Fenwick, Senior Member

CHILD SUPPORT – departure prohibition order – whether criteria requiring revocation met – whether discretion to revoke should be exercised – decision under review affirmed

Citizenship

[LNRD & RFKS and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4247 (18 October 2019); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – application for citizenship by conferral – refused as applicant did not satisfy general residence requirement - whether applicant was present in Australia as an unlawful non-citizen – where visa was cancelled under s 140 of the Migration Act due to the applicant being part of a family unit – where Tribunal set aside original visa cancellation – administrative error – decision affirmed

CITIZENSHIP – application for citizenship by conferral – where applicant is under 18 years – where eligibility criteria satisfied – whether discretion to refuse application under s 24(2) of Australian Citizenship Act should be exercised – decision set aside and substituted

Compensation

[Aiberti and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 4238 (14 October 2019); Deputy President Boyle

COMPENSATION – Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – mesothelioma condition – defence service – presumption under s 7(1) – onus on Respondent to establish that the claimed mesothelioma was not significantly contributed to by defence service – exposure to asbestos in Wittenoom – use of epidemiological evidence – decisions under review affirmed

[Oliver and Comcare](#) (Compensation) [2019] AATA 4194 (14 October 2019); Dr I Alexander, Senior Member and Emeritus Professor P Fairall, Senior Member

WORKERS' COMPENSATION – Respondent previously accepted liability for psychological injury – aggravation of major depressive disorder, single episode – whether the Respondent is presently liable to pay medical expenses and incapacity payments in respect of previously accepted liability – whether the Applicant continued to suffer from compensable condition of an aggravation of major depressive disorder, single episode – decision affirmed

[Briouzguine and Comcare](#) (Compensation) [2019] AATA 4197 (27 September 2019); Deputy President JW Constance

WORKERS' COMPENSATION – application for review of decision affirming determination that Respondent not liable to compensate Applicant in respect of claimed injury – whether Applicant suffered “an injury (other than a disease)” – myocardial infarction – whether Applicant suffered “ailment” or “aggravation of such an ailment” – aggravation of chronic post-traumatic stress disorder with associated major depressive disorder – whether injury arose “out of, or in the course of,” the Applicant’s employment – whether ailment “contributed to, to a significant degree” by Applicant’s employment – decision under review set aside and substituted

WORKERS' COMPENSATION – application for review of decision affirming determination that Respondent not liable to compensate Applicant for permanent impairment and non-economic loss – whether impairment “permanent” – whether Applicant has undertaken all reasonable rehabilitative treatment – decision affirmed

[Weatherburn and Comcare](#) (Compensation) [2019] AATA 4196 (14 October 2019); Deputy President G Humphries AO

COMPENSATION – major depressive disorder – whether the applicant’s major depressive disorder remains contributed to, to a significant degree, by her former employment – multiple possible causes of applicant’s condition – whether Comcare has discharged the evidentiary burden required by *Comcare v Power* [2015] FCA 1502 – decisions under review set aside and substituted

Education and Research

[Frankcom and Secretary, Department of Education](#) [2019] AATA 4205 (14 October 2019); Senior Member NA Manetta

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting of FEE-HELP balance – whether applicant’s circumstances made it impossible for him to make a post-census-date application to have his balance re-credited – decision affirmed

Migration

[Pavey and Minister for Home Affairs](#) (Migration) [2019] AATA 4198 (11 October 2019); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return Visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review affirmed

National Disability Insurance Scheme

[Castledine and National Disability Insurance Agency](#) [2019] AATA 4240 (16 October 2018); Ms K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – participant with multiple serious and permanent medical conditions – participant has intense and complex support needs – multidisciplinary therapy – practice coaching for support staff – concerns raised about self-management of plan and direct employment of support staff - dispute about the number of hours of speech therapy, occupational therapy and practice coaching required – provision of therapy assistants as an alternative support – method of calculation of transport supports – treatment of successive NDIS plans – decision under review set aside and substituted with decision to approve a new statement of participant supports – extension of review date in statement of participant supports

[James and National Disability Insurance Agency](#) [2019] AATA 4248 (18 October 2018); Deputy President The Hon. J Pascoe AC CVO

NATIONAL DISABILITY INSURANCE SCHEME – access – autism spectrum disorder – whether applicant meets early intervention criteria – whether early intervention likely to reduce future need for supports – decision affirmed

Practice and Procedure

[ACTA College Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 4250 (4 October 2019); Mr R Reitano, Member

PRACTICE AND PROCEDURE – application to stay decision – substantive proceedings concern renewal of RTO registration – principles relevant to the granting of a stay – interest of persons affected by review – prospects of success – public interest – strong evidence showing remedied non-compliance – stay application granted

[Anita and Decision Maker](#) [2019] AATA 4239 (4 October 2019); Senior Member CJ Furnell

PRACTICE AND PROCEDURE – whether the Tribunal has jurisdiction – whether there is a decision – the Tribunal does not have jurisdiction in respect of the application for review

[NIKOLOV and Comcare](#) (Compensation) [2019] AATA 4235 (3 September 2019); R CAMERON, Senior Member

PRACTICE AND PROCEDURE – Compensation – failure to comply with directions – failure to proceed with the application – significant delay – application dismissed

Social Services

[Chamoun; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 4236 (16 October 2019); Dr L Bygrave, Member

SOCIAL SECURITY – carer payment debt – where applicant’s partner received lump sum compensation payment – where Centrelink on notice that lump sum compensation payment would be made – where Applicant failed to discharge reporting requirements – where Centrelink ultimately notified that Applicant’s partner owned two properties and continued to pay Applicant at the maximum rate of carer payment – sole administrative error – decision set aside and substituted

[Fernandez and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4206 (27 September 2019); Dr NA Manetta, Senior Member

SOCIAL SECURITY – Pensions, benefits and allowances – Age pension – Start date – Where Applicant not qualified for age pension at date of initial claim – Where Applicant provided documentation demonstrating qualification after the rejection of the initial claim – Whether re-execution of new old claim form or submission of new claim form necessary – Decision under review set aside and remitted to the Respondent

[Hodgetts and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4237 (17 October 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.

[Mesecke; Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 4249 (3 October 2019); Dr NA Manetta, Senior Member

SOCIAL SECURITY – Payments – Family Tax Benefit – Application for Family Tax Benefit made outside claim period – Whether an extension of the claim period can be granted – Whether “special circumstances” prevented the Respondent from making a claim for Family Tax Benefit within the claim period – Meaning of “prevented” – Found that the totality of Respondent’s circumstances amounted to “special circumstances” – Found that “special circumstances” prevented the Respondent from lodging claim for Family Tax Benefit in claim period – Decision under review affirmed.

[Ronaldson and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4234 (17 October 2019); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – from cardiomyopathy/congestive cardiac failure; bilateral inguinal hernia; substance abuse - whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review affirmed

Taxation

[H2O Exchange Pty Ltd and Innovation and Science Australia](#) (Taxation) [2019] AATA 4195 (14 October 2019); Deputy President BW Rayment OAM QC

TAXATION – research and development tax offset – development of software platform for water trading – whether R&D activities are “core R&D activities” or “supporting R&D activities” within the meaning of Division 355 of the Income Tax Assessment Act 1997 (Cth) – whether internal review for a variation of a decision can be made while the decision is under external review – whether outcome can be known or determined in advanced – whether outcome amounts to new knowledge – decision affirmed

[Lacey and Commissioner of Taxation](#) (Taxation) [2019] AATA 4246 (18 October 2019); Senior Member Ehrlich QC

TAXATION – superannuation excess transfer balance – whether pension drawdown debits or reduces transfer balance account – where applicant submits led into error by misleading content on ATO website – whether Tribunal has jurisdiction to determine whether content misleading – decision under review affirmed

Transport

[Colley and Secretary, Department of Infrastructure, Transport, Cities and Regional Development](#) [2019] AATA 4204 (19 September 2019); Dr S Fenwick, Senior Member

MOTOR VEHICLE IMPORTATION – vehicle from New Zealand – vehicle without identification plate – vehicle part of inheritance – whether discretion should be exercised – decision set aside

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
LQZW and Minister for Home Affairs	[2019] AATA 93

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Barnes v Repatriation Commission	[2017] AATA 1385	[2019] FCA 1685
Commissioner of Taxation v Sharpcan	[2017] AATA 2948	[2018] FCAFC 163 [2019] HCA 36
Downing v Minister for Immigration and Border Protection	[2018] AATA 4592	[2019] FCA 1684
Ferreira v Minister for Home Affairs	[2018] AATA 2599	[2019] FCA 1657
Hopkins v Minister for Home Affairs	[2019] AATA 1393	[2019] FCA 1697
Lee v Minister for Home Affairs	[2019] AATA 871	[2019] FCA 1669
NDBR v Minister for Home Affairs	[2019] AATA 612	[2019] FCA 1631
Singh and Minister for Home Affairs	[2018] AATA 4302	[2019] FCA 1670



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