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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

[Ibrahim and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4294 (18 October 2019); Ms A Burke AO, Member

CITIZENSHIP – citizenship by descent – Applicant born outside of Australia – whether a parent of the Applicant was an Australian citizen at the time of the Applicant's birth – meaning of parent – not limited to biological parent – ordinary meaning of parent – parent's conduct before, at the time of and after the birth – decision set aside and remitted for reconsideration.

[Shahrabifarahani and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4358 (25 October 2019); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – citizenship test – whether applicant has permanent or enduring mental incapacity – depression & anxiety – improvements in applicant's mental health – capacity to learn & retain information – decision under review affirmed

Compensation

[Russell and Comcare](#) (Compensation) [2019] AATA 4363 (25 October 2019); K Parker, Member

WORKERS' COMPENSATION – shoulder bursitis – disease – aggravation of ailment – causation – repetitive and intense activities using computer keyboard and mouse – consideration of articles reviewing relevant epidemiological studies – consideration of conflicting medical evidence – employment contributed to, to a significant degree, the aggravation of the disease – decision set aside and substituted – issue of costs reserved

[Sillett and Comcare](#) (Compensation) [2019] AATA 4305 (23 October 2019); Dr I Alexander, Senior Member

WORKERS' COMPENSATION – claim for compensation – psychological condition contributed to a significant degree by employment – exclusionary provision – whether administrative action in respect of employee's employment – where Applicant transferred to "back of house" duties due to business requirements – where return to face to face duties due to operational demand – action contributing to psychological condition was operational not administrative – decision set aside and remitted

[Vinokurov and Comcare](#) (Compensation) [2019] AATA 4360 (25 October 2019); Senior Member A Poljak

COMPENSATION – workers compensation – neck injury – claim for medical treatment – left sided intercostal fibrositis and capsulitis – chronic pain – whether massage treatment for the applicant is reasonable medical treatment – other medical treatment options exhausted – decision under review set aside and substituted

Migration

[Edwards and Minister for Home Affairs](#) (Migration) [2019] AATA 4260 (14 October 2019); Emeritus Professor P A Fairall, Senior Member and Senior Member T Tavoularis

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of applicant's visa – citizen of the Solomon Islands – class BB Subclass 155 Five Year Resident Return visa – possession and access of child exploitation material – seriousness of the offences – applicant does not pass the character test – whether there is another reason why the original decision should be revoked – Ministerial Direction No 79 – Ministerial Direction No 75 – decision affirmed

[MHCZ and Minister for Home Affairs](#) (Migration) [2019] AATA 4259 (21 October 2019); Senior Member A Nikolic AM CSC

MIGRATION – refusal of XA-866 (permanent protection) visa – where the applicant convicted by final judgment of particularly serious crime – whether applicant will be a danger to the Australian community if released back into the community – application of WKCG – where mental health issues impacted on offending – whether applicant can receive adequate treatment – question of compliance with treatment and support measure – decision set aside

[Seddon and Minister for Home Affairs](#) (Migration) [2019] AATA 4361 (24 October 2019); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass character test – criminal history between 2003 and 2015 – convictions for multiple violent offences – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[XGDG and Minister for Home Affairs](#) (Migration) [2018] AATA 5927 (26 October 2018); Senior Member D J Morris

MIGRATION – refusal of protection visa – consideration of character test – applicant charged with serious offences – all charges subsequently withdrawn – absence of other offending – applicant proximate to proven serious offence occurring – risk of applicant engaging in criminal conduct in Australia – assessment of risk – past and present general conduct – applicant satisfies character test – decision set aside and substituted

Practice and Procedure

[OJG Engineering Pty Ltd and Commissioner of Taxation](#) [2019] AATA 4293 (26 September 2019); Deputy President Boyle

FREEDOM OF INFORMATION – confidentiality orders – s 35 Administrative Appeals Tribunal Act 1975 – s 25 Freedom of Information Act 1983 – neither confirm nor deny documents exist – not appropriate to grant applicants' legal representatives access – procedural fairness – orders made

Social Services

[Antoniadis and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4257 (22 October 2019); R West, Member

SOCIAL SECURITY – Age Pension – deprived assets – characterisation of bank deposits – issue estoppel – decision affirmed

[DTDJ and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4295 (23 October 2019); Dr L Bygrave, Member

SOCIAL SECURITY – parenting payment – debt – whether applicant was a member of a couple – where joint tenants on rental agreements – where financial cooperation not pooling of resources – where financial aspects of the relationship otherwise limited – where no shared household – where no social relationship – where acknowledged sexual relationship – where no objective evidence of commitment to each other – decision set aside and remitted

[Hamza and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4306 (23 October 2019); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – whether applicant's impairments total twenty points or more under the Impairment Tables – decision affirmed

[Khanji and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4258 (18 October 2019); Senior Member J C Kelly

SOCIAL SECURITY – overpayment of carer payment – calculation of Applicant's partner's income - parties agreed on method of calculating income from family day care business – parties agreed on business deductions from the family day care business – parties agreed on amount of income earned from Modern Air Conditioners Pty Ltd in the year ended 30 June 2014 – whether income in financial year ended 30 June 2015 from Modern Tradies Pty Ltd properly characterised as wages – consideration of contemporaneous corroborating evidence - no argument to write off or waive the debt - reviewable decision set aside and matter remitted for recalculation in accordance with the Tribunal's findings.

[Klewer and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4357 (25 October 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – debt – overpayment of disability support pension – where debt arose due to not disclosing income or interests in property to Centrelink – where applicant was later found to qualify for disability support pension (blind) – whether debt can be waived – sole administrative error – special circumstances – decision affirmed

[Kyritsis and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 4253 (21 October 2019); Senior Member R Pintos-Lopez

SOCIAL SECURITY – disability support pension – whether fully diagnosed, treated and stabilised – whether impairments attract rating of 20 points or more under the Impairment Tables – indefinite portability not considered – decision affirmed

[Markus and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 4308 (23 October 2019); Senior Member J C Kelly

SOCIAL SECURITY – disability support pension – whether Applicant's impairments were fully diagnosed, treated and stabilised – whether Applicant's impairments attract 20 points under Impairment Tables – Applicant's impairments do not attract 20 points or more under the Impairment Tables – decision under review affirmed

[Mainprize and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 4359 (25 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

[Sidebottom and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 4254 (3 October 2019); Brigadier A G Warner, Member

SOCIAL SECURITY – cancellation of age pension and refusal of new claim for age pension – Applicant exceeded income limit for age pension – proceeds of sale of principal residence deposited in bank account – deeming provisions apply to calculation of income received from

deposit – Applicant not receiving age pension immediately before period of absence from Australia – indefinite portability not applicable – no change in circumstances since cancellation – reviewable decision affirmed

[Makinen and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 4298 (22 October 2019); D K Grigg, Member

SOCIAL SECURITY – disability support pension – overpayment - whether member of a couple – decision under review affirmed.

[Qadoura and Secretary, Department of Social Services](#) (Social services second review) [2019]
AATA 4307 (23 October 2019); Senior Member C Puplick AM

SOCIAL SECURITY – Special Benefit – cancellation decision – where applicant failed to comply with reporting obligations – failure to return information requested by Secretary – consideration of date of effect – decision affirmed

[Stephens; Secretary, Department of Social Services and](#) (Social services second review) [2019]
AATA 4256 (22 October 2019); Senior Member B J Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – disability support pension – suspension due to employment - change in circumstances – when applicant informed Centrelink – backdating of benefits – benefits backdated to date when Centrelink informed of change in circumstances - decision set aside and substituted

[Stevens and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4297 (22 October 2019); Senior Member B Pola

SOCIAL SECURITY – disability support pension – DSP – spinal condition – mental health conditions - whether condition is fully diagnosed, fully treated and fully stabilised – decision under review affirmed

[Walk and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4255 (21 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

Taxation

[Abichandani and Commissioner of Taxation](#) (Taxation) [2019] AATA 4296 (1 October 2019); Deputy President B J McCabe, Senior Member L Kirk and R Reitano, Member

TAXATION – deemed dividends for the purposes of section 109D of the Income Tax Assessment Act – whether loans were made to a partnership by a company – whether loans were made to shareholders by a company – applicant required to prove their case – testimony of the applicants – lack of corroboration – no substantiation – whether the applicants were reckless – applicants had an understanding of the legislative provisions – applicants had financial backgrounds – decision affirmed

[GYBW and Commissioner of Taxation](#) (Taxation) [2019] AATA 4262 (21 October 2019); Deputy President B J McCabe and Senior Member Hespe

TAXATION – complying superannuation fund – taxation of superannuation entities – dividends from a company – whether a non-arm's length relationship exists – where dividends paid according to shares held but whether transition of acquisition was non-arm's length – whether the value of the shares was nil or nominal – future cash flows – penalties – failure to take reasonable care – safe harbour provisions – voluntary disclosure – shortfall interest

Veterans' Affairs

[Guganovic and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2019] AATA 4309 (24 October 2019); Deputy President B W Rayment OAM QC

VETERANS' APPEALS – Defence-related Claims – applicant surviving claimant – whether applicant was entitled to compensation for non-economic loss after the death of the claimant – whether a determination was made prior to death of claimant – whether Military Rehabilitation and Compensation Commission failed to act with due diligence – decision affirmed

[Simmons and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 4362 (25 October 2019); Deputy President J Sosso

VETERANS' ENTITLEMENTS — Disability pension — Where the veteran is in receipt of the pension at 100% of the general rate — When the veteran suffers from a number of accepted and non-accepted conditions – Special rate pension – Whether ss 24(1)(c) or 24(2)(b) met – The alone test – War-caused disease or war-caused injury not sole cause of incapacity – Whether “genuinely seeking” work – Whether the accepted conditions are the substantial cause of the veteran's inability to obtain work – 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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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Bornecrantz v Secretary, Department of Social Services

[\[2019\] AATA 1471](#)

[\[2019\] FCA 1733](#)

FYBR v Minister for Home Affairs

[\[2018\] AATA 4281](#)

[\[2019\] FCA 500](#)
[\[2019\] FCAFC 185](#)

Leach v Comcare

[\[2018\] AATA 1632](#)

[\[2019\] FCA 1698](#)

Mullen v Aged Care Quality and Safety Commissioner

[\[2017\] AATA 1805](#)
[\[2017\] AATA 2556](#)

[\[2019\] FCA 1726](#)

Nathanson v Minister for Home Affairs

[\[2019\] AATA 642](#)

[\[2019\] FCA 1709](#)

RZSN v Minister for Home Affairs

[\[2019\] AATA 240](#)

[\[2019\] FCA 1731](#)



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