



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 45/2019

11 November 2019

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

[Belkaha and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4472 (22 October 2019); Senior Member L Kirk

CITIZENSHIP – eligibility – where application for Australian citizenship refused – domestic violence and driving offences – whether applicant is of good character – considerations to be taken into account when assessing good character – whether applicant has demonstrated the “enduring moral qualities” associated with “good character” over a sufficient period of time – community attitudes towards domestic violence offences – whether applicant has demonstrated full acceptance of responsibility and remorse for conduct – applicant found not to be of good character at the time of the Minister's decision on the application for citizenship – decision under review affirmed

[Docker and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4479 (6 November 2019); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review set aside

[El Cheikh and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4544 (7 November 2019); Mr R Reitano, Member

CITIZENSHIP – conferral of Australian citizenship – permanent or enduring physical or mental incapacity – not capable of understanding the nature of the application – not capable of demonstrating an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship – major depressive disorder – panic disorder – fibromyalgia – persistent disability – decision set aside and remitted

[Mechman and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4474 (5 November 2019); Senior Member C Puplick AM

CITIZENSHIP – Extension of time application – whether there is an acceptable explanation for the delay – whether applicant rested on rights – merits of substantial application – permanent or enduring physical or mental incapacity – prejudice – extension of time applications refused

[Mohammed and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4482 (9 October 2019); Mr I Fletcher, Member

Application for Australian Citizenship – application for extension of time – the application for extension of time is refused

[Rao and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4475 (5 November 2019); Senior Member C Puplick AM

CITIZENSHIP – Extension of time application – whether there is an acceptable explanation for the delay – merits of substantial application – applicant is the spouse of an Australian citizen – whether applicant maintains a close and continuing association with Australia – extension of time application refused

Compensation

[Gurgees and TNT Australia Pty Ltd](#) (Compensation) [2019] AATA 4469 (30 October 2019); Dr L Bygrave, Member

WORKERS' COMPENSATION – accepted left shoulder injury – accepted right shoulder injury – whether applicant continued to suffer an incapacity for work and a need for treatment as a result of the accepted left shoulder injury – whether applicant continued to suffer an incapacity for work and a need for treatment as a result of the accepted right shoulder injury – whether applicant sustained a secondary major depressive condition – whether applicant's employment with TNT Australia contributed to a significant degree to the onset of that condition – whether applicant suffered an incapacity for work as a result of his major depressive condition – where no incapacity for work – where no identifiable psychiatric disorder – decisions affirmed

[Ilijevski and Comcare](#) (Compensation) [2019] AATA 4484 (15 October 2019); Mr A Maryniak QC, Member

WORKERS' COMPENSATION – lumbar sprain – whether the applicant should be granted an extension of time to lodge a request for reconsideration of a determination – where applicant seeks extension for a significant period well in excess of two years – application of principles from *Hunter Valley Developments v Minister for Home Affairs and Environment* (1984) – decision affirmed

[Smith and Comcare](#) (Compensation) [2019] AATA 4473 (5 November 2019); Mrs JC Kelly, Senior Member

WORKERS' COMPENSATION – Respondent previously accepted liability for mild depressive disorder – Respondent subsequently revoked determination and rejected liability – whether Applicant sustained an injury significantly contributed to by her employment with the Department of Agriculture and Water Resources – whether liability is excluded by s 5A of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – consideration of Applicant's employment and medical history – Applicant suffered from autoimmune and allergic conditions – consideration of clinical opinions in relation to Applicant's psychiatric condition – finding in relation to date of onset – contemporaneous evidence does not show significant contribution by employment to psychiatric condition – reviewable decision affirmed

[XPCK and Comcare](#) (Compensation) [2019] AATA 4549 (7 November 2019); Dr I Alexander, Senior Member

WORKERS' COMPENSATION – two claims – applicant suffering from post-traumatic stress disorder, major depressive disorder & anxiety – whether the Respondent is liable for compensation under section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) for 'post-traumatic stress disorder and major depressive disorder' – decision affirmed

Corporations

[Callychurn and Australian Securities and Investments Commission](#) [2019] AATA 4600 (25 October 2019); Deputy President J Redfern

CORPORATIONS – consumer credit – application for review of decision prohibiting applicant from engaging in any credit activities for a specified period under s 80(1) of the National Consumer Credit Protection Act 2009 (Cth) – whether applicant contravened s 225 of the National Consumer Credit Protection Act 2009 (Cth) – whether applicant is a fit and proper person to engage in credit activities – whether the applicant is likely to contravene or be involved in the contravention of any credit legislation – disqualification period – decision under review affirmed

CORPORATIONS – consumer credit – application for review of decision to cancel an Australian Credit Licence under s 55(1) of the National Consumer Credit Protection Act 2009 (Cth) – whether credit licensee is a fit and proper person – whether likely to contravene credit legislation in the future – decision under review affirmed

JURISDICTION – scope of review on remittal – order that the matter be remitted to the Tribunal for further consideration in accordance with law – no express or implied limitation – matter remitted is the whole matter – matter remitted is not confined to the question of law considered – new grounds and evidence raised before this Tribunal on review following remittal

Migration

[BPVS and Minister for Home Affairs](#) (Migration) [2019] AATA 4470 (4 November 2019); Deputy President BW Rayment OAM QC

MIGRATION – refusal to grant Protection (Class XA) visa – where applicant owed protection obligations – offences due to drugs – where applicant convicted of offence once – risk of re-offending if abstinent from drug use – where applicant does not pass character test – whether discretion should be exercised – Direction No. 79 – primary considerations and other considerations – nature and offence of past criminal conduct – whether there is a risk to the Australian community – where applicant is owed non-foulement obligations – where legal consequence of non-refoulement obligations result in possible prolonged detention – contrary to dictates of good government – decision under review set aside

[Singh and Minister for Home Affairs](#) (Migration) [2019] AATA 4598 (7 November 2019); Senior Member A Nikolic AM CSC

MIGRATION – visa cancellation – citizen of India – Subclass 885 (Skilled – Independent) visa – indecent act with child under 16 – use carriage service to procure person under 16 years old – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

Practice and Procedure

[Ashe and Decision Maker](#) [2019] AATA 4480 (5 November 2019); Mr W Frost, Member

PRACTICE AND PROCEDURE – dismissal for lack of jurisdiction – decision not made under enactment – decision not reviewable by the Tribunal – application dismissed

[Lee and Migration Agents Registration Authority](#) [2019] AATA 4547 (7 November 2019); Mr S Evans, Member

PRACTICE AND PROCEDURE – second application for an extension of time to review – applicant’s previous application for an extension refused – cancellation of migration agent registration – whether principles of *functus officio*, *estoppel* or *res judicata* limit Tribunal’s jurisdiction – s 42B(1)(c) – abuse of process – whether there is an acceptable explanation for the delay – whether applicant rested rights – prejudice to the respondent or general public – merits of the substantive application – second application for extension of time refused

[RKTF and Australian Securities & Investments Commission](#) [2019] AATA 4546 (23 October 2019); Deputy President I Molloy

TAXATION AND COMMERCIAL – application for stay of decision under review – banning order under s 920A of the Corporations Act 2001 (Cth) – implementation and operation of the decision – stay of publication – publication in Government Gazette and entry in register – informal media release – principles for grant of stay – consent stay order in operation – consideration of the applicant’s prospects of success – the consequences to the applicant – the public interest – balance struck by legislature – application for a confidentiality order – norm set by legislature – whether reason to depart from the norm – application for stay of the decision under review refused – application for a confidentiality order refused

Social Services

[Abu Quba and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4467 (5 November 2019); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – cancellation – where conceded that applicant has accepted medical conditions causing impairment – whether the applicant has an impairment rating of 20 or more points according to the Impairment Tables – whether the applicant has a continuing inability to work – where impairments not rated at 20 points or more under the Impairment Tables – decision affirmed

[Bogoevski and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4481 (6 November 2019); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – cardiovascular disease, hypertension and hypoglycaemia; alcohol abuse disorder; mental health condition – whether impairment attracts rating of 20 points or more under Impairment Tables – whether program of support had been undertaken – decision under review set aside.

[Byrne and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4471 (5 November 2019); Ms DK Grigg, Member

SOCIAL SECURITY – Newstart allowance – cancellation – whether eligibility requirements met – decision under review affirmed

[Lazos and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4542 (25 October 2019); Mr I Fletcher, Member

SOCIAL SECURITY – back dated claim for carer payment and carer allowance – Application for Review – extension of time application – decision affirmed

[Orlando and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4468 (4 November 2019); Senior Member B Pola

SOCIAL SECURITY – disability support pension – DSP – condition fully diagnosed, fully treated and fully stabilised – whether the Applicant’s impairments attract 20 points or more under the Impairment Tables – Table 15: Functions of Consciousness – decision under review affirmed

[Ward and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4545 (7 November 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

Superannuation

[Buck and Commonwealth Superannuation Corporation](#) [2019] AATA 4548 (31 October 2019); Deputy President SA Forgie

SUPERANNUATION – application for an extension of time within which to seek review of decision by the Commissioner of Superannuation – whether a ‘spouse’ under s 3(1) of the Superannuation Act 1976 – whether eligible under s 3(2) – whether acceptable explanation for delay – whether there are prospects of success – decision affirmed

Taxation

[Probin and Commissioner of Taxation](#) (Taxation) [2019] AATA 4597 (8 November 2019); Ms DK Grigg, Member

TAX – assessment of superannuation guarantee charge – whether correctly imposed – whether worker an employee or independent contractor pursuant to section 12 of the Superannuation Guarantee (Administration) Act 1992 – 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
FTDN and Minister for Home Affairs	[2019] AATA 1301
Klewer v Secretary, Department of Social Services	[2019] AATA 4357

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
CBM19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 1414	[2019] FCA 1832
FTJ18 v Minister for Home Affairs	[2018] AATA 3681	[2019] FCA 1775
JNMK v Minister for Home Affairs	[2018] AATA 971	[2019] FCA 1758
RZMW v Minister for Home Affairs	[2018] AATA 4620	[2019] FCA 1761
Vu v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 635	[2019] FCA 1808



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