



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

Issue No. 46/2019

18 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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

---

## 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.

**Subscribe** to be sent The Review every month.

---

# Contents

<b>AAT Recent Decisions</b> .....	<b>3</b>
Child Support.....	3
Citizenship.....	3
Compensation .....	3
Migration.....	4
Practice and Procedure.....	5
Professions and Trades .....	5
Social Services.....	5
Taxation.....	6
<b>Appeals</b> .....	<b>7</b>
Appeals lodged.....	7
Appeals finalised .....	7

# 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

[PRZR and Child Support Registrar](#) (Child support second review) [2019] AATA 4617 (8 November 2019); Senior Member C Puplick AM

CHILD SUPPORT – Extension of time application – whether there is an acceptable explanation for the delay – merits of substantial application – residency status – applicant deemed resident of Australia – child support debt – prejudice to other parties – extension of time application refused

## Citizenship

[Ater and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4677 (11 November 2019); S Burford, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – satisfaction as to identity – insufficient evidence regarding identity of the Applicant – limited primary documentation produced – reviewable decision affirmed

## Compensation

[Di Carlo-Casablanca and Australian Capital Territory](#) (Compensation) [2019] AATA 4772 (15 November 2019); Deputy President G Humphries AO

COMPENSATION – aggravation of a disease (anorexia nervosa) – whether the applicant's employment contributed, to a significant degree, to the disease – whether the applicant is excluded from receiving compensation by operation of s 53 of the Act – whether the applicant gave notice of the disease 'as soon as possible' after becoming aware of her disease – whether the applicant's purported notice is 'notice in writing of the injury' – decision under review affirmed

[O'Callaghan and Comcare](#) (Compensation) [2019] AATA 4758 (14 November 2019); Mr S. Webb, Member

WORKERS' COMPENSATION – discretion to order costs – decision favourable to applicant – initial hearing rendered abortive by applicant producing materials without notice – applicant to bear his own costs in relation to initial hearing – discretion exercised – partial payment of costs ordered

[O'Sullivan and P & O Maritime Services Pty Ltd](#) (Compensation) [2019] AATA 4759 (7 August 2019); Mr S. Webb, Member

SEAFARERS' COMPENSATION – claim for compensation in respect of an injury – request for referral of a question of law to the Federal Court of Australia – considerations relevant to exercise of discretion – meaning of “question of law arising in a proceeding” – referral not justified – discretion not exercised – requests for referral to the Federal Court refused

## Migration

[HLKD and Minister for Home Affairs](#) (Migration) [2019] AATA 4679 (12 November 2019); Senior Member D. J. Morris

MIGRATION – mandatory cancellation of Class BF transitional (permanent) visa – applicant has substantial criminal record – failure to pass character test – delegate decides not to revoke mandatory cancellation of visa – consideration of ministerial Direction No. 79 – primary considerations – serious sexual offending – many dishonesty offences – denial of sexual offending – best interests of minor children – care of minor grandchildren – other considerations – any other reason – decision under review affirmed

[KMDC and Minister for Home Affairs](#) (Migration) [2019] AATA 4771 (14 November 2019); T Eteuati, Member

MIGRATION – mandatory cancellation of Applicant's visa under s 501(3A) – Applicant failed to pass the character test – whether there is another reason why cancellation decision should be revoked – application of Direction No. 79 – decision under review affirmed

[Martin and Minister for Home Affairs](#) (Migration) [2019] AATA 4619 (12 November 2019); Senior Member T Tavoularis and Senior Member N Manetta

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision under review affirmed

[MBPQ and Minister for Home Affairs](#) (Migration) [2019] AATA 4681 (12 November 2019); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – guilty of sexually based offence involving a child – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – strength, nature and duration of ties – decision under review affirmed

[QDWQ and Minister for Home Affairs](#) (Migration) [2019] AATA 4622 (12 November 2019); Senior Member N A Manetta

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – guilty of violent offences against a woman – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – non-refoulement obligations – other considerations – primary considerations outweigh other considerations – decision under review affirmed

[WSYT and Minister for Home Affairs](#) (Migration) [2019] AATA 4621 (5 November 2019); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – substantial criminal record – is there 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 – nature of harm – risk of re-offending low – risk not an unacceptable one – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties – impact on victims – extent of impediments if removed – decision set aside and substituted

[ZJXK and Minister for Home Affairs](#) (Migration) [2019] AATA 4682 (6 November 2019); Senior Member D. J. Morris

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – delegate decides not to revoke mandatory cancellation – consideration of Ministerial Direction No. 79 – primary considerations – other considerations – acquittal of certain offences – certain uncharged matters – crimes against women – whether Tribunal can consider matters where Court has acquitted – decision affirmed – oral decision – written reasons provided

## Practice and Procedure

[The Applicant and The Regulator](#) [2019] AATA 4683 (4 November 2019); Deputy President B J McCabe and Senior Member D O'Donovan

PRACTICE AND PROCEDURE – disclosure of spent convictions – whether the disclosure of facts underlying spent convictions may be referred to – evidence of failing to disclose convictions when not spent which are now spent – where disclosure would lead to disclosure of spent convictions – whether the regulator can rely on grounds not previously raised – documents to be removed or redacted as set out in Schedule One

## Professions and Trades

[Madz and Tax Practitioners Board](#) [2019] AATA 4773 (15 November 2019); The Hon. John Pascoe AC CVO, Deputy President

TAX AGENTS – termination of registration as tax agent – applicant prohibited from applying for registration for period of eighteen months – alleged breaches of Code of Professional Conduct – whether applicant has failed to comply with taxation laws in the conduct of his personal affairs – whether applicant failed to respond to direction of Board in timely manner – decision varied

## Social Services

[Kalnins and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4770 (15 November 2019); W Frost, Member

SOCIAL SECURITY – pensions, benefits and allowances – age pension – eligibility for age pension – start date for age pension payments – whether the applicant completed an online claim form – where the applicant did not submit a claim form – decision under review affirmed

[Kuklis and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4620 (5 November 2019); I Fletcher, Member

SOCIAL SECURITY – Age Pension – Asset Test Threshold – joint tenants in property – trusts – decision affirmed

[Sharma and Secretary, Department of Social Services](#) (Services Social services second review) [2019] AATA 4618 (8 November 2019); Senior Member Chris Puplick AM

SOCIAL SECURITY – Disability Support Pension – whether applicant qualified for DSP during qualification period – whether conditions fully diagnosed, treated, stabilised – epilepsy – back and neck pain – depression and anxiety – whether impairment attracts 20 points or more under the Impairment Tables – decision under review affirmed

## **Taxation**

[Reid and Commissioner of Taxation](#) (Taxation) [2019] AATA 4624 (12 November 2019); Senior Member J C Kelly

TAXATION AND REVENUE – income tax – deductions – whether Applicant is entitled to claim deductions for work-related car expenses for the income years 30 June 2012, 30 June 2014, 30 June 2015 – whether Applicant is entitled to deductions for other work-related expenses for the income years ended 30 June 2012, 30 June 2014, 30 June 2015 and 30 June 2016 – log book not kept in accordance with s 28-125(2) of the ITAA 1997 – work-related car expenses allowed at audit is the appropriate deduction – other work-related expenses related to home office running costs, telephone and internet costs – stationery/printer cartridges/consumables – purchase of newspapers/journals – Applicant not required to work in home office – home office claim not sufficiently substantiated – telephone costs not incurred in the course of employment – claim for internet costs not sufficiently substantiated – stationery cost not incurred in the course of employment in income years 30 June 2012, 30 June 2014, 30 June 2015 – partly allowed stationery expenses in income year ended 30 June 2016 is appropriate – claim for newspaper, journals and magazine expenses not sufficiently substantiated – whether the Applicant is liable to administrative penalties – whether there are any proper grounds for remission of administrative penalties – Applicant or agent made a false or misleading statement – Applicant liable for administrative penalties – no grounds for remission – reviewable decision affirmed

[Thompson and Commissioner of Taxation](#) (Taxation) [2019] AATA 4678 (12 November 2019); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – whether the Tribunal has the power to stay the operation of an objection decision – power to stay under section 41 – operation of section 14ZZB – Tribunal does not have jurisdiction

# 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
-----------	---------------

---

<b>Dharma and Minister for Home Affairs</b>	<a href="#">[2019] AATA 4065</a>
---	----------------------------------

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
-----------	---------------	-----------------

---

<b>Bailey v Repatriation Commission</b>	<a href="#">[2017] AATA 1909</a>	<a href="#">[2019] FCA 1840</a>
---	----------------------------------	---------------------------------

---

<b>CWGF v Minister for Home Affairs</b>	<a href="#">[2019] AATA 179</a>	<a href="#">[2019] FCA 1802</a>
---	---------------------------------	---------------------------------

---

<b>FTY18 v Minister for Home Affairs</b>	<a href="#">[2018] AATA 3681</a>	<a href="#">[2019] FCA 1775</a>
--	----------------------------------	---------------------------------

---

<b>Paszkievicz v Minister for Home Affairs</b>	<a href="#">[2018] AATA 691</a>	<a href="#">[2019] FCA 390</a> <a href="#">[2019] FCAFC 198</a>
--	---------------------------------	--

---

<b>PHMK v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	Not applicable	<a href="#">[2019] FCA 1776</a>
---	----------------	---------------------------------

---

<b>Wall v Repatriation Commission</b>	<a href="#">[2018] AATA 2573</a>	<a href="#">[2019] FCA 1844</a>
---------------------------------------	----------------------------------	---------------------------------

---

<b>ZMBZ v Minister for Home Affairs</b>	<a href="#">[2018] AATA 1869</a>	<a href="#">[2019] FCA 455</a> <a href="#">[2019] FCAFC 195</a>
---	----------------------------------	--

---



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).