



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 **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

[Upton and Laing](#) (Child support) [2019] AATA 4859 (10 September 2019); K Buxton, 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 – court orders not complied with – reasonable action taken – interim period applied – decision under review set aside and substituted

[Haynes and Child Support Registrar](#) (Child support) [2019] AATA 4878 (17 September 2019); S Letch, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay – arguable merit – weighing all factors the extension of time was correctly refused – decision under review affirmed

[Anson and Neale](#) (Child support) [2019] AATA 4860 (18 September 2019); M Kennedy, Member

CHILD SUPPORT – percentage of care – determination of the likely pattern of care from the start of the administrative assessment – decision under review affirmed

[Holland and Simpson](#) (Child support) [2019] AATA 4858 (1 October 2019); P Noonan, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – income, property and financial resources of both parents – costs of child care – ground for departure established – decision under review set aside and substituted

[Donaldson and Child Support Registrar](#) (Child support) [2019] AATA 4869 (3 October 2019); J Longo, 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 – court orders not complied with – reasonable action taken – interim period applied – decision under review set aside and substituted

Citizenship

[Agepati and Minister for Home Affairs](#) (Citizenship) [2019] AATA 5029 (29 November 2019); Ms A Burke AO, Member

CITIZENSHIP - citizenship by conferral - refusal to approve application for citizenship - proceedings for an offence against Australian - adjourned undertakings - Tribunal must apply relevant law and circumstances in place at the time of review - decision affirmed

[Harjani and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4970 (26 November 2019); Senior Member L Kirk

CITIZENSHIP – application for Australian citizenship by conferral – approval of citizenship cancelled under section 25 of the Australian Citizenship Act – Canadian citizen – Applicant working in Canada – whether the Applicant likely to reside in Australia or continue to reside in Australia – Applicant has been absent from Australia for 18 months – whether the Applicant likely to maintain a close and continuing association with Australia – employment and professional undertakings – family ties – living arrangements and assets – community participation – decision under review affirmed

[SLHH and Minister for Home Affairs](#) (Citizenship) [2019] AATA 5033 (29 November 2019); R West, Member

REVIEW OF REFUSAL OF APPLICATION FOR CITIZENSHIP – applicant under 18 years of age – whether permanent resident as required by s.21(5) of the Citizenship Act 2007 – whether discretion to consider the best interests of the child in assessing eligibility under s.21(5) – decision affirmed

Compensation

[Berry and Comcare](#) (Compensation) [2019] AATA 4978 (28 November 2019); R Maguire, Member

WORKERS COMPENSATION – coronary artery disease – ischaemic heart disease – aggravation/acceleration of coronary artery disease – passage of time – whether the Respondent remained liable for medical expenses – whether the Respondent remained liable for incapacity payments – decision under review affirmed

[Hollywood and Military Rehabilitation and Compensation Commission](#) (Compensation) [2019] AATA 5032 (29 November 2019); Senior Member Dr S Fenwick

MILITARY COMPENSATION – naval service – post traumatic stress disorder – alcohol dependence – whether applicant has conditions claimed – when conditions manifested – applicable test for causation – decision affirmed

[Millar and Comcare](#) (Compensation) [2019] AATA 4973 (27 November 2019); Deputy President G Humphries AO

COMPENSATION – whether three claimed conditions are injuries for the purposes of the Safety, Rehabilitation and Compensation Act 1988 – whether the Applicant's thoracic condition had resolved – whether the Applicant suffered from chronic pain condition, a sequela of the thoracic condition – whether the applicant suffered a tear of the medial meniscus (left knee) – whether the Applicant is a witness of credit – multiple instances of inconsistent and irreconcilable accounts provided in evidence to the Tribunal – reviewable decisions on thoracic and chronic pain conditions affirmed – reviewable decision on knee condition set aside and substituted

[Shillingford and Comcare](#) (Compensation) [2019] AATA 4972 (26 November 2019); Deputy President G Humphries AO

COMPENSATION – incapacity for work – calculation of normal weekly earnings – where Applicant was employed on a non-ongoing basis with irregular or intermittent duties – whether arrangement was a contract of employment – where broader industry in which the Applicant was employed experienced a major downturn – decision under review affirmed

[ZDHG and Comcare](#) (Compensation) [2019] AATA 5028 (28 November 2019); Mrs J C Kelly, Senior Member

WORKERS' COMPENSATION – Applicant employed by the Australian Federal Police – Applicant served in domestic and international deployments between 2007 and 2014 – Applicant accepted voluntary redundancy in August 2014 - whether Applicant suffers from PTSD which was significantly contributed to by employment with Australian Federal Police - consideration of contemporaneous evidence – Applicant's medical evidence post voluntary redundancy fails to adequately consider contemporaneous evidence of the Applicant's employment with Australian Federal Police – reviewable decision affirmed

Education and Research

[Coombs and Secretary, Department of Education and Training](#) [2019] AATA 4954 (19 November 2019); Deputy President P Britten-Jones

HIGHER EDUCATION — VET FEE-HELP Assistance Scheme — application for remission of VET FEE-HELP debt — Advanced Diploma of Aviation — special circumstances — whether circumstances were beyond the Applicants' control — whether circumstances made it impracticable to complete the requirements for the unit during the required time — meaning of 'beyond control' — meaning of 'impracticable to complete' — where necessary to determine 'the requirements for the unit' — where circumstances related to poor delivery of the course and management by the course provider — where circumstances beyond the Applicants' control and made it impracticable for the Applicants to complete the course requirements in time — decisions under review set aside and substituted with decisions that the Applicants' VET FEE-HELP debt be re-credited

Freedom of Information

[Kazakhstan Potash Corporation Limited and Australian Securities and Investments Commission](#) (Freedom of information) [2019] AATA 5035 (26 November 2019); Deputy President S A Forgie

FREEDOM OF INFORMATION – whether document is conditionally exempt under s 47G(1)(a) of the Freedom of Information Act 1982 – whether disclosure would unreasonably affect lawful business, commercial or financial affairs – disclosure not unreasonable – public interest not considered – document not conditionally exempt – decision affirmed

Migration

[Huang](#) (Migration) [2019] AATA 4935 (6 November 2019); M O'Loughlin, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – ground for cancellation – enrolment – not enrolled in a registered course – consideration of discretion – purpose of stay in Australia – circumstances giving rise to non-compliance – major depressive disorder – beyond applicant's control – decision under review set aside

[DLXF and Minister for Home Affairs](#) (Migration) [2019] AATA 4949 (25 November 2019); Deputy President B W Rayment OAM QC

MIGRATION – cancellation of visa on character grounds under s 501(3A) – crimes of serious dishonesty – exercise of discretion to cancel revocation of visa – considerations under Direction No. 79 – protection and expectations of the Australian community – where applicant reoffended after warning of cancellation of visa – where applicant and family is threatened – best interests of minor children in Australia – where teenage child has psychological disorders – where applicant fears risk of death if sent back to Malaysia – consideration of the existence of harm – decision set aside and substituted

[Maryvan and Minister for Home Affairs](#) (Migration) [2019] AATA 4951 (21 November 2019); Senior Member L Kirk

MIGRATION – mandatory cancellation of the Applicant's Subclass 101 Child (Permanent) visa – s 501(3A) – Applicant fails to pass the character test – substantial criminal record – sentenced to a term of imprisonment for 12 months or more – whether there is another reason why the cancellation should be revoked – s 501CA – application of Direction No. 79 – mental health of the applicant – mental healthcare available in Laos – decision affirmed

[Mundele and Minister for Home Affairs](#) (Migration) [2019] AATA 4968 (25 November 2019); Senior Member L Kirk

MIGRATION – Non-revocation of mandatory cancellation – where Applicant does not pass the character test – sentenced to three years imprisonment – whether there is another reason to revoke the cancellation of the Applicant's visa – application of Ministerial Direction 79 – decision under review affirmed

[Pena Franco](#) (Migration) [2019] AATA 4934 (13 November 2019); M Edgoose, Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 500 (Student) – genuine temporary stay – study will benefit salary in Colombia – personal ties to Colombia and Australia – economic circumstances are incentive to stay – gained experience in Australia – visa to maintain residence – decision under review affirmed

[SIN](#) (Migration) [2019] AATA 4937 (5 November 2019); M Cooke, Senior Member

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – Federal Circuit Court remittal – genuine spousal relationship – previously married to each other – reignited their love for each other – decision under review remitted

[The Indigo Olive Pty Ltd ATF The Indoki Family Trust](#) (Migration) [2019] AATA 4840 (6 November 2019); T Baxter, Member

MIGRATION – Temporary Residence Transition stream – employer’s nomination of position – training requirements – on-the-job training by production supervisor – percentage of production supervisor’s time spent training employees – decision under review set aside

[Zhao](#) (Migration) [2019] AATA 5009 (8 November 2019); B Cullen, Member

MIGRATION – cancellation – Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – incorrect information on application – applicant a director, owner and manager – change of circumstances without notifying Department – sale of property and change of address after legal proceedings by second applicant’s former business partner – change of circumstances form signed by applicant and posted by agent – form not received by Department – applicant’s obligation to ensure Department received form – factors for and against cancellation – third applicant’s education in Australia – court order leading to sale of property set aside on appeal – decision under review set aside for first applicant, no jurisdiction for second and third applicants

Practice and Procedure

[Brighton Pacific Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 4977 (4 October 2019); Dr P McDermott RFD, Deputy President

STAY – Variation of stay order under section 41(3) – Stay application be varied due to the operation of 43(5C) – Australian Skills Quality Authority (ASQA) – Restriction on commencement of enrolled students in an institution - Breach of a stay order – Stay is preserved

[Chaker and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4946 (22 November 2019); Senior Member Emeritus Professor P A Fairall

PRACTICE AND PROCEDURE – reinstatement – previously dismissed for non-appearance – whether reinstatement appropriate – reinstatement allowed

PRACTICE AND PROCEDURE – extension of time to lodge application for review – principles to be applied – merits of substantive matter – extension of time allowed

[Egan and Minister for Home Affairs](#) (Citizenship) [2019] AATA 4953 (22 November 2019); Deputy President The Hon. John Pascoe AC CVO

PRACTICE AND PROCEDURE – legal professional privilege – documents produced under summons – correspondence between party’s representatives and expert witness – whether privilege has been waived – documents found to be privileged

[JKQT and Commissioner of Taxation](#) (Taxation) [2019] AATA 5034 (28 November 2019); Mrs J C Kelly, Senior Member and N Gaudion, Member

TAXATION AND REVENUE – objection to income tax assessments – Applicant is an undischarged bankrupt – whether Respondent is estopped from raising the issue of standing – Tribunal is required to consider the statutory precondition of whether the Applicant has standing to proceed pursuant to s 14ZZ(1) of the Taxation Administration Act – Respondent not estopped from raising issue of standing – whether the fact that bankruptcy occurred after commencement of AAT proceedings distinguishes Applicant’s case – Applicant does not have an accrued right to review which requires the Tribunal to disregard changed circumstances – does the Applicant fall within limited class of bankrupts identified by Lehane J in Robertson Jnr to have standing despite bankruptcy – consideration of deposits into Applicant’s account in the form of loans and shares – consideration of running balance accounts related to Applicant – Applicant does not fall within class of bankrupts identified by Lehane J to have standing - Applicant argued majority decision in McCallum did not bind the Tribunal – Tribunal bound by decisions of courts – Applicant does not have standing – application of s 60(2) and s 60(3) of Bankruptcy Act 1966 (Cth) – trustee in bankruptcy notified of proceedings – no response from trustee in bankruptcy after 28 days from notice – application for review dismissed pursuant to s 42B(1) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Klewer and National Disability Insurance Agency](#) [2019] AATA 4974 (25 November 2019); Deputy President The Hon. John Pascoe AC CVO

PRACTICE AND PROCEDURE – National Disability Insurance Scheme - appointment of guardian ad litem – where Applicant seeks review of statement of participant supports – where Applicant is represented by his mother – where the mother has previously been found to be a vexatious litigant – whether Tribunal has power to appoint a guardian ad litem – best interests of Applicant – procedural fairness for Respondent – matter held in abeyance pending appointment of guardian ad litem

[LQMG and National Disability Insurance Agency](#) [2019] AATA 4975 (26 November 2019); Deputy President S A Forgie

PRACTICE AND PROCEDURE – outline of path open to the parties to ensure applications for review of 2018 and 2019 participant’s plans heard at same time when Agency has not reviewed earlier, but had reviewed latter, under s 100(6)

Refugee

[1929485](#) (Migration) [2019] AATA 4961 (25 October 2019); A Dronjic, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – acceptable arrangements to depart Australia – one-way tickets – genuineness of intention to depart as planned – abide by conditions imposed – reporting requirement – departure by specified date requirement – past immigration history – decision under review affirmed

[1921338](#) (Refugee) [2019] AATA 4991 (30 October 2019); M Foster, Member

REFUGEE – protection visa – China – religion – membership and activity in unregistered Christian church – credibility – inconsistent evidence lacking in detail – delay in joining a church in Australia – periods as unlawful non-citizen and in immigration detention – delay in applying for protection – fear of persecution not well founded – decision under review affirmed

[1613261](#) (Refugee) [2019] AATA 4964 (1 November 2019); H Sanderson, Member

REFUGEE – protection visa – India – imputed political opinion – All India Sikh Students Federation (AISSF) – International Sikh Youth Federation (ISYF) – religion – Sikhism – lack of independent corroborating information – study and employment history in India – delay in applying for protection – decision under review affirmed

[1610544](#) (Refugee) [2019] AATA 4947 (6 November 2019); N Goetz, Member

REFUGEE – protection visa – Nepal – threats by family about marriage to Australian woman – separated but not divorced – credibility – immigration history – application for protection after partner visa refused – Australian citizen sister in a marriage opposed by family – fear of harm not well founded – decision under review affirmed

[1813845](#) (Refugee) [2019] AATA 4967 (12 November 2019); D Dragovic, Senior Member

REFUGEE – protection visa – China – Federal Circuit Court remittal – particular social group – Uighur who have studied abroad – protesting for the rights of Uighurs in Australia – failure to spy on the Uighur diaspora in Australia – of interest to the authorities – detention and re-education camp – discriminatory laws – ‘appropriate and adapted’ – decision under review remitted

Social Services

[Besenyei, Secretary, Department of Social Services and](#) (Social services second review) [2019] AATA 4986 (26 November 2019); Deputy President Britten-Jones

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension – whether conditions fully treated and fully stabilised in claim period – mental health conditions – drug dependence condition – where respondent had not exhausted reasonable treatment options available for his mental health conditions – decision under review set aside and substituted with a decision that the respondent does not qualify for a Disability Support Pension in the claim period

[Lemon and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4988 (9 August 2019); I Thompson, Member and G Hallwood, Member

SOCIAL SECURITY – Disability Support Pension – Permanent impairment – Sufficient points on Impairment Tables – Continuing inability to work – Decision under review is affirmed

[Louis and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4966 (25 November 2019); Dr L Bygrave, Member

FAMILY TAX BENEFIT – percentage of care – date on which child left applicant’s care contested – whether change of care or delegation of care – legal responsibility – insufficient evidence to establish which party had legal responsibility of child in care period – where child transient – decision set aside and substituted

[Maxton and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4952 (25 November 2019); R West, Member

DISABILITY SUPPORT PENSION – hearing on the papers – s.34J AAT Act - whether impairment fully diagnosed, fully treated and fully stabilised – decision affirmed

[McCoy and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4971 (27 November 2019); Ms A Wood, Member

SOCIAL SECURITY – disability support pension – impairment rating during qualification period – continuing inability to work – decision under review set aside and remitted

[Pettinau and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4976 (27 November 2019); S Barton, Member

AGED PENSION – application for aged pension – submission of claim – claim lodged in a manner approved by the Secretary – Reviewable Decision affirmed

[Reed and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5031 (29 November 2019); Dr S Fenwick, Senior Member

SOCIAL SECURITY – mobility allowance – when qualification for allowance ceased – whether requirement to inform of change in circumstances met – whether debt solely attributable to administrative error made by the Commonwealth – decision under review affirmed

[Renwick and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 4969 (25 November 2019); Mr R Reitano, Member

SOCIAL SECURITY – Disability Support Pension – Age Pension – rate of payment – whether applicants were a member of a couple – marriage-like relationship – financial aspects of relationship – nature of household – social aspects of relationship – sexual relationship – nature of commitment to each other – reviewable decisions affirmed

[Samorukoff and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 5030 (29 November 2019); M Hyman, Member

SOCIAL SECURITY – disability support pension – genetic disorder requiring a kidney transplant – effects of the transplant – effects of immunosuppressive drugs – cardiomyopathy arising from arteriovenous fistula – gout – osteopaenia and osteoporosis – carpal tunnel syndrome – whether each condition fully diagnosed, treated and stabilised – continuing inability to work – decision affirmed

[Vincent and Secretary, Department of Health](#) (Social services) [2019] AATA 4950 (22 November 2019); D K Grigg, Member

SOCIAL SECURITY – Aged Care – whether certain asset to be disregarded in aged care fee assessment – decision under review affirmed

Veterans' Affairs

[Green and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 4615 (8 November 2019); Senior Member Katter

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – disability pension – trigeminal neuropathy – trigeminal neuralgia – whether carcinoma removal caused injury or disease – causal relationship with surgery – reasonable satisfaction – discrepancies in versions of evidence between experts – decision under review affirmed

[Slight and Repatriation Commission](#) (Veterans' entitlements) [2019] AATA 4948 (22 November 2019); Deputy President J W Constance and Senior Member Emeritus Professor P A Fairall

VETERANS' ENTITLEMENTS – widows' pension – application for review of decision of Veterans' Review Board that veteran's death was not war-caused – whether material before Tribunal points to hypothesis connecting death of veteran with circumstances of operational service – whether hypotheses raised reasonable – subarachnoid haemorrhage – hypertension – excessive alcohol consumption – Tribunal not satisfied beyond reasonable doubt that veteran's death was not war-caused – decision under review set aside and remitted with directions

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
Singh and Minister for Home Affairs	[2019] AATA 4598
Tuioti and Minister for Home Affairs	[2019] AATA 4423
Stowers and Minister for Home Affairs	[2019] AATA 3640

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
HZCP v Minister for Immigration and Border Protection	[2017] AATA 775	[2018] FCA 1803 [2019] FCAFC 202
Kheir v Minister for Home Affairs	[2019] AATA 146	[2019] FCA 1974
Uasi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 638	[2019] FCA 1924
Vaokakala v Minister for Home Affairs	[2018] AATA 4452	[2019] FCA 1979



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