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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, 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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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, 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

[Ghalzai and Minister for Home Affairs](#) (Citizenship) [2019] AATA 74 (31 January 2019); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship refused – whether applicant had a parent who was an Australian citizen – polygamous marriage – decision under review set aside and remitted to the Respondent

[Gjergji and Minister for Home Affairs](#) (Citizenship) [2019] AATA 72 (30 January 2019); Deputy President G Humphries

CITIZENSHIP – application for Australian citizenship by conferral – whether Mr Gjergji is a person of good character for the purposes of s 21(2)(h) of the Australian Citizenship Act 2007 – decision set aside and remitted

[Mkhwananzi and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 67 (25 January 2019); Mr C Edwardes, Member

IMMIGRATION AND CITIZENSHIP – application for citizenship refused – production of documents – length of delay – prohibition to approve a person becoming an Australian citizen unless the Minister is satisfied of the identity and character of the person – whether Tribunal satisfied of identity and character of Applicant – decision affirmed

[Nkali and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 76 (24 January 2019); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship by conferral – general residence requirement – whether unlawful non-citizen – whether present in Australia as a permanent resident – application of Ministerial discretions – administrative error – decision affirmed

Migration

[Da Silva and Minister for Home Affairs](#) (Migration) [2019] AATA 68 (25 January 2019); Mrs JC Kelly, Senior Member

MIGRATION – Revocation of visa cancellation – failure to pass character test – previous criminal offences – whether there is another reason why visa cancellation should be revoked – Ministerial Direction No. 65 applied – primary considerations – protection of the Australian community – the nature and seriousness of conduct – risk to the Australian community should the non-citizen commit further offences or engage in other serious conduct – expectations of the Australian community – best interests of minor children – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review set aside and a decision substituted

[Singh and Minister for Home Affairs](#) (Migration) [2019] AATA (30 January 2019); Senior Member R Cameron

MIGRATION – Visa cancellation – Indian national – failed character test – indecent act with children – child grooming – risk of reoffending – expectations of the Australian community – decision affirmed

[YZXB and Minister for Home Affairs](#) (Migration) [2019] AATA 69 (25 January 2019); Senior Member M Griffin QC

MIGRATION – Class XB Subclass 202 Global Special Humanitarian visa – mandatory cancellation – failure to pass the character test – Ministerial Direction No 65 – serious criminal conviction – risk to the Australian community – risk of reoffending – minimal risk – best interests of minor children – strength nature and duration of ties – impediment if removed – Iraq – non-refoulement obligations – decision set aside

Practice and Procedure

[Bradley and TNT Australia](#) (Compensation) [2018] AATA 4864 (18 December 2018); Senior Member A Nikolic AM CSC

COMPENSATION – no jurisdiction in absence of liability determination under s 14 of Safety, Rehabilitation and Compensation Act 1988 (Cth)

[Shalala and Registrar of Marriage Celebrants](#) [2019] AATA 63 (29 January 2019); Senior Member C Puplick AM

MARRIAGE – registration as marriage celebrant – celebrant registration charge – charge not paid within prescribed period – consequences of not paying charge within notified period – scope of discretion to give notice of deregistration on non-payment of charge – section 42B application on the basis that application is has no reasonable prospect of success – substantive application dismissed

Professions and Trades

[Mantra Training and Development Pty Ltd and Australian Skills Quality Authority](#) [2019] AATA 66 (23 January 2019); Mr M Hyman, Member

VOCATIONAL EDUCATION AND TRAINING – where applicant failed to pay the fee for renewal of registration more than 90 days before registration was to expire – whether the application was complete if the fee was not paid – whether the applicant should be allowed to apply for renewal within a shorter period than 90 days – relevant principles – explanation for the delay in payment – prejudice to respondent – whether the applicant did its best to abide by the requirements of the legislation – consequences for the applicant if the shorter period is not granted – offer by the respondent – decision under review affirmed

Social Security

[Dik and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 65 (24 January 2019); Senior Member NA Manetta

FAMILY TAX BENEFIT- percentage care split between parents – evidence of applicant found to be unreliable – decision affirmed

[Peachy and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 75 (31 January 2019); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether impairment is fully diagnosed, treated and stabilised – whether applicant's impairment attracts 20 points or more under the Impairment Tables – functions requiring physical exertion and stamina – chronic fatigue syndrome – mental illness – decision set aside

[Suttor and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 70 (30 January 2019); Senior Member PJ Clauson

SOCIAL SECURITY – Disability Support Pension – Refusal – mental health condition – asthma condition – alcohol liver disease condition – whether impairments are of 20 points or more under the Impairment Tables – decision under review affirmed

Taxation

[Al Rubaei and Commissioner of Taxation](#) [2019] AATA 71 (30 January 2019); Deputy President Boyle

TAXATION – income tax – whether the amended assessment for the 2014 financial year is excessive – unexplained income – decision under review set aside and substituted

[McKenzie and Commissioner of Taxation](#) [2019] AATA 77 (31 January 2019); Deputy President G Humphries AO

TAXATION – income tax assessments – whether the Applicant is entitled to deductions pursuant to s 8-1 of the Income Tax Assessment Act 1997 – whether the Applicant's expenditure was incurred in the course of producing assessable income – whether the outgoing was private or domestic in nature – the mere fact of connection between expenditure and the derivation of income insufficient – distinction between the activity of getting to work and the activity of working – objection decision 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, 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
GCLV and Minister for Home Affairs	[2018] AATA 4460
Fortunatow and Commissioner of Taxation	[2018] AATA 4621

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v BHP Billiton Limited	[2017] AATA 3037	[2019] FCAFC 4
Secretary, Department of Social Services v Sziva	[2018] AATA 3040	[2019] FCA 23



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