



AAT 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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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.

Archives

[Fernandes and Director-General, National Archives of Australia](#) [2020] AATA 123 (13 January 2020); Deputy President JW Constance

ARCHIVES – Commonwealth Archives – exempt records – information or matter the disclosure of which could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth – public interest certificate – decision under review affirmed

[Fernandes and Director-General, National Archives of Australia](#) [2020] AATA 128 (13 January 2020); Deputy President JW Constance

ARCHIVES – Commonwealth Archives – disclosure of information as to the existence or non-existence of requested records in a Commonwealth record – whether disclosure would cause that Commonwealth record to be an exempt record – decision under review affirmed

Citizenship

[Almeida da Silva Silva and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 131 (6 February 2020); Senior Member C Puplick AM

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – person not present in Australia – whether Ministerial discretion should be exercised – whether spouse, de facto partner or surviving spouse or de facto partner of Australian citizen – whether person in an interdependent relationship with Australian citizen – decision under review affirmed

[Koker and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 118 (4 February 2020); Mr W Frost, Member

CITIZENSHIP – application for citizenship by conferral – application for citizenship refused - whether the Tribunal is satisfied the applicant is of good character – where the applicant is said to have facilitated unlawful migration outcomes – Tribunal not satisfied the applicant is of good character – decision under review affirmed

[Loo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2020] AATA 104 (4 February 2020); Mrs JC Kelly, Senior Member

DISMISSAL – refusal to grant Australian citizenship by conferral – applicant not meeting general residence requirement – the applicant was not present in Australia for the period of 4 years immediately before the day she made the application – the applicant was not present in Australia as a permanent resident for the period of 12 months immediately before the day she made the application – whether section 22(9) Ministerial discretion applies – subsection 42B(1)(b) no prospect of success – review application is dismissed

Compensation

[Pike and Australian Capital Territory](#) (Compensation) [2020] AATA 110 (31 January 2020); Mr S Webb, Member

WORKERS' COMPENSATION – compensation claimed in respect of accepted injury – Feldenkrais, physiotherapy and guided steroid injection treatments – nature and persistence of accepted injuries – chronic pain – 'disease' – applicable causal test – persisting employment contribution 'to a material degree' – meaning of 'medical treatment' and 'therapeutic treatment' – requirement that treatment must be reasonable to obtain in the circumstances – consideration of options – Comcare's Clinical Framework policy not binding or determinative – evaluative assessment – self-management – physiotherapy treatment not reasonable in the circumstances – meaning of 'at the direction of' – requirement for treatment to be advised, prescribed or ordered by legally qualified medical practitioner – Feldenkrais treatment not at the direction of a medical practitioner - requirement for treatment obtained to be in relation to the injury – guided steroid injections not obtained in relation to the accepted injuries – decisions affirmed

Education and Research

[Bow and Secretary, Department of Education](#) [2020] AATA 114 (4 February 2020); Senior Member B Pola

HIGHER EDUCATION – FEE-HELP debt – application for re-crediting – whether special circumstances exist – decision affirmed

Industrial Law

[Yeo and Secretary, Attorney-General's Department](#) [2020] AATA 117 (3 February 2020); Senior Member CJ Furnell

FAIR ENTITLEMENTS GUARANTEE – approbate and reprobate – payment in lieu of notice – redundancy pay entitlement – date of termination – small business exception – decision affirmed

Migration

[Dauvou and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 111 (31 January 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class EN Subclass 186 Employer Nomination (Permanent) Visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review affirmed

[DGPZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 115 (3 February 2020); Senior Member A Nikolic AM CSC

MIGRATION – Federal Court remittal – mandatory visa cancellation – citizen of Turkey – Class BB Subclass 155 (Five Year Resident Return) visa – failure to pass good character test – multiple convictions between 1980 and 2016 – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[LZGG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 107 (3 February 2020); Mr S Evans, Member

MIGRATION – Mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – failure to pass the character test due to substantial criminal record – whether discretion to revoke mandatory cancellation of visa should be exercised – Ministerial Direction No. 79 applied – primary considerations – other considerations – decision under review set aside and new decision substituted

[QDQY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 125 (31 January 2020); Deputy President Britten-Jones

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 – non-refoulement obligations – decision under review affirmed

[Ung and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 112 (3 February 2020); Dr NA Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – interests of minor children – strength, nature and duration of ties – where applicant convicted of wounding with intent to cause grievous bodily harm and two counts of common assault – where applicant intoxicated during offending – where best interests of minor children favour revocation – decision under review set aside and in substitution decided that visa cancellation be revoked

[Wilson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 122 (5 February 2020); Senior Member D O'Donovan

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – substantial criminal record under s 501(7) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – minor children – strength nature and duration of ties – impediments to applicant if removed – risk from criminal gangs if returned to New Zealand – decision under review set aside and substituted

Professions and Trades

[S M Senarath B Chanaka Senanayake and Migration Agents Registration Authority](#) (2020)

AATA 116 (4 February 2020); Deputy President JW Constance

MIGRATION AGENTS REGISTRATION – review of decision to cancel registration – where complaint made in relation to applicant's conduct – false and misleading protection visa application – duplication of claims made in applications lodged previously by applicant on behalf of former clients – whether applicant is a person of integrity – whether applicant breached the Code of Conduct for registered migration agents – decision under review affirmed

Social Services

[Botros and Secretary, Department of Social Services](#) (Social services second review) [2020]

AATA 106 (4 February 2020); Senior Member L Kirk

SOCIAL SECURITY – family tax benefit – top-up payment – Applicant's husband failed to inform the Department that he was not required to file an income tax return – whether Applicant received letter from the Department setting out this requirement – rules relating to service of documents – deemed receipt – whether special circumstances prevented Applicant notifying the Department – decision affirmed

[Chilton and Secretary, Department of Social Services](#) (Social services second review) [2020]

AATA 130 (6 February 2020); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – from spinal condition, osteoarthritis of the knees, bipolar disorder, lupus, right shoulder arthritis and conjunctival irritation – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review set aside and remitted

[Horner; Secretary, Department of Social Services and](#) (Social services second review) [2020]

AATA 108 (24 January 2020); Mr I Fletcher, Member

SOCIAL SECURITY – disability support pension – relevant period – fibromyalgia – gastroenterological condition – mental health condition – vertigo – continuing inability to work – whether party has an impairment rating of 20 points or more under the Impairment Tables – AAT1 decision affirmed

[Logan and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 102 (29 January 2020); Senior Member BJ Illingworth

SOCIAL SECURITY – Disability Support Pension – entitlement – commencement date – payment of arrears – decision under review set aside and remitted

[Prahauser and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 105 (3 February 2020); Mr I Thompson, Member

SOCIAL SECURITY – disability support pension – whether conditions fully diagnosed, treated and stabilised – whether impairments rate 20 points or more – decision under review affirmed

[QKTZ and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 133 (6 February 2020); Mr G Hallwood, Member

SOCIAL SECURITY – Family Tax Benefit – Three non-government parties – eligibility of grandparent for Family Tax Benefit – meaning of care – decision under review

[Rezaei and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 109 (31 January 2020); Senior Member CJ Furnell

SOCIAL SECURITY – family tax benefit – s32AE of the A New Tax System (Family Assistance) (Administration) Act 1999 – whether to apply 6.4.3 of the Family Assistance Guide – where applicant has not lodged a tax return – where applicant has not notified respondent that they are not required to lodge a tax return – whether determination under s28(2) of the A New Tax System (Family Assistance) (Administration) Act 1999 exists – whether member of a couple – married during relevant period – debt – whether debt can be waived or written off – whether special circumstances – decision relating to zero entitlement set aside – decision relating to excess payment affirmed

[Weston and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 113 (22 January 2020); Ms M East, Member

SOCIAL SECURITY – extension of time – s 29 of the Administrative Appeals Tribunal Act 1975 (Cth) – factors that are relevant when considering an extension of time – length of delay – explanation for delay – awareness of appeal rights – prejudice – merits of substantive application – alternative avenues of relief – Tribunal not satisfied extension of time reasonable in the circumstances – application for extension of time not allowed

[Wilson and Secretary, Department of Employment, Skills, Small and Family Business](#) (Social services second review) [2020] AATA 121 (15 January 2020); Ms D Mitchell, Member

SOCIAL SECURITY – Newstart allowance activity test – rate of Austudy – dismissal of frivolous and vexatious proceedings

PRACTICE AND PROCEDURE – role of the Tribunal – administrative justice – possible outcome versus purpose of application – correct or preferable decision – no power to address conduct of officers – frivolous or vexatious – application made for collateral purpose – abuse of the process of the Tribunal – mechanism of review that is fair, just, economical, informal and quick

Taxation

[Coal of Queensland Pty Ltd and Innovation and Science Australia](#) (Taxation) [2020] AATA 126 (30 January 2020); Deputy President BJ McCabe and Senior Member A Poljak

TAXATION – research and development tax offset – activities relating to production of viable coking coal product – Fort Cooper Coal Measures – whether R&D activities are “core R&D activities” or “supporting R&D activities” within the meaning of Div 355 of the Income Tax Assessment Act 1997 (Cth) – activities come within the exception in s 355–25(2)(b) of the Income Tax Assessment Act 1997 (Cth) – activities conducted were prospecting, exploring or drilling minerals for purposes of determining size or quality of deposits – decision under review affirmed

TAXATION – overseas activity does not meet the conditions in s 28D of the Industry Research and Development Act 1986 (Cth) – design of a wash-plant beneficiation process – application for a further period to make an application for internal review pursuant to s 30C(3)(b) of the Industry Research and Development Act 1986 (Cth) – applicant’s failure to apply for internal review of decision its fault and within its control – decision under review affirmed

Veterans' Affairs

[Newcomb and Repatriation Commission](#) (Veterans’ entitlements) [2020] AATA 124 (5 February 2020); Senior Member PJ Clauson AM

VETERANS’ AFFAIRS – military compensation – Veterans’ Entitlement Act 1986 (Cth) – disability pension – Special Rate – war-caused injury or war-caused disease – claim for cervical spondylosis condition and shoulder condition – alone test – 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 |
|--|----------------------------------|
| Mayes and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs | [2020] AATA 32 |
| HLKD and Minister for Home Affairs | [2019] AATA 4679 |
| Sanwa Pty Ltd and Comptroller-General of Customs | [2019] AATA 5166 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|----------------------------------|--|
| Comptroller-General of Customs v Pharm-A-Care Laboratories Pty Ltd | [2017] AATA 1816 | [2020] HCA 2 [2018] FCAFC 237 |



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