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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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Recent developments

New Small Business Taxation Division to commence on 1 March 2019

On 1 March 2019, a new Small Business Taxation Division will commence within the AAT, as [announced by](#) the Assistant Treasurer, the Hon. Stuart Robert MP.

The new Division is part of a range of measures announced to make it simpler for small businesses to resolve tax disputes. Other measures include a Concierge Service delivered by the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

Applicants to the AAT's new Small Business Taxation Division will pay a reduced application fee, have a case manager, early case assessment, and an expedited turnaround time for decisions, with AAT decisions in most cases being made within 28 days of the last day of the hearing, or receipt of further permitted evidence or submissions.

Additionally, under a scheme administered by the ASBFEO, unrepresented small business taxpayers who apply to the AAT's new Small Business Taxation Division may be able to access one hour of free legal advice.

The AAT is currently seeking feedback on two documents on the proposed operations of the new Division:

1. a Practice Direction titled [Review of Small Business Taxation Decisions](#), and
2. a [Guide to Small Business Taxation Division](#).

If you would like to comment on the draft documents, please email your feedback to us at LPExtFeedback@aat.gov.au by 21 February 2019.

Further information, including PDF copies of the consultation documents, is available [on our website](#).

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.

Aviation

[Hotson-Jones and Secretary, Department of Home Affairs](#) [2019] AATA 121 (13 February 2019)
Senior Member C Puplick AM

AUSCHECK – Aviation Security Identification Card – notice to issuing Authority of Applicant's qualified criminal history – notice to issuing body mandated by AusCheck Regulations 13(2) – section 42B application on the basis that application has no reasonable prospect of success – substantive application dismissed

Child Support

[Hall and Child Support Registrar](#) (Child support) [2019] AATA 115 (11 February 2019); R West, Member

Child Support Liability – departure prohibition order – revocation – decision affirmed

[Huckle and Harl](#) (Child support) [2018] AATA 4895 (5 December 2018); T Hamilton-Noy, Member

CHILD SUPPORT – child support agreement – whether a financial agreement meets the requirements of a binding child support agreement – decision under review affirmed

[Jagger and Jagger](#) (Child support) [2019] AATA 94 (3 January 2019); J Thomson, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income should be accepted – decision under review set aside and substituted

[Pannell and Pannell](#) (Child support) [2018] AATA 4898 (10 December 2018); K Millar, Member

CHILD SUPPORT – departure determination – costs of education – manner expected by both parents – cost of maintaining the children are significantly affected – financial resources of both parents – decision under review set aside and substituted

[Potter and Jarrett](#) (Child support) [2019] AATA 96 (3 January 2019); R Anderson, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – business income – decision under review set aside and substituted

[Reygan and Lancaster](#) (Child support) [2018] AATA 4899 (17 December 2018); A Smith, 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 – date of effect of the care percentage decision – decision under review set aside and substituted

Citizenship

[Alsaad and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 114 (8 February 2019); C Edwardes, Member

CITIZENSHIP – good character test – bogus documents – visa – inconsistency in information provided to department – false and misleading information – decision under review – character test satisfied

Compensation

[Budarick and Comcare](#) (Compensation) [2019] AATA 116 (8 February 2019); M Hyman, Member

PRACTICE AND PROCEDURE – compensation – application to dismiss – where review application is alleged to be misconceived or to have no reasonable prospects of success – relevant principles – medical evidence – existence of two case theories, each of which has evidentiary support – applicant's case is not fanciful – application to dismiss denied

[Van de Waterbeemd and Comcare](#) (Compensation) [2019] AATA 118 (11 February 2019); Senior Member L Kirk

COMPENSATION – appropriate diagnosis of the Applicant's condition – whether Applicant suffers from chronic pain syndrome or carpal tunnel syndrome – whether Applicant suffered from a 'disease' that was contributed to, in a material degree, by her employment – whether Applicant continues to suffer from the effects of the disease – whether gym membership 'medical treatment' under s 4 of the SRC Act – reviewable decisions affirmed.

Migration

[Angok and Minister for Home Affairs](#) (Migration) [2019] AATA 112 (11 February 2019); Senior Member M Griffin QC

MIGRATION – Revocation of visa cancellation – Applicant failed to pass the character test – whether there is another reason why the decision-maker should exercise its discretion to revoke the original visa cancellation decision – Ministerial Direction No. 65 applied – primary considerations – protection of Australian community from criminal or other serious conduct – best interests of minor children in Australia – expectations of Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – strength, nature and duration of ties – decision under review affirmed

[BIZCENTRAL COMMUNICATIONS PTY LTD](#) (Migration) [2018] AATA 4745 (5 December 2018); C Burnett-Wake, Member

MIGRATION – nomination of an occupation (employer nomination) – position of Contract Administrator – genuine position – effect of the Amending Regulations on a nomination application made before 18 March 2018 – no application for a Subclass 457 visa – no prescribed criteria – decision under review affirmed

[CHIUNDIZA](#) (Migration) [2018] AATA 4749 (6 December 2018); J Cripps Watts, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – applicant over 55 years of age – internationally recognised record of exceptional and outstanding achievement in a profession – current prominence in the field of music therapy – prominent and important work – established business in Australia – exceptional benefit to the Australian community – decision under review remitted

[Dang](#) (Migration) [2019] AATA 102 (21 January 2019); J Meyer, Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 570 (Independent ELCOS Sector) – genuine temporary entrant criteria – course changes – lack of academic progress – additional study not necessary to achieve business goals – use of visa program to extend stay – decision under review affirmed

[Fiodorov and Minister for Home Affairs](#) (Migration) [2019] AATA 117 (11 February 2019); Senior Member M Griffin QC

MIGRATION – decision not to revoke mandatory cancellation of visa – character test – substantial criminal record – Ministerial Direction no. 65 – primary and other considerations – decision under review affirmed

[RWDX and Minister for Immigration and Border Protection](#) (Migration) [2019] AATA 123 (12 February 2019); Deputy President Boyle

MIGRATION – Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – nature and seriousness of the crimes committed – length of sentences imposed – mitigating or aggravating factors – criminal history in totality – nature of the prior crimes – period over which the crimes took place – risk of re-offending/likelihood of relapsing into crime – prospects of rehabilitation – applicability of Direction no. 75 – decision under review affirmed

[Tran and Minister for Home Affairs](#) (Migration) [2019] AATA 125 (12 February 2019); Senior Member R Cameron

MIGRATION – Mandatory cancellation of visa – Whether to revoke cancellation – Where the Applicant does not pass the character test – Where the Applicant has a substantial criminal record – Whether there is another reason cancellation should be revoked – Consideration of Direction no. 65 – Decision affirmed

[Tran](#) (Migration) [2018] AATA 4741 (6 December 2018); A Mendes Da Costa, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visas – Subclass 186 Employer Nomination Scheme – Temporary Residence Transition stream – position of Air Conditioning and Refrigeration Mechanic – nomination approved upon review – decision under review remitted

[VASCONCELLOS DA SILVA](#) (Migration) [2018] AATA 4742 (6 December 2018); J Cripps Watts, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – internationally recognised record of exceptional and outstanding achievement in the arts – tattoo artist specialising in tattooing for women with breast cancer – participation in professional and charitable events – established business in Australia – national and international profile as tattoo artist – decision under review remitted

Refugee

[1703251](#) (Refugee) [2018] AATA 4868 (12 December 2018); C Smolicz, Member

REFUGEE – protection visa – Egypt – religion – Coptic Orthodox Christian – social work with the church – helped young Muslim women – fears sectarian violence – fear of harm from Islamic extremists – psychological and physical abuse – sexual assault victim – societal discrimination – relocation unreasonable – mental health issues – PTSD and depression – decision under review affirmed

[1616263](#) (Refugee) [2018] AATA 4872 (13 December 2018); L Hardy, Member

REFUGEE – protection visa – Fiji – imputed opinion – association with authorised recipient opinions – delay in applying for protection – lack of evidence of claims – decision under review affirmed

[1606344](#) (Refugee) [2019] AATA 97 (16 January 2019); S Roushan, Senior Member

REFUGEE – protection visa – Lebanon – imputed political opinion – forced to give goods to extremists – kidnapped – credibility – delay in apply for protection – family members in Australia – mental health claims do not explain inconsistencies – decision under review affirmed

[1701702](#) (Refugee) [2019] AATA 90 (16 January 2019); J Pennell, Member

REFUGEE – protection visa – Vietnam – economic disadvantage – fears harm from gangs – no evidence provided – credibility – delay in apply for protection – plan to work in Australia – no genuine fear of being persecuted – decision under review affirmed

[1606344](#) (Refugee) [2019] AATA 97 (16 January 2019); S Roushan, Senior Member

REFUGEE – protection visa – Lebanon – imputed political opinion – forced to give goods to extremists – kidnapped – credibility – delay in apply for protection – family members in Australia – mental health claims do not explain inconsistencies – decision under review affirmed

[1701702](#) (Refugee) [2019] AATA 90 (16 January 2019); J Pennell, Member

REFUGEE – protection visa – Vietnam – economic disadvantage – fears harm from gangs – no evidence provided – credibility – delay in apply for protection – plan to work in Australia – no genuine fear of being persecuted – decision under review affirmed

Social Security

[Ashley and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 122 (12 February 2019); Mr C Edwardes, Member

SOCIAL SECURITY – disability support pension – medical conditions – impairment tables – continuing inability to work rating – participation in program of support – decision under review affirmed

[Nabasango and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 120 (8 February 2019); Senior Member N A Manetta

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – medical conditions not fully diagnosed, fully treated and fully stabilised during the assessment period – decision under review affirmed

[Strachan and Secretary, Department of Social Services](#) (Social services second review) [2018] AATA 4942 (14 November 2018); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – disability support pension – whether applicant qualified for disability support pension – chronic fatigue syndrome – anxiety and depression – migraine – scoliosis – whether applicant's conditions fully treated and stabilised – whether applicant has a continuing inability to work – program of support – decision affirmed

[TWCZ and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 113 (8 February 2019); C Edwardes, Member

SOCIAL SECURITY – members of a couple – shared care – FTB child – nature of the household – separation short period – Facebook posts – decision affirmed

Taxation

[NKCX and Commissioner of Taxation](#) (Taxation) [2019] AATA 124 (13 February 2019); Senior Member Mrs J C Kelly

TAXATION – GOODS AND SERVICES TAX – whether assessments and amended assessments of net amount were excessive for purposes of s 14ZZK(b)(i) of the Taxation Administration Act 1953 – whether the Applicant was entitled to input tax credits – whether Applicant carried on enterprise of private investigations, mercantile agent, litigation support, and consultancy – whether Applicant carried on an enterprise of share trading – interpretation of s 14ZZE of the Taxation Administration Act 1953 – 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
Sadruga and Minister for Home Affairs	[2019] AATA 119
Zyaran and Minister for Home Affairs	[2018] AATA 3785

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		



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