



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.

Child Support

[Caruso and Caruso](#) (Child support) [2019] AATA 5420 (13 November 2019); M Baulch, Member

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

[Boatwright and Boatwright](#) (Child support) [2019] AATA 5938 (25 November 2019); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – calculation of adjusted taxable income under estimate review – decision under review varied

[Damon and Child Support Registrar](#) (Child support) [2019] AATA 5947 (18 November 2019); S Letch, 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 – decision under review set aside and substituted

Citizenship

[Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 493 (12 March 2020); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review affirmed

Compensation

[Jenkins and Comcare](#) (Compensation) [2020] AATA 499 (12 March 2020); Dr M Evans-Bonner, Senior Member

COMPENSATION – Workers' Compensation – Commonwealth Employee – determination by Respondent of no present liability – medical expenses – incapacity payments – whether Applicant continues to suffer from an injury – accepted injury as described by Comcare not definitive – whether Applicant recovered from injury – whether an injury can continue after successful surgery – whether a new injury caused as a result of medical treatment – expert medical evidence – independence of experts when they have conferred – common law “but for” test does not apply to the Safety, Rehabilitation and Compensation Act 1988 – Reviewable Decision affirmed

[Ramsay and Comcare](#) (Compensation) [2020] AATA 487 (11 March 2020); M O'Loughlin, Member

COMPENSATION – accepted injury – causes of incapacity under claim – nature of ‘injury’ and contributory causes – whether injury due to employment - decision set aside and substituted with a decision that respondent is liable under section 14 of the Safety, Rehabilitation and Compensation Act 1988

[Thompson and Comcare](#) (Compensation) [2020] AATA 431 (10 March 2020); Emeritus Professor P A Fairall, Senior Member

COMPENSATION – workers compensation – osteoarthritis of the left hip – bilateral hip replacements – claim for ‘frank’ injury to right hip rejected – whether original determination of liability in relation to left hip was correct – Telstra Corporation Ltd v Hannaford – whether employment no longer contributed to a significant degree – decision under review set aside and remitted

Education and Research

[Chicho Family Day Care Pty Ltd and Secretary, Department of Education](#) [2020] AATA 426 (6 March 2020); Dr S Fenwick, Senior Member

CHILD CARE – BENEFITS AND REBATES – cancellation of approval as a child care service – whether the applicant has breached relevant regulatory framework – consideration of frequency and seriousness of breaches – consideration of appropriate sanction – decision affirmed

Migration

[Allen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 436 (11 March 2020); Senior Member M Griffin QC

MIGRATION – permanent residency visa – citizen of New Zealand – failure to pass character test – offending history – whether discretion to revoke mandatory cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – decision under review set aside and substituted

[Kare Kare and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 498 (12 March 2020); R Arends, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) 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

[Khoshaba and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 432 (6 March 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass good character test – extensive criminal history – convictions for multiple violent offences – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

PDWL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 485 (11 March 2020); Dr N A Manetta, Senior Member

MIGRATION – where Minister's delegate refused application for a protection visa under section 501 on character grounds – effect of BAL19 v Minister for Home Affairs – no jurisdiction in delegate so to act – whether Tribunal should remit matter with directions or substitute decision that protection visa be granted – held that it was appropriate to decide to substitute a decision that a visa be granted as all criteria met

Pitcher and Minister for Home Affairs (Migration) [2020] AATA 497 (3 March 2020); R Arends, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) 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

RQRP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 437 (10 March 2020); S Burford, Member

MIGRATION – Migration Act 1958 (Cth) - visa cancellation decision under s 501(2) - substantial criminal record – child sexual offending – traffic and general offending – Applicant does not satisfy character test – whether the Tribunal should exercise discretion to set aside or remit the Reviewable Decision – Direction no. 79 - primary considerations – protection of the Australian community – nature and seriousness of the non-citizen's conduct – risk to the Australian community – expectations of the Australian community other considerations – strength, nature and duration of ties – extent of impediments if removed to United Kingdom – decision affirmed

Strachan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 496 (13 March 2020); Senior Member D J Morris

MIGRATION – Cancellation of applicant's Class BB Return Residence Subclass 155 (Five Year Resident Return) visa – applicant is a citizen of the United Kingdom – applicant has failed character test – whether discretion should be exercised to cancel visa – consideration of ministerial Direction No. 79 – protection of the Australian community – the nature and seriousness of the conduct – child abuse material offences – the risk to the Australian community should the person re-offend – expectations of Australian community – strength, nature and duration of ties to Australia – applicant's long residence in Australia – extent of impediments if removed – applicant is elderly – other relevant matter – spouse of applicant has temporary visa and applicant is sponsor – decision under review is affirmed

Tohi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 495 (13 March 2020); Mr S Evans, Member

MIGRATION – Mandatory cancellation of Subclass 444 Special Category (Temporary) visa – failure to pass character test due to substantial criminal record – whether discretion to revoke mandatory cancellation of visa should be exercised – whether another reason why original decision should be revoked – Ministerial Direction No. 79 applied – primary considerations – other considerations – decision under review affirmed

XNBW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2020] AATA 441 (2 March 2020); Senior Member B J Illingworth

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

1727209 (Migration) [2019] AATA 6350 (21 October 2019); A Murphy, Member

MIGRATION – cancellation – Refugee and Humanitarian (Class XB) – Subclass 200 (Refugee) – failure to notify department of changes – change in relationship status – ‘shot gun’ wedding – has wife and child – Afghan Hazaras – unplanned pregnancy – no evidence of prior relationship – no evidence of joint ownership – decision under review set aside

Kim (Migration) [2020] AATA 208 (28 January 2020); P Dunn, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – false or misleading information – bogus document – job reference – former employer provided reference, then was uncooperative to department and applicant – employer’s fear of authorities over employment and tax irregularities – casual work, no contract or other documentation and cash payments widespread in sector – letter of recommendation and oral evidence from former colleague – work history in Australia – decision under review remitted

NGUYEN (Migration) [2020] AATA 145 (29 January 2020); W Banfield, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – ground for cancellation – genuine student – failure to maintain enrolment – unsatisfactory academic progress – study gaps – consideration of discretion – mental health issues – benefitted from treatment – identified a more suitable subject area – decision under review set aside

O’Keeffe (Migration) [2020] AATA 204 (31 January 2020); J Cripps Watts, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – Standard Business Sponsorship stream – approved nomination – legislative amendments to visa subclass – transitional provisions save nomination from ceasing until tribunal’s review of refusal of visa – skills, qualifications and employment background necessary for nominated occupation – ANZSCO classification – relevant experience instead of formal qualifications – applicant’s tasks on large civil construction projects – licensing or registration requirements – state legislation excludes large civil projects from licensing requirements – ANZSCO should be used as a guide, not prescriptively – decision under review remitted

XUE (Migration) [2020] AATA 240 (7 February 2020); J Murphy, Member

MIGRATION – Skilled Nominated (Permanent) (Class SN) visa – Subclass 190 (Skilled - Nominated) – false or misleading information – bogus document – range and level of duties stated in work reference letters – departmental officers contacted general manager of company by phone, who stated that applicant had performed other, lower-level duties – later, written information corrected information in phone call – manager’s original information by phone given in English – not made aware of purpose of call – consistent and credible evidence from applicant and manager at hearing – decision under review remitted

Practice and Procedure

[Global Family Day Care Pty Ltd and Secretary, Department of Education](#) [2020] AATA 433 (9 March 2020); Deputy President B W Rayment OAM QC

PRACTICE AND PROCEDURE – application for stay of operation of reviewable decision – where applicant cannot operate if stay is not granted – where no other day care facilities available in the area – where not in the public interest – where previous stays ordered by consent – where applicant has opportunity to rectify non-compliances – stay application granted

[Pittard and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 435 (11 March 2020); K Parker, Member

EXTENSION OF TIME APPLICATION – whether reasonable in all the circumstances to grant an extension of time – application lodged more than six years out of time – applicant claims that reviewable decision not sent to her and not advised of 28-day time limit – explanation for the delay – merits of the substantive application – application refused

[Ridden and Tax Practitioners Board](#) [2019] AATA 6545 (18 October 2019); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – whether the decision to cancel the applicant's tax agent registration should be stayed – whether the stay is necessary to preserve the efficacy of the review proceedings – impacts on the applicant – impacts on third parties – impact of respondent's regulatory role – prospects of success – stay refused

[Somba and Minister for Home Affairs](#) (Migration) [2020] AATA 425 (3 March 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – migration – reinstatement of application for revocation of cancellation of visa – explanation for the Applicant's failure to appear – Applicant's conduct in prosecuting application generally – fair and equitable – resting on rights – prejudice to parties – public interest – merits of substantive application – no reasonable prospects of success – application for reinstatement refused

[Taylor and Comcare](#) (Compensation) [2020] AATA 430 (28 February 2020); W Frost, Member

PRACTICE AND PROCEDURE – application for dismissal under section 42A(5) of the Administrative Appeals Tribunal Act 1975 – whether the applicant has failed to proceed with her application – whether the applicant has failed to comply with Tribunal directions – discretion to dismiss an application is enlivened – whether dismissal is the proper remedy – prejudice to the respondent – merits of the application – best efforts of the applicant to assist the Tribunal – dismissal as the last resort – application dismissed

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 429 (10 March 2020); Mr R Reitano, Member

PRACTICE AND PROCEDURE – extension of time to lodge application for review – principles to be applied – significant delay – where no prejudice from granting an extension – some prospects of substantive matter succeeding – extension of time granted

Refugee

[1719102](#) (Refugee) [2019] AATA 6417 (8 August 2019); C Smolicz, Member

REFUGEE – protection visa – Pakistan – Federal Court remittal – religion – Shia Muslim – race – Pashtun Bangash – imputed political opinion due to religion and ethnicity – general and specific threats and attacks by Taliban and other militant groups – withdrawal of daughter from school – applicant's father has links with government and intelligence agencies – mental health – lack of appropriate services in Pakistan – relocation – decision under review remitted

[1730123](#) (Refugee) [2019] AATA 6488 (9 August 2019); B Darcy, Member

REFUGEE – protection visa – Sri Lanka – Federal Circuit Court remittal – political opinion – United National Party – failed asylum seeker – feared harm by People's Alliance Supporters – inconsistent evidence – credibility issues – unreliable witness – fabricated claims for migration purposes – no real chance of serious harm – decision under review affirmed

[1904948](#) (Refugee) [2020] AATA 300 (20 January 2020); S Baker, Member

REFUGEE – protection visa – Burundi – race – Hutu – father killed by Tutsi soldiers – humanitarian visa cancelled on character grounds – ethnically based civil war ended in 2005 – Arusha agreement – imputed political opinion – opposition to the current government – general security situation – decline in politically motivated violence – particular social group – returnee from Australia or wealth country – single person with no family – prospects of integrating into society – separation from family and children – access to mental health care – decision under review affirmed

[1617953](#) (Refugee) [2020] AATA 354 (31 January 2020); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – religion – questioning of Islam in Iran – conversion to Christianity in Australia – low-level church membership and activity – country information – status of Christians and failed asylum seekers – decision under review affirmed

[1825788](#) (Refugee) [2020] AATA 428 (6 February 2020); F Simmons, Member

REFUGEE – protection visa – Stateless – arrival at Ashmore Reef – unauthorised maritime arrival and Temporary Safe Haven visa grant – visa ceased – minister lifted bar in s 46A – applicant applied for Safe Haven Enterprise Visa – application refused by department on identity, nationality and protection obligations grounds – refusal affirmed by Immigration Assessment Authority – Ashmore and Cartier Islands proclaimed as excised offshore places – Federal Court judgment in another case – Ashmore and Cartier Islands arrival not unauthorised maritime arrival or fast-track applicant – IAA decision quashed – tribunal's power to review – applicability of ss 46A and 91K if original TSH visa invalidly granted – no statutory power to consider whether grant of original TSH visa was wrong in law – application invalid and cannot be considered – decision under review set aside

[1711341](#) (Refugee) [2020] AATA 357 (19 February 2020); J Kelly, Senior Member

REFUGEE – cancellation – protection visa – Iran – incorrect information in protection visa application – fear of harm from police, Basij and government – engagement with authorities to obtain passport – voluntary return to home country twice – compelling and compassionate circumstances – daughters beaten by in-laws and miscarried, one attempted suicide – applicant's physical and mental health and treatment – decision under review set aside

[1935626](#) (Refugee) [2020] AATA 502 (31 January 2020); M Hawkins, Member

REFUGEE – protection visa – cancellation – Sri Lanka – criminal conviction and imprisonment – discretion to cancel visa – factors for and against cancellation – nature and seriousness of criminal conduct – assault within peer group, after argument affected by alcohol – not principal offender, did not strike victim – remorse and plea of guilty – treatment for mental health and alcohol consumption – good work record with offer of ongoing employment – close ties to community – statements of support from brother, friend and victim of assault – decision under review set aside

Social Services

[Arber and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 491 (13 March 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – cervical spine condition – whether applicant had severe functional impairment – opiate dependence – moderate functional impairment – decision under review affirmed

[Eid and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 424 (7 February 2020); S Evans, Member

SOCIAL SECURITY – disability support pension – rejection – qualification – medical – whether impairments fully diagnosed, treated and stabilised – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – bladder condition – chronic pain syndrome – gastrointestinal condition – mental health condition – decision affirmed

[Findlay and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 490 (13 March 2020); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – depression and anxiety – epilepsy – obstructive sleep apnoea – tinnitus and benign positional vertigo – whether impairments rated at 20 points or more under the Impairment Tables – limited medical evidence – decision affirmed

[Kalayzich and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 439 (11 March 2020); D Mitchell, Member

SOCIAL SECURITY – Disability Support Pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Relevant Period – decision under review affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 492 (13 March 2020); Mr R Reitano, Member

SOCIAL SECURITY – disability support pension – where applicant has medical conditions causing impairment – whether the impairment is fully diagnosed, fully treated and fully stabilised - whether the applicant has an impairment rating of 20 or more points according to the Impairment Tables – whether the applicant has a continuing inability to work – spinal condition - decision set aside and substituted

[Stanley and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 438 (11 March 2020); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – from dysgraphia, autism spectrum disorder, gender dysphoria and anxiety – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review affirmed

[Vasta and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 423 (5 March 2020); The Hon. S Parry, Member

SOCIAL SECURITY – disability support pension – qualification at date of claim – qualification period – whether the applicant met the residency requirements – social security international agreements – whether the applicant had a physical or psychiatric impairment – impairment rating – decision affirmed

[Wood and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 434 (5 March 2020); The Hon. S Parry, Member

SOCIAL SECURITY - disability support pension – qualification at date of claim – qualification period – whether the applicant had a physical or psychiatric impairment – impairment rating – continuing inability to work – decision affirmed

Taxation

[Douglas and Commissioner of Taxation](#) (Taxation) [2020] AATA 494 (13 March 2020); The Honourable Justice J A Logan RFD, Deputy President

TAXATION – INCOME TAX – where applicant’s application for amendment of his ground of discharge in 2002 from the Australian Defence Force to discharge on medical grounds was approved in 2014 – where applicant was consequentially determined in 2014 to be entitled to invalidity pay under the Defence Force Retirement and Death Benefits Act 1973 (Cth) on and from discharge date and paid a lump sum of arrears of invalidity pay in 2015 income year – whether the arrears payment should be treated in the manner prescribed in s 307-145(1) of the Income Tax Assessment Act 1997 (Cth) (ITAA97) – where the Treasury Laws Amendment (Miscellaneous Amendments) Regulations 2018 (Cth) (amending regulations) were made during the course of the review proceedings – where at the time when the applicant was assessed in respect of the 2015 income year, at the time of the objection decision in respect of his objection to the assessment and at the time when the applicant sought review of that objection decision by the Tribunal there was no specification in the Income Tax Assessment Regulations 1997 (Cth) of any “superannuation benefit” for the purposes of s. 307-70(1) of the ITAA97 – whether s 7(2) of the Acts Interpretation Act and s 12 of the Legislation Act 2003 (Cth) applicable so as to require review to be conducted unaffected by the amending regulations – decision set aside and remitted

[Ridden and Tax Practitioners Board](#) [2020] AATA 422 (6 March 2020); Deputy President B J McCabe

TAX AGENTS – termination of registration as tax agent – applicant prohibited from applying for registration for period of three years – contraventions of the Code of Professional Conduct – where applicant failed to disclose convictions for failing to comply with requirements under taxation law – applicant failed to disclose previous regulatory action – applicant failed to manage personal tax affairs – applicant failed to account to clients for monies received on trust – applicant failed to respond to requests and directions from the Board – whether action should be taken against the applicant – whether three year ban was appropriate – decision to terminate affirmed – decision to ban varied to two years

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
Klewer and National Disability Insurance Agency	[2019] AATA 4974
Klewer and Secretary, Department of Social Services	[2019] AATA 4357
VSGP and Minister for Home Affairs	[2019] AATA 334

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
AXT19 v Minister for Home Affairs	[2019] AATA 27	[2020] FCAFC 32 [2019] FCA 1423
Bernard v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (No 3)	[2017] AATA 597	[2020] FCA 319
BHP Billiton Limited (now named BHP Group Limited) v Commissioner of Taxation	[2017] AATA 3037	[2019] FCAFC 4 [2020] HCA 5
DHS17 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 3646	[2020] FCA 311
Hopkins v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 1393	[2020] FCAFC 33 [2019] FCA 1697
Ferreira v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2018] AATA 2599	[2020] FCAFC 33 [2019] FCA 1657
Lum v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs and Anor	[2019] AATA 935	[2020] FCA 324



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