



Administrative
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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

[XWPX and Child Support Registrar](#) (Child support second review) [2020] AATA 546 (16 March 2020); The Hon. J Pascoe AC CVO, Deputy President

CHILD SUPPORT – review of decision of Social Services and Child Support Division – percentage of care – where father claimed the child lived entirely with him for the relevant period – where father claimed special circumstances for not lodging an objection to the care percentage determination – decision affirmed

Citizenship

[Jafari and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 570 (18 March 2020); Mr R Reitano, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether permanent or enduring physical or mental incapacity at the time the applicant made the application – where insufficient evidence of permanent or enduring mental incapacity at the time of application – PTSD – major depression – decision under review affirmed

[Kakos and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 571 (19 March 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is of good character – traffic/driving infringements – assault police – resist officer in execution of duty – domestic violence charges dismissed – apprehended domestic violence order made – Citizenship Policy – Australian Citizenship Procedural Instructions – where applicant has limited insight into his behaviour – character references do not outweigh offences – decision under review affirmed

[Su and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 590 (19 March 2020); R West, Member

CITIZENSHIP – application for citizenship refused – non-biological parent – whether a parent of the person was an Australian citizen at the time of the birth – decision under review set aside and remitted to the Respondent

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

(Citizenship) [2020] AATA 549 (3 February 2020); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is of good character – where applicant provided false and misleading information over a long period of time – where applicant misled by omission – Citizenship Policy – decision under review affirmed

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

(Citizenship) [2020] AATA 553 (13 March 2020); Mr M O’Loughlin, Member

IMMIGRATION AND CITIZENSHIP – citizenship – whether Tribunal satisfied as to the identity of the applicant – insufficient evidence regarding identity of the applicant – decision under review affirmed

Corporations

[Bowker and Australian Securities and Investments Commission](#) [2020] AATA 573 (6 March

2020); Deputy President B J McCabe and Dr M Evans-Bonner, Senior Member

CORPORATIONS – banning order – financial services – decision by Australian Securities and Investments Commission to make banning order prohibiting applicant from providing financial services for 6 years – where the applicant does not otherwise provide financial services – whether ASX minimum spread requirement to qualify for the ASX Official List obtained by artificial means – whether applicant failed to comply with a financial services law – whether applicant engaged in conduct that was misleading or deceptive or was likely to mislead or deceive in relation to a financial product – whether power to make a banning order enlivened – whether banning order should be made – duration of banning order – reviewable decision varied to reduce the banning period to two years

Migration

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

(Migration) [2020] AATA 545 (13 March 2020); Mr T Eteuati, Member

MIGRATION – Non-revocation of mandatory cancellation of Class XB Subclass 202 protection visa – Applicant does not pass character test – whether there is another reason why the mandatory cancellation of the Applicant’s visa should be revoked – consideration and application of Ministerial Direction No 79 – decision under review set aside and substituted

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

(Migration) [2020] AATA 539 (13 March 2020); Senior Member C Puplick AM

MIGRATION – mandatory cancellation of Absorbed Person visa – failure to pass character test – substantial criminal record – whether there is another reason for the mandatory cancellation to be revoked – ministerial Direction no. 79 – primary considerations – protection of the Australian community – the best interests of minor children – expectations of the Australian community – other considerations – international non-refoulement obligations – strength, nature and duration of ties – impact on Australian business interests – impact on victims – extent of impediments if removed – weighing of primary and other considerations – reviewable decision is set aside and substituted

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

(Migration) [2020] AATA 543 (16 March 2020); Mr S Evans, Member

MIGRATION – non-revocation of mandatory cancellation of a Subclass 444 Special Category (Temporary) visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record under s 501(7) – affray – whether there is another reason to revoke the mandatory cancellation of the visa – Ministerial Direction No. 79 – primary considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – impediments if removed – where Applicant is considered to be at medium risk of re-offending – decision under review affirmed

Social Services

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

AATA 548 (16 March 2020); Senior Member C Puplick AM

SOCIAL SERVICES – aged pension – debt raised for overpayment of pension recovered by garnishee notice – whether debt recovered should be refunded – sole administrative error – assets previously disclosed to the department – whether application for aged pension made fraudulently – decision affirmed

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

AATA 544 (13 March 2020); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – fibromyalgia – chronic fatigue syndrome – migraines – irritable bowel syndrome – whether impairments are 20 points or more under the Impairment Tables – decision affirmed

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

AATA 554 (16 March 2020); Senior Member R Cameron

SOCIAL SECURITY – Newstart Allowance rejection – rejection due to assets value limit – whether directors' loans assets attributable to the applicants – decisions under review affirmed

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

AATA 595 (19 March 2020); Senior Member DR Davies

SOCIAL SECURITY – age pension – whether applicant satisfied qualification criteria – whether applicant was an Australian resident during the relevant period – decision under review affirmed

RCJY and Secretary, Department of Social Services (Social services second review) [2020] AATA

572 (18 March 2020); Senior Member BJ Illingworth

FAMILY ASSISTANCE – court orders – non-compliance – reasonable action to comply – interim period – family tax benefit – decision under review affirmed

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

AATA 591 (19 March 2019); Ms LM Gallagher, Member

SOCIAL SECURITY – age pension – date of effect of favourable determination – date of request for review of rate of payment – Tribunal's discretion to otherwise order – decision under review affirmed

Taxation

[SWPD and Commissioner of Taxation](#) (Taxation) [2020] AATA 555 (18 March 2020); Deputy President AG Melick AO SC and Ms L Rieper, Member

TAXATION – whether Applicant was carrying on a business for the purposes of subdivision 152-A of the Income Tax Assessment Act 1997 – whether the Applicant was entitled to reduce the capital gain on the sale of his property – whether the Applicant’s property satisfied the active asset test – Applicant satisfied the burden of proof – Applicant was operating a business and property meets active assets test – Applicant satisfies conditions for relief in section 152-10(1) of the Act – decision set aside and remitted to Commissioner for reconsideration

Tribunals

[Hunt and Department of Transport and Main Roads \(Qld\)](#) [2020] AATA 557 (28 February 2020); Dr P McDermott RFD, Deputy President

MUTUAL RECOGNITION – whether applicant entitled to be granted registration in Queensland as an electrical contractor by reason of his registration in Queensland for traffic management design – no occupation – no jurisdiction to determine the application

[McPhillimy and Department of Transport and Main Roads \(Qld\)](#) [2020] AATA 556 (28 February 2020); Dr P McDermott RFD, Deputy President

MUTUAL RECOGNITION – whether applicant entitled to be granted registration in Queensland as an electrical contractor by reason of his registration in Queensland for traffic management design – no occupation – no jurisdiction to determine the application

Veterans' Affairs

[Garrard and Repatriation Commission](#) (Veterans’ entitlements) [2020] AATA 538 (13 March 2020); Senior Member Katter

VETERANS’ AFFAIRS – claim for defence-caused conditions – claim for disability pension – standard of proof – relevant Statements of Principles – hypertension – decision set aside and remitted for reconsideration

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
Berryman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 421
DGPZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 115
LDDW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 60
Moltoni and Commissioner of Taxation	[2020] AATA 137
Navugavuga and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 155
RDQD and Child Support Registrar	[2020] AATA 160
Tapara and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 321

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Alstom Transport Australia Pty Ltd v Comptroller-General of Customs	[2019] AATA 1308	[2020] FCAFC 43
Commonwealth Superannuation Corporation v Truan	[2019] AATA 555	[2020] FCA 364
Montenegro v Secretary, Department of Education	[2019] AATA 1912	[2020] FCA 325
XFKR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2017] AATA 2385	[2020] FCA 323



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