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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

[Castaneda and Child Support Registrar](#) (Child support) [2020] AATA 901 (20 February 2020); A Schiwy, Member

CHILD SUPPORT – particulars of the administrative assessment – whether a terminating event happened in relation to the child – no terminating event – decision under review set aside and substituted

[Chernoff and Ciesielski](#) (Child support) [2020] AATA 1041 (25 February 2020); J Thomson, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – whether a child support terminating event had occurred – decision under review set aside and substituted

[Freckleton and Freckleton](#) (Child support) [2020] AATA 1023 (20 February 2020); Senior Member R Ellis

CHILD SUPPORT – percentage of care – no change to the likely pattern of care – decision under review affirmed

[Herbert and Child Support Registrar](#) (Child support) [2020] AATA 1039 (21 February 2020); K Dordevic, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review set aside and substituted

CHILD SUPPORT – date of effect of the tribunal's decision – whether there were special circumstances that prevented the application for review being lodged in time - special circumstances exist - tribunal makes a determination under subsection 95N(2)

[Kelley and Sanders](#) (Child support) [2020] AATA 1018 (18 February 2020); P Jensen, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – income from employment and self-employment - decision under review set aside and substituted

Citizenship

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

(Citizenship) [2020] AATA 1503 (26 May 2020); Mrs J C Kelly, Senior Member

CITIZENSHIP – Refusal of Australian citizenship by conferral – applicant is an Egyptian citizen – whether applicant is of good character – applicant was in Australia unlawfully for a total of 9 years – applicant did not respect and abide by four decisions refusing his claims for a visa – the applicant did not respect and abide by Australian law on those occasions – applicant is not of good character at the time of decision – reviewable decision affirmed

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

(Citizenship) [2020] AATA 1346 (17 April 2020); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – citizenship test exemption – whether Applicant suffers from a permanent or enduring mental incapacity at the time of application – medical evidence considered – decision set aside and remitted

[Gavi and Minister for Home Affairs \(Citizenship\)](#) [2020] AATA 1492 (19 May 2020); Deputy

President Boyle

CITIZENSHIP – good character – enduring moral qualities – unlawful and indecent assault – breach of protective bail – false or misleading declaration – character references – claimed cultural differences – complete disclosure of convictions to Department – reviewable decision affirmed

[Harbi and Minister for Immigration and Border Protection, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1347 (18 May 2020); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – rejection – citizenship test – eligibility requirements for citizenship – whether applicant has permanent or enduring physical or mental incapacity – consideration of medical evidence – decision affirmed

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

(Citizenship) [2020] AATA 1327 (15 May 2020); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – eligibility – application for citizenship by conferral – refusal of citizenship – failure to meet general residence requirement – whether a close and continuous association with Australia – spouse of Australian citizen – long periods of absence in four year period immediately before citizenship application – whether discretion should be exercised to treat Applicant as having been present in Australia as a permanent resident during periods of absence – reviewable decision set aside and remitted

Compensation

[PLBB and Comcare](#) (Compensation) [2020] AATA 1348 (18 May 2020); Ms S Taglieri SC, Member

COMPENSATION – whether the Applicant suffered an injury, disease or aggravation of either for the purposes of the Act – liability exclusion – whether the injury or disease resulted from reasonable administrative action taken in a reasonable manner in respect of the Applicant’s employment – meaning of administrative action in respect of employee’s employment - decision set aside and matter remitted

[Whitlock and Comcare](#) (Compensation) [2020] AATA 1353 (18 May 2020); Senior Member L Kirk

WORKERS’ COMPENSATION – psychological condition – whether the applicant suffered an ‘ailment’ or an ‘aggravation’ of an ailment for the purposes of section 4 of the Safety, Rehabilitation and Compensation Act 1988 – whether the applicant’s employment contributed, to a significant degree, to her ailment or aggravation of an ailment such that she suffered a disease pursuant to section 5A of the Safety, Rehabilitation and Compensation Act – whether that disease is not an injury by reason of section 7(7) of the Safety, Rehabilitation and Compensation Act 1988 – applicant’s employment did not significantly contribute to the applicant’s disease – Tribunal does not need to consider whether section 7(7) is applicable – decision under review affirmed

Corporations

[Universal Family Day Care Pty Ltd and Secretary, Department of Education](#) [2020] AATA 1369 (19 May 2020); Dr L Bygrave, Member

CORPORATIONS – cancellation of approval for child care subsidy – deregistration – the effect of reinstatement – whether the applicant ceased to operate when deregistered – whether the Corporations Act can be applied retrospectively – decision under review affirmed

Freedom of Information

[Bell and Secretary, Department of Health](#) (Freedom of information) [2020] AATA 1436 (19 May 2020); Deputy President S A Forgie

FREEDOM OF INFORMATION – legal professional privilege – legal advice given by government in-house legal branch – whether privilege waived – decision affirmed

[Francis and Department of Veterans' Affairs](#) (Freedom of information) [2020] AATA 1419 (22 May 2020); Deputy President Britten-Jones

FREEDOM OF INFORMATION – application for amendment of personal records – where the applicant had made previous applications to amend the same document – record of opinion – whether opinion based on mistake of fact – whether author of opinion biased, unqualified or acted improperly in conducting factual inquiries towards formulating opinion – whether the information was incorrect, incomplete, out of date or misleading – what annotation is appropriate – decision affirmed

[Neilson and Secretary, Services Australia](#) (Freedom of information) [2020] AATA 1435 (25 May 2020); Deputy President R I Hanger AM QC

FREEDOM OF INFORMATION – Freedom of Information Act – access to information – requests involving computers – information not available in discrete form – whether use of a computer or other equipment is ordinarily available to the agency under s 17 – where agency refused request on grounds that the document does not exist under s 24A – Privacy Rules Linking Medicare Benefits Schedule and Pharmaceutical Benefits Scheme under s 135AA National Health Act 1953 – decision under review affirmed

Industrial Law

[Roberts and Secretary, Attorney-General's Department](#) [2020] AATA 1494 (26 May 2020); Ms D K Grigg, Member

FAIR ENTITLEMENTS GUARANTEE – whether applicant entitled to an advance for unpaid commissions, overtime annual leave loading and redundancy payments – consideration of the applicable “governing instrument” – contract interpretation - decision under review affirmed.

Migration

[BHVN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1467 (25 May 2020); Ms R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Subclass 801 Spouse (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

[HMYH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1465 (26 May 2020); Senior Member A Nikolic AM CSC and Dr S. Fenwick, Senior Member

MIGRATION – visa refusal – whether the applicant passes the character test - failure to pass the character test – sexual offence – fail to comply with bail – whether the visa should be refused on character grounds - Ministerial Direction No. 79 applied – decision affirmed

[HJBL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1434 (22 May 2020), Senior Member L Kirk

MIGRATION – Class XE, Subclass 790 Safe Haven Enterprise visa – citizen of Iran – failure to pass character test – driving offences – whether discretion to revoke mandatory visa cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – non-refoulement obligations – likelihood of indefinite period of detention – decision under review set aside and substituted

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

(Migration) [2020] AATA 1349 (18 May 2020); Ms R Bellamy, 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 set aside and substituted

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

(Migration) [2020] AATA 1469 (25 May 2020), Mr S Evans, Member

MIGRATION – non-revocation of mandatory cancellation of a visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record under s 501(7) – whether the applicant made representations in accordance with the invitation – whether representations were made when posted or received – whether there is another reason to revoke the mandatory cancellation of the visa – Ministerial Direction No. 79 – primary considerations – other considerations – decision set aside and remitted for reconsideration with directions.

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

(Migration) [2020] AATA 1329 (15 May 2020); Mr S Evans, Member

MIGRATION – refusal of Employer Nomination Scheme (Class EN) (Subclass 186) Visa – whether applicant fails the character test – whether there is any risk of the applicant engaging in future criminal conduct – Direction No. 79 – applicant found to meet the character test – discretion to refuse the visa not enlivened - decision under review set aside and substituted

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

(Migration) [2020] AATA 1506 (7 May 2020); Deputy President G Humphries AO and W Frost, Member

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 – trend of increasing seriousness in applicant’s criminal offending - risk of re-offending – the protection and expectations of Australian community – minor children in Australia – strength nature and duration of ties - impediments to applicant if removed to Tonga – applicant’s health considered - decision under review affirmed

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

(Migration) [2020] AATA 1367 (18 May 2020); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – refusal of Bridging E (Class WE) Visa – failure to pass the character test – whether discretion to set aside the delegate’s decision should be exercised – whether there is any risk of the applicant engaging in future criminal conduct – whether the applicant poses a risk of harm to the Australian community – Direction No. 79 – decision under review set aside and substituted

Novina and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 1421 (22 May 2020); Deputy President B W Rayment OAM QC

MIGRATION – cancellation of visa on character grounds under s 501(3A) – where applicant’s offences involved drug – whether to exercise discretion under Direction No. 79 – primary considerations – protection of the Australian community – where offending was serious – where applicant has history of drug and driving offences – where applicant has spent most of his life in Australia – regard to role and remarks of the sentencing judge – where applicant was addicted to drugs but now rehabilitated – where applicant unlikely to reoffend – expectation of the Australian community – in accordance with government policy – best interests of minor children in Australia – other considerations – strength, nature and duration of ties and extent of impediments if removed – impact on the Applicant’s family – decision set aside and substituted

QYXM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 1370 (19 May 2020); Senior Member M J McGrowdie

MIGRATION – mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – character test – discretion under Ministerial Direction No 79 – whether there is another reason to revoke the mandatory cancellation of the visa – risk of re-offending – primary considerations – other considerations – Applicant in Australia since the age of seven – decision under review set aside

Richards and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 1351 (18 May 2020); Senior Member B Pola

MIGRATION – refusal of application for Employer Nomination (Permanent) (Class EN) (subclass 186) visa – applicant failed to pass the character test under section 501(6)(d)(i) – whether the discretion in section 501(1) should be exercised – decision under review set aside and substituted

TLTV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 1352 (5 May 2020); Ms S Burford, Member

MIGRATION – Migration Act 1958 (Cth) – bridging visa – is the Tribunal satisfied that the Applicant passes the character test – whether the Applicant would engage in the conduct identified in ss 501(6)(d)(i), 501(6)(d)(ii), or 501(6)(d)(v) – whether having regard to a person’s past and present criminal conduct and/or their past and present general conduct under s 501(6)(c) the Applicant is not of good character – Direction No. 79 – Annex A – application of the character test — decision to be set aside and remitted with a direction that the Applicant passes the character test for the purposes of s 501(1) of the Migration Act 1958 (Cth)

Tran and Minister for Immigration, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 1423 (22 May 2020); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – Mandatory visa cancellation – Class BB Subclass 155 Resident Return (Five Year) Visa – multiple convictions – previous immigration warning – failure to pass character test – Ministerial Direction No. 79 applied – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – best interests of the child – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

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

(Migration) [2020] AATA 1485 (26 May 2020); Senior Member T Tavoularis

MIGRATION – refusal of application for a Partner (Provisional) (Class UF) visa – applicant failed to pass the character test under section 501(6)(d)(i) – whether the discretion in section 501(1) should be exercised – decision under review set aside and substituted

1818508 (Migration) [2020] AATA 1264 (24 April 2020); S Baker, Member

MIGRATION – cancellation – Refugee and Humanitarian (Class XB) visa – Subclass 200 (Refugee) – incorrect information in his visa application – applicant claimed his Pakistan documents are not genuine – exclusion from Pakistan citizenship for Afghan nationals – fear of return to Afghanistan and Pakistan – Pakistani Computerised National Identity Cards and driver’s license – genuine identity documents obtained fraudulently – Pakistan identity documents not used in Australia – decision under review set aside

1835768 (Migration) [2020] AATA 1187 (16 January 2020); E Tueno, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – enrolment in a registered course ceased – limited academic progress – tuition fees not paid – criminal proceedings against ex-partner – new relationship in Australia – options to move within Italy or the European Union – decision under review affirmed

1901948 (Migration) [2019] AATA 6805 (3 October 2019); A Younes, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – ground for cancellation – incorrect information in previous protection visa application – basis of seeking protection – homosexuality – change in sexual orientation – heterosexual relationship – fathering of four children – voluntary return to Lebanon – requisite level of satisfaction not attained – decision under review set aside

Singh (Migration) [2020] AATA 1178 (16 April 2020); M Ison, Senior Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Federal Circuit Court remittal – Direct Entry stream – Cook – bogus document – IELTS test result – ‘reasonable suspicion’ the test was taken by an imposter – significant improvement in results – supported by probative evidence – waiver of requirement – compelling or compassionate circumstances – impact on nominating employer – senior position in the business – shortage of qualified chefs in Australia – challenging conditions faced by business due to the COVID-19 global pandemic – decision under review remitted

Vibhor (Migration) [2020] AATA 1143 (30 March 2020); D Renton, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) – Subclass 573 (Higher Education Sector) – enrolment at lower level than visa requirement – reliance on agents – attempt to enrol at required level at college’s Perth campus, but offer letter was for Melbourne campus – agent’s advice to enrol in lower-level course – enrolment in original course after receiving notice of intention to consider cancellation – lengthy period of breach – no approach to department – discretion to cancel visa – decision under review affirmed

Practice and Procedure

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

(Migration) [2020] AATA 1414 (21 May 2020); Emeritus Professor P A Fairall, Senior Member

QUESTION OF JURISDICTION – s 501 visa cancellation – Applicant had a substantial criminal record – visa cancelled in 2015 – whether Applicant’s Extension of Time Application should be granted – whether Applicant was validly notified of visa cancellation in accordance with regulations – Insufficient evidence provided to conclude Tribunal has no jurisdiction to review the Application – Application referred to a further hearing

[Cleary and Comcare \(Compensation\) \[2020\] AATA 1372](#)

(7 May 2020); Emeritus Professor P A Fairall, Senior Member

PRACTICE AND PROCEDURE – compensation – reinstatement of application – extension of time raised – prejudice to parties – standing to apply for review – application dismissed

[Cross and Tax Practitioners Board](#)

(Taxation) [2020] AATA 1471 (18 May 2020); Deputy President

Boyle

PRACTICE AND PROCEDURE – interlocutory application – application for stay of decision – prospects of success – consequences of refusing stay – public interest – whether the applications for review would be rendered nugatory if stays not granted – requests for stay refused

[Cvek and Tax Practitioners Board](#)

(Taxation) [2020] AATA 1422 (21 May 2020); Senior Member K

James

PRACTICE AND PROCEDURE – application to stay decision under review – decision to terminate tax agent registration – where public interest concerns – applicant’s personal circumstances – interest of clients – stay granted subject to conditions

PRACTICE AND PROCEDURE – application for confidentiality order in respect of stay application – where desirable that proceedings before the Tribunal be held in public – confidentiality order refused

[Kyriacou and Tax Practitioners Board](#)

(Taxation) [2020] AATA 1466 (26 May 2020); Senior

Member R J Olding

PRACTICE AND PROCEDURE – STAY APPLICATION – termination of tax agent registrations – where allegations of failing to comply with personal taxation obligations – where objection against tax assessments pending – where some allegations not particularised – conditional stays granted

[Mitchell and Comcare](#)

(Compensation) [2020] AATA 1464 (26 May 2020); Senior Member R

Cameron

PRACTICE AND PROCEDURE – reinstatement application – matter dismissed for failure to proceed with the application within a reasonable time – whether the application has been dismissed “in error” – whether the application should be reinstated – application reinstated

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

(Citizenship) [2020] AATA 1373 (20 May 2020); Ms M East, Member

CITIZENSHIP – Extension of time – s 29 Administrative Appeals Tribunal Act 1975 (Cth) – factors that are relevant when considering an extension of time – length of delay – unaware of decision notification – Freedom of Information application made – awareness of appeal rights – prejudice – merits of substantive application – alternative avenues of relief – Tribunal satisfied extension of time reasonable in the circumstances – application for extension of time granted

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

AATA 1326 (19 March 2020); Mr R West, Member

PRACTICE AND PROCEDURE – dismissed for non-appearance – application for reinstatement – no appearance at reinstatement hearing – merits of original application – lack of reason for non-appearance – application refused

Svatos and Australian Capital Territory (Compensation) [2020] AATA 1413 (14 May 2020);

Deputy President Gary Humphries AO

PRACTICE AND PROCEDURE – power to reconsider determinations pursuant to section 62 of the Safety, Rehabilitation and Compensation Act 1988 – extension of time relevant considerations discussed – decision under review set aside and substituted

Refugee

1604355 (Refugee) [2019] AATA 6804 (24 September 2019); S Hoffman, Member

REFUGEE – protection visa – South Africa – particular social group – security professionals in South Africa – white male facing legislative discrimination through affirmative action – race – white Afrikaners – religion – conservative Christians – complementary protection – testimony against criminal gangs – fear of killing – no police reports – applicant remained at employer – return visit to South Africa – effective protection – fear of sexual violence – employment – decision under review affirmed

1707044 (Refugee) [2020] AATA 1376 (24 April 2020); B Darcy, Member

REFUGEE – protection visa – Yemen – religion – Coptic Christianity – raised late only after the delegate's decision – non-disclosure of apostasy and conversion to family – state protection and relocation – credibility concerns – race – ethnicity – political opinion – South Yemeni secessionism – participation in a public demonstration – particular social group – businessman who is targeted by a more influential authority figure – decision under review remitted

1712706 (Refugee) [2019] AATA 6803 (25 September 2019); M Hawkins, Member

REFUGEE – cancellation – protection visa – Iran – incorrect information in the visa application – applicant returned to Iran three times – applicant engaged the Iranian authorities – passport renewal – obtaining driver's license – applicant's father passed away in Iran – applicant's divorce not recognised in Iran – shared custody and access to children – best interests of the children – decision under review set aside

[1812821](#) (Refugee) [2020] AATA 1275 (24 April 2020); M Sripathy, Member

REFUGEE – protection visa – Jordan – Federal Circuit Court remittal – religion – practising Christian – forced conversion to Islam – forced marriage and confinement and surveillance – apostasy charges – credibility concerns regarding past harm – implausibility of claims – internal inconsistencies – return to home area between 2008 and 2014 with no harm suffered – risk of future harm – significant governmental and societal discrimination – loss of civil rights – annulment of marriage – lose custody of children – unable to live openly and freely as a Christian and raise children as Christians – decision under review remitted

[1815740](#) (Refugee) [2020] AATA 1288 (29 April 2020); I O'Connell, Deputy Division Head

REFUGEE – cancellation – protection visa – Iraq – Federal Magistrates Court remittal – religion – Sunni Muslim – race – Bedouin – particular social group – Bedouins in Iraq – ground for cancellation – incorrect information in visa application – country of citizenship – claimed statelessness – Iraqi citizenship – claimed adverse profile – voluntarily returned to Iraq three times without any apparent issues of harm – requisite state of mind – distinction between 'Bedouin' and 'Bidoon' – sufficiently particularised notice – consideration of discretion – grant of visa not based on claimed statelessness – decision under review set aside

Social Services

[Baldwin and Secretary, Department of Health](#) (Social services) [2020] AATA 1420 (22 May 2020); Mr W Frost, Member

SOCIAL SECURITY – assessable assets for aged care fees – whether a correct assessment of assets was made in calculating residential aged care fees – whether the 'extended land use test' in subsection 11A (4) of the Social Security Act 1991 applies to the land jointly owned by Applicant – decision under review affirmed

[Bogdan and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1433 (21 May 2020); Senior Member B J Illingworth

SOCIAL SECURITY – age pension – date from which the Applicant was to be paid an increase in rate of age pension – decision under review set aside

[Doering; Secretary, Department of Agriculture, Water and the Environment and](#) (Social services second review) [2020] AATA 1504 (28 May 2020); Deputy President Britten-Jones

SOCIAL SECURITY – farm household allowance – where the respondents are beneficiaries of a trust – where the financial statements of the trust record loans to the respondents – whether there is a loan to the respondents as beneficiaries – whether the assets of the respondents include the beneficiary loans – whether the value of non-farm assets exceeds the value limit under s 33 of the Farm Household Support Act 2014 - farm household allowance is not payable – decision in the Social Services and Child Support Division is set aside

[Edler and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1424 (22 May 2020); Ms L Rieper, Member

SOCIAL SECURITY – disability support pension – rate – member of a couple – whether the Applicant is living separately and apart from the other person on a permanent or indefinite basis – Applicant receiving financial support from other person – little change in nature of the household – decision under review affirmed

[Hamdan and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1350 (18 May 2020); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – whether applicant qualified for DSP during qualification period – whether conditions fully diagnosed, treated, stabilised – spinal condition – left shoulder and left hand conditions – depression and anxiety – respiratory condition – thyroid condition – whether impairment attracts 20 points or more under the Impairment Tables – decision under review affirmed

[Hanson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1374 (29 April 2020); Brigadier A G Warner, Member

SOCIAL SECURITY – disability support pension – whether Applicant's impairments were fully diagnosed, fully treated and fully stabilised at the qualification period – qualification period – whether Applicant's impairments attract 20 points under the Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

[He and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1491 (27 May 2020); Ms D Mitchell, Member

FAMILY ASSISTANCE – family tax benefit – percentage of care – whether there was a change in the percentage of care – what is the correct percentage of care – decision under review varied.

[Kierse and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1345 (18 May 2020); Mr I Thomson, Member

SOCIAL SECURITY – disability support pension – whether medical conditions diagnosed, treated and stabilised during the qualification period- whether an impairment rating of 20 points or more existed under the Impairment Tables- decision under review set aside

[Kilner and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1368 (14 May 2020); Senior Member B Pola

SOCIAL SECURITY – parenting payment single – overpayment – administrative error – whether overpayment constitutes a debt to the Commonwealth – whether overpayment is recoverable in full – whether debt can be written off or waived – decision under review affirmed

[Lonie; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 1366 (22 April 2020); Senior Member P E Nolan

SOCIAL SECURITY – disability support pension – whether conditions were fully diagnosed, treated and stabilised during the relevant period – decision under review set aside – in substitution it is decided that the respondent does not qualify for disability support pension

[**Maier and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 1416 (21 May 2020); Brigadier A G Warner, Member

SOCIAL SECURITY – age pension – whether Applicant's age pension was correctly cancelled – whether age pension can be reinstated from date of cancellation – whether Applicant received or was taken to have received Centrelink notices – decision under review affirmed

[**McCormick and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 1488 (27 May 2020); R Maguire, Member

Social Security – Disability Support Pension – Carer's Payment – Ordinary Income – Meaning of Ordinary Income - Exempt Lump Sum – Insurance Benefit – Insurance Benefit not Ordinary Income – decisions under review are set aside

[**PCJP and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 1468 (26 May 2020); Dr S Fenwick, Senior Member

SOCIAL SECURITY – application for disability support pension – whether qualified – lower limb condition – mental health condition – whether impairment attracts rating of 20 points or more under a single Impairment Table – applicant also in receipt of carer payment – decision under review affirmed

[**Peat and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 1415 (21 May 2020); Mr G Hallwood, Member

SOCIAL SECURITY – Age pension – Qualification – Australian residency – Overseas travel – Decision under review remitted – Whether applicant was an Australian resident during the relevant periods – What constitutes "temporary" absence – Meaning of "usual place of residence" – Factors relevant to residence in Australia – decision under review remitted

[**Rowe and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 1418 (18 May 2020); Ms A Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – chronic fatigue syndrome (CFS), Right knee dysfunction, spinal and left shoulder dysfunction, and a mental health condition – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review affirmed

[**Syed and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 1328 (15 May 2020); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – whether impairments are of 20 points or more under the Impairment Tables – lumbar spine condition – depression and anxiety – high blood pressure and vascular disease – sleep apnoea – decision affirmed

[Szlasa and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1489 (26 May 2020); Deputy President Britten-Jones

SOCIAL SECURITY – claim for carer payment – claim for age pension – calculating the value of assets - whether the maximum asset limit is exceeded – where the principal place of residence is mortgaged for the purpose of acquiring investment properties – where the principal place of residence is disregarded in calculating the value of assets – whether the value of the assets should be reduced by the amount owing on the mortgage – interpretation of subsection 1121(3) of the Social Security Act 1991 – decisions under review affirmed

[Wagar; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 1493 (27 May 2020); D Cox, Member

Eligibility for parenting payment - Income test – Benefits and Entitlements - family tax benefit and childcare benefit – debt waived – income notification obligation – sole administrative error - Decision under review set aside

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1505 (28 May 2020); Ms D Mitchell, Member

SOCIAL SECURITY – Austudy Allowance – basic rate or long term income support student rate – treatment of compensation payments – decision under review affirmed

Taxation

[Holman and Commissioner of Taxation](#) (Taxation) [2020] AATA 1375 (20 May 2020); Ms D K Grigg, Member

TAX – whether amended income tax assessment issued by the Australian Tax Office following a private ruling was excessive – whether the applicant conducted a business in partnership with his wife – indicia to be considered in determining whether a business is operated as a partnership for income tax purposes - decision under review affirmed

Veterans' Affairs

[Bridge and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1417 (21 May 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – claim in respect of incapacity from disease of a veteran – whether veteran has a disease – identification of disease to precede consideration of reasonable hypothesis or reasonable satisfaction – insufficient and conflicting evidence as to diagnosis and symptoms – decision under review affirmed

[Dantel and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1490 (27 May 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – application for increase in pension under s 23 and s 24 of the Act – whether veteran totally and permanently incapacitated by war-caused injury or disease – whether veteran prevented from continuing to undertake remunerative work by reason of war-caused injury or disease alone – veteran prevented from undertaking remunerative work by reason of non-war-caused injury – decision under review affirmed

[Lynn and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1331 (13 May 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – veteran deceased – claim for compensation by widow – whether veteran rendered British nuclear test defence service – Statement of Principles concerning malignant neoplasm of the colorectum (Instrument No. 37 of 2013 as amended by Instrument No. 58 of 2017) – whether reasonable hypothesis that veteran's condition related to service – Deledio 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
Kerry and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 869
VXQB and Child Support Registrar	[2020] AATA 697
XNBW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 441

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ahamed v Secretary, Department of Social Services	[2019] AATA 5636	[2020] FCCA 1245
Dring v Telstra Corporation Limited	[2018] AATA 3149	[2020] FCA 699
GCRM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 1394	[2020] FCA 678
Meyrick v Minister for Home Affairs	[2019] AATA 168	[2020] FCA 677
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CPJ16	[2019] AATA 3907	[2020] FCAFC 87 [2019] FCA 2033
Vural v Minister for Home Affairs	[2019] AATA 579	[2020] FCA 667
Vu v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 635	[2020] FCAFC 90 [2019] FCA 1808



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