



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 17/2020

15 June 2020

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

Recent News	3
COVID-19: Safety remains a priority in our workplaces.....	3
Annual feedback survey now underway.....	3
AAT Recent Decisions.....	4
Child Support.....	4
Citizenship.....	4
Compensation.....	5
Freedom of Information	5
Health.....	6
Maritime Law	6
Migration.....	6
Practice and Procedure.....	9
Professions and Trades.....	10
Refugee	10
Social Services.....	12
Taxation.....	13
Veterans' Affairs.....	14
Appeals	16
Appeals lodged	16
Appeals finalised.....	16

Recent News

COVID-19: Safety remains a priority in our workplaces

Like a number of Australian courts and tribunals, the AAT has not yet announced a date when in-person hearings will resume.

We are, however, well advanced in our planning at a national level to make all AAT workplaces 'COVID-safe'. This is a key priority for the Tribunal at the moment because it means we can minimise the risk of spreading the coronavirus as more people progressively return to work in, and visit, our registries.

While in-person hearings have not yet resumed, there has been little impact on the services we have been able to provide online and by hearing matters remotely. Find out more about [how to access our services](#) at this time.

Please continue to monitor our website at www.aat.gov.au for further updates and information about the actions we have taken to make the AAT COVID-safe.

Annual feedback survey now underway

Our yearly survey has commenced, with most parties who had a review finalised between 1 January 2020 and 30 April 2020 being invited via email or SMS to have their say.

Representatives who were involved in a review between 1 December 2019 and 30 April 2020 are also being surveyed.

If you have received a link, we strongly encourage participating in the survey to assist us in identifying areas where the AAT can make improvements.

If you have received a link on behalf of someone else please forward them their personalised link as soon as possible, so they can also participate in providing us feedback on our performance.

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

[KSDJ and Child Support Registrar](#) (Child support second review) [2020] AATA 1715 (12 June 2020); Mr S Evans, Member

CHILD SUPPORT – percentage of care – actual care – extent of care – parents separated but living in the same house – date of effect – decision set aside and substituted

[Forsberg and Forsberg](#) (Child support) [2020] AATA 1020 (25 February 2020); K Buxton, 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 - whether there were special circumstances that prevented the objection being lodged in time – special circumstances existed

[Truett and Scinta](#) (Child support) [2020] AATA 886 (4 March 2020); A Freeman, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources and earning capacity of the liable parent – earning capacity criteria met - a ground for departure established – decision to depart - decision under review varied

[Phelps and Phelps](#) (Child support) [2020] AATA 1027 (4 March 2020); M Martellotta, Member

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

Citizenship

[Al Khalaf and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1716 (11 June 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the Tribunal is satisfied of the applicant's identity – whether the applicant is a stateless Bidoon or Iraqi citizen – three pillars of identity – biometrics – documents – life story – inconsistent information – decision under review affirmed

[RRML and Minister for Home Affairs](#) (Citizenship) [2020] AATA 1654 (4 June 2020); Deputy President Boyle

CITIZENSHIP – citizenship by conferral – Citizenship Policy – status of policy – persons aged under 18 years of age – significant hardship or disadvantage – best interest of the child – access to education – ties to Australia – discretion to approve or refuse to approve citizenship application – COVID-19 – resident return visa - reviewable decision affirmed

[XXVV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1518 (29 May 2020); Mr W Frost, Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant meets the permanent residence requirement to be granted Australian citizenship by conferral – applicant does not meet permanent residence requirement – whether the applicant is a stateless person pursuant to the Australia Citizenship Act 2007 – applicant was not born in Australia – applicant has previously been a citizen of another country – applicant is not a stateless person – whether the applicant is of good character not in issue – decision under review affirmed

Compensation

[Shirreff and Comcare](#) (Compensation) [2020] AATA 1710 (11 June 2020); Dr D Cremean, Senior Member

WORKERS COMPENSATION – claimed conditions of rheumatoid arthritis and right elbow epicondylitis/angiofibroblastic tendinosis – pain suffered during work tasks – pain suffered outside of work tasks – underlying condition – pain is response of underlying condition to tasks performed – decision under review affirmed

Freedom of Information

[Alpert and Secretary, Department of Defence](#) (Freedom of information) [2020] AATA 1632 (3 June 2020); Ms DK Grigg, Member

FREEDOM OF INFORMATION – Confidentiality Order – Legal Professional Privilege – Claim of Legal Professional Privilege – Whether Legal Professional Privileged Waived – Confidentiality Order Granted

Health

[Philip Colasante Pharmacies Pty Ltd and Australian Community Pharmacy Authority](#) [2020] AATA 1529 (15 May 2020); Deputy President JW Constance

HEALTH – PHARMACISTS – application for approval to supply pharmaceutical benefits at premises other than premises in respect of which approval already granted – plan devised by Applicants based on National Health (Australian Community Pharmacy Authority Rules) Determination 2011 to relocate approval at expiration of two year period – National Health (Australian Community Pharmacy Authority Rules) Determination 2018 entered into force before expiration of two year period – whether Applicants can have benefit of previous Rules – whether exceptional circumstances exist – whether pharmaceutical benefits unable to be supplied at existing premises now and in the future – whether subsequent Rules offend common law presumption against retrospectivity – where subsequent Rules expressly designed to prevent establishment of temporary pharmacies which are subsequently relocated – where subsequent Rules have future effect on past events and speak only to future applications – amendment of Rules does not constitute exceptional circumstances within meaning of the Rules – inability to supply pharmaceutical benefits distinct from commercial viability of doing so – decision under review affirmed

Maritime Law

[Fortune Union Shipping Ltd, Hong Kong New Fortune Genius Management Ltd, China and Australian Maritime Safety Authority](#) [2020] AATA 1711 (11 June 2020); Deputy President JW Constance

MARITIME SAFETY – direction that vessel not to enter or use any port in Australia for 365 days – hearing on the papers – Maritime Labour Convention – where Seafarers not given monthly account of wages – where more than one set of wage accounts were in use – where false documents presented to the delegates – where Seafarers coerced to sign false wage statements – where home allotments not made – appropriate period for exclusion – where Tribunal found the contravention was extremely serious and premeditated – decision affirmed

Migration

[DBKX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1520 (25 February 2020); Mr T Eteuati, Member

MIGRATION – mandatory cancellation of Applicant’s visa under s 501(3A) – Applicant failed to pass the character test - whether there is another reason why cancellation decision should be revoked – application of Direction No. 79 – decision under review is affirmed

[HMDS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1634 (3 June 2020); Senior Member C Puplick AM

MIGRATION – discretionary visa refusal under s 501(1) of Migration Act 1958 – failure to pass character test – substantial criminal record – whether there is another reason to exercise discretion to refuse visa – 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 – impact on family members – weighing of primary and other considerations – reviewable decision is set aside and remitted

[Jacobs and Minister for Immigration and Border Protection](#) (Migration) [2020] AATA 1524 (27 May 2020); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – another reason why the cancellation decision should be revoked – Direction 79 – 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 – COVID-19 – decision set aside and substituted

[LYYZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1635 (13 May 2020); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa under section 501CA – whether mandatory cancellation should be revoked – Class XA Subclass 866 protection visa – applicability of BAL19 – distinguished from BAL19 – Ministerial Direction 79 – primary considerations – other considerations – decision under review affirmed

[NWWJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1631 (4 June 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – Mandatory visa cancellation – Partner (Residence)(Class BS) Subclass 801 visa (the visa) – domestic violence conviction of a serious and violent nature – 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 – strength, nature and duration of ties – extent of impediments if removed – whether non-refoulement obligations are owed – reviewable decision affirmed

[Puata and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1639 (4 June 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 affirmed

[Rascovici and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1640 (4 June 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Romania – Class BC Subclass 100 Partner (Migrant) visa – failure to pass good character test – extensive criminal history – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[XLML and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1657 (9 June 2020); Senior Member T Tavoularis

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

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

(Migration) [2020] AATA 1642 (5 June 2020); Deputy President J Sosso

MIGRATION – decision on remittal – mandatory cancellation of applicant’s visa under s 501(3A) – where Applicant does not pass the character test – whether there is another reason why cancellation decision should be revoked – consideration of Ministerial Direction No. 79 – decision under review set aside and substituted

[1934930](#) (Migration) [2020] AATA 1521 (4 February 2020); T Quinn, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – enrolment in a higher level registered course – applicant changed to lower level related courses – completion of lower level studies – avenue of entry to degree course – studying Nursing to improve the standard of health care in Nepal – no period of non-enrolment or failure in Australia – decision under review set aside

[Shrestha](#) (Migration) [2020] AATA 1334 (5 February 2020); S Conwell, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector – Federal Circuit Court remittal – enrolment in a registered Higher Education course ceased – applicant’s changed to vocational course – eligible higher degree student – eligible education provider – visa condition met at all relevant times – applicant applied for a subclass 572 visa – decision under review set aside

[Zhu](#) (Migration) [2020] AATA 1385 (8 April 2020); A Dronjic, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – change of circumstances – separation and divorce – no longer member of the family unit of primary applicant – date and circumstances of separation – living separately for employment-related reasons, but continuing the relationship – credibility – inconsistent evidence – final separation two months before visa application – no change of circumstances, but possible incorrect information – decision under review set aside

[Reshadati](#) (Migration) [2020] AATA 1472 (9 April 2020); B Darcy, Member

MIGRATION – cancellation – Other Family (Migrant) (Class BO) – Subclass 116 (Carer) – incorrect information in visa application – sponsor with severe medical condition – applicant’s unwillingness to provide care at the time of applying – delayed departure after visa granted – return and long stay within months of arrival – care from other relatives during this time – discretion to cancel visa – other relatives now unable or unwilling to provide care – no attempt to access government or community assistance – sponsor’s health care needs – improvement under applicant’s care – hardship if applicant’s visa remains cancelled – decision under review set aside

[Singh](#) (Migration) [2020] AATA 1449 (23 April 2020); A Younes, Senior Member

MIGRATION – cancellation – Bridging B (Class WB) visa – Subclass 020 (Bridging B) – visa grant based on fact or circumstance that did not exist – no visa held at time of application – previous substantive visa application refused, refusal affirmed and associated bridging visa ceased – invitation to attend hearing of review of refusal of substantive visa and notification of decision sent by post to last known address – no evidence of notification of change of address – circumstances beyond applicant’s control – visa granted by mistake – applicant and department taken to have received documents, whether or not they in fact had – discretion to cancel visa – study, work and community involvement – decision under review affirmed

Practice and Procedure

[Australian Institute of Technical Training Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 1641 (7 May 2020); The Hon. M Groom, Senior Member

PRACTICE AND PROCEDURE – application for variation of a stay order – relevant considerations for variation of stay order – whether proceedings likely to be rendered nugatory if application not granted – interlocutory application granted

[Daly and Australian Securities and Investments Commission](#) [2020] AATA 1516 (27 May 2020); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of publication of banning order by the Respondent – where applicants were banned for 5 years for mismanagement of funds – where publication of ban may impact sale of a business to compensate investors hurt by Applicant’s conduct – whether publication may hurt identifiable group of investors – objectives of the regulators in making a decision – where objective of legislation evince concern for consumer protection – objective of transparency – where there may be reputational damage – impact on family and business interests – where granting stay may subvert fundamental logic of legislative regime – stay application refused

[Do and Inspector-General in Bankruptcy](#) [2020] AATA 1528 (2 June 2020); Senior Member D O'Donovan

PRACTICE AND PROCEDURE – Taxation and Commercial – decision by delegate to affirm Trustee’s objection to discharge bankrupt estate – interlocutory application for an extension of time – application for review made outside the prescribed time – explanation for the delay inadequate – whether it is reasonable in all the circumstances to grant the extension of time – delay outweighs other competing considerations – application refused

[Iseppi and Tax Practitioners Board](#) (Taxation) [2020] AATA 1523 (12 May 2020); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – stay application – whether stay necessary to secure the effectiveness of the hearing – whether the discretion to grant a stay enlivened – factors in favour of granting a stay – impact on applicant and other parties – factors against granting a stay – public interest – action taken in a regulated profession – evidence of financial loss – whether evidence sufficient to establish the business will fail and render the review nugatory – interim stay order discharged – stay refused

[Mavrokokki and Tax Practitioners Board](#) (Taxation) [2020] AATA 1517 (29 May 2020); Mr A Maryniak QC, Member

PRACTICE AND PROCEDURE – application for stay of decision – decision to terminate tax agent registration – competence of tax agent – prospects of success – consequences for parties – public interest – whether application would be rendered nugatory if stay not granted – conditional stay granted

[O'Donnell and K & S Freighters Pty Ltd](#) (Compensation) [2020] AATA 1714 (12 June 2020); The Hon. John Pascoe AC CVO, Deputy President

EXTENSION OF TIME – determination of normal weekly earnings – where original decision made almost ten years prior to application for review – where applicant has issues with literacy – where applicant changed legal representation – where applicant had other proceedings before the Tribunal – principles to be applied – whether substantive application has reasonable prospects of success – where delay causes prejudice to the respondent – whether it would be fair in the circumstances – extension of time refused

[Satellite Accounting Pty Ltd and Tax Practitioners Board](#) [2020] AATA 1648 (3 June 2020); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – decision to terminate the registration of the corporate applicant and its director as a tax agent – further application for a stay – whether a stay should be granted for the decision against the corporate applicant – alternative registered tax agent available to become a director – extent of terminated director's control over the tax agent business of the corporate applicant – whether conditions can be ordered – stay refused

[Stapleton and Optus Administration Pty Ltd](#) (Compensation) [2020] AATA 1713 (11 June 2020); Ms K Parker, Member

EXTENSION OF TIME APPLICATION – whether reasonable in all the circumstances to grant an extension of time to lodge two related applications – periods of delay were 14 months and ten months respectively – explanation for delay – workers' compensation case with complex medical history since 2006 and previous accepted claims – existing related application for review in respect of same injury from same incident – merit of substantive applications lodged out of time – extension of time granted to lodge both applications – orders made to link two new applications to existing related application for review

Professions and Trades

[HFFV and Tax Practitioners Board](#) (Taxation) [2020] AATA 1712 (7 May 2020); Deputy President FD O'Loughlin QC and Professor A O'Connell, Senior Member

TAX AGENTS – Termination of registration as tax agent – breach of Code of Professional Conduct – applicant failed to comply with taxation laws in the conduct of its personal affairs – appropriate response

Refugee

[1602248](#) (Refugee) [2019] AATA 6831 (4 October 2019); I O'Connell, Deputy Division Head

REFUGEE – protection visa – Myanmar – race – ethnic Rohingya – nationality – stateless – religion – Muslim – particular social group – undocumented stateless Rohingya – arbitrary arrest – physical assault – obtaining identity documents – state protection – illegal departure – decision under review affirmed

[1814277](#) (Refugee) [2019] AATA 6827 (31 October 2019); D Dragovic, Senior Member

REFUGEE – protection visa – China – Federal Court remittal – religion – ethnic Uighur – particular social group – studied abroad – involvement in protests – practices Islam – threat of detention and re-education – extended period stay in Australia – decision under review remitted

[1826370](#) (Refugee) [2019] AATA 6837 (31 October 2019); A Grant, Member

REFUGEE – protection visa – Bangladesh – Federal Circuit Court remittal – political opinion – Bangladesh Nationalist Party – particular social group – returned asylum seeker – victim of assault – false murder charges – fears harm by Awami League members – politically motivated violence – family targeted – relocation in home country not feasible – persecution relates to all area of Bangladesh – decision under review remitted

[1703365](#) (Refugee) [2020] AATA 1354 (21 January 2020); M McAdam, Member

REFUGEE – protection visa – Japan – particular social group – women – victims of family violence – mixed marriages – mental health issues – religion – Muslim husband – applicant disowned by family – Consulate’s refusal to register marriage – physical abuse – decision under review remitted

[1914576](#) (Refugee) [2020] AATA 1440 (27 April 2020); S Roushan, Senior Member

REFUGEE – cancellation – protection visa – Iraq – Federal Circuit Court remittal – religion – minority Sunni Muslim – attacks and threats by Shia militia – incorrect information in visa application – fear of harm – voluntary returns and extended stays to help family – possession of valid passport – date of first departure – two brothers with protection visas on account of one brother’s occupation – father killed by militia – no harm to remaining brother – physical and mental health – decision under review affirmed

[1610977](#) (Refugee) [2020] AATA 1502 (30 April 2020); J Silva, Member

REFUGEE – protection visa – Myanmar – non-disclosure certificate – race – Rohingya ethnicity – citizenship status – claimed statelessness or Myanmar citizen – assessment of credibility – lack of candour concerning the provision of documentations – ability to travel and reside throughout Myanmar – National Registration Card (NRC) – temporary registration card (TRC) – household registration certificate – discrimination as a Rohingya descendant – family’s integration into the Burmese Muslim community – applicant’s lack of Rohingya language skills and cultural identity – religion – Sunni Muslim – molavi – religious teacher – discrimination and violence against Muslims – failed asylum seeker – decision under review affirmed

[1831953](#) (Refugee) [2020] AATA 1495 (1 May 2020); J Lambie, Senior Member

REFUGEE – protection visa – Pakistan – Federal Circuit Court remittal – interpretation issues – availability of Pakistani Pashto interpreters – mental health issues – religion – Shia Muslim – race – Pashtun – Turi – targeted by the Taliban in the former Kurram Agency – internal relocation – Rawalpindi or Islamabad – former association or imputed membership of the Imamia Student Organisation (ISO) – new claims or evidence – father’s profile as a political figure in the Kurram region – access to health care – ability to subsist – returnee from a Western country – decision under review affirmed

Social Services

[Brown and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1652 (9 June 2020); Ms LM Gallagher, Member

SOCIAL SECURITY – disability support pension – whether applicant has conditions that were fully diagnosed, fully treated and fully stabilised – whether applicant has 20 impairment points – whether applicant has severe impairment – fibromyalgia condition – osteoarthritis condition – chronic fatigue syndrome – mental health condition – whether applicant has continuing ability to work – whether applicant has completed program of support – decision under review affirmed

[Firth and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1633 (4 June 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – overpayment of age pension – Applicant exceeded the asset limit – whether changing address and bank account details sufficient to advise of sale proceeds of property in bank accounts – obligation to notify of change of circumstances – whether debt or part of debt should be waived or written off – whether debt attributable solely to administrative error by the Commonwealth – whether special circumstances – AAT1 decision affirmed

[Griffith and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1515 (29 May 2020); Brigadier AG Warner, Member

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

[Kennedy and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1638 (4 June 2020); Mr I Thompson, Member

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

[Lear and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1651 (9 June 2020); Mr I Thompson, Member

SOCIAL SECURITY – disability support pension – whether applicant's medical conditions were fully diagnosed, fully treated and fully stabilised during the qualification period – whether an impairment rating of 20 points or more existed under the Impairment Tables – decision under review affirmed

[McKeown and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1525 (1 June 2020); Senior Member B Pola

SOCIAL SECURITY – Family Tax Benefit – FTB – calculation of correct entitlement – whether the debts are recoverable in part or full – no severe financial hardship – decision under review affirmed

[McKeown and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1530 (1 June 2020); Senior Member B Pola

SOCIAL SECURITY – Family Tax Benefit – FTB – care arrangements – percentage of care – whether there was a change to the likely pattern of care – no change to the pattern and percentage of care – decision under review affirmed

[Snell and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1522 (2 June 2020); Ms M East, Member

SOCIAL SECURITY – pensions, allowances and benefits – age pension – Australian resident – Australian citizen – “residence” – nature of accommodation used in Australia – nature and extent of family relationships in Australia – nature and extent of person’s employment, business or financial ties with Australia – nature and extent of person’s assets located outside Australia – frequency and duration of the person’s travel outside Australia – whether person intends to remain permanently in Australia – “intent” – decision under review remitted

[Stimpson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1644 (5 June 2020); Senior Member P J Clauson

SOCIAL SECURITY – disability support pension – carers’ pension – whether recipients were members of a couple – whether debt is recoverable – decision affirmed

Taxation

[Atkinson and Commissioner of Taxation](#) (Taxation) [2020] AATA 1666 (22 May 2020); Senior Member T Tavoularis and Senior Member B Pola

TAX AND COMMERCIAL – Income Tax – objection to amended assessment – Trustee – whether assessment is excessive – burden of proof on taxpayer – administrative penalty – GST shortfall – varied assessments

[Camalic Pty Ltd and Innovation and Science Australia](#) (Taxation) [2020] AATA 1590 (3 June 2020); Senior Member T Tavoularis

TAXATION – research and development tax incentive – whether the Applicant conducted a core R&D activity in the relevant financial years – whether development of an algorithm to predict shareholder value increases is a core R&D activity – whether claimed activities were undertaken in the year in which they were claimed – whether claimed activities were undertaken at all – whether development of algorithm is caught by exclusion in s. 355-25(1) Income Tax Assessment Act 1997 (Cth) – whether activities claimed as supporting R&D activities are core R&D activities – decision under review affirmed.

PRACTICE AND PROCEDURE – procedural fairness – where claim by applicant that applications not assessed by people with sufficient knowledge of machine learning and software development – no evidence to support claim – no unfairness

[Cash World Gold Buyers Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 1546 (28 May 2020); Ms G Lazanas, Senior Member

TAXATION – GST – input tax credits – gold industry – creditable acquisition – whether applicant made acquisitions of precious metal or scrap gold – whether acquisitions made from intermediaries – whether acquisitions made through intermediaries acting as agents – form of tax invoices – whether second-hand goods rules apply – meaning of second-hand goods – form of records required for acquisitions of second-hand goods – whether excess GST passed on to another entity – shortcomings in evidence – whether Commissioner allowed to recover GST twice – recklessness as to operation of taxation laws – amendment of grounds of objection permitted – objection decision re assessment of net amount affirmed – objection decision re imposition of penalty affirmed – decision not to remit penalty affirmed

[Hiremani and Commissioner of Taxation](#) (Taxation) [2020] AATA 1653 (5 June 2020); Senior Member L Hespe

TAXATION – income tax – allowable deductions – deductions for work-related expenses for the financial year ended 30 June 2016 – car expenses – self-education expenses – other work related expenses – travel between home and work – whether there is written evidence to substantiate deductions claimed – penalty assessed – failure to take reasonable care – decision varied and remitted

[MacKinnon and Commissioner of Taxation](#) (Taxation) [2020] AATA 1647 (9 June 2020); Senior Member L Hespe

TAXATION – whether the applicant was a resident for income tax purposes – working holiday visa – whether resident within ordinary meaning – whether resident under 183 day test – decision affirmed

[MJPV and Commissioner of Taxation](#) (Taxation) [2020] AATA 1527 (6 May 2020); Deputy President BJ McCabe

TAXATION – income tax – objection to amended assessments – whether Commissioner can make amendments – whether fraud or evasion present – whether amounts to be classified as income – other explanations for deposits – whether amounts were loans – whether amounts were gambling winnings – amount assignable to a sale of a car – penalties – whether false or misleading rate or penalty appropriate – whether penalties should be remitted – decision varied

[The Trustee for the Star Enterprises Trust \(Eurodrive Tours Pty Ltd\) and Commissioner of Taxation](#) (Taxation) [2020] AATA 1656 (9 June 2020); Senior Member T Tavoularis

TAXATION – LUXURY CAR TAX – supplies of luxury cars – liability for tax – whether putative lenders or purchaser – whether intention to hold as trading stock – onus of proof not discharged – credibility of witnesses – administrative penalties – decisions under review set aside and remitted to Commissioner

Veterans' Affairs

[Freeman and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1650 (9 June 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – veteran deceased – claim for war widow's pension – cause of death subdural haemorrhage – relevant conditions of subdural haematoma and ischaemic heart disease – relevant Statement of Principles – whether the veteran's smoking habit arose out of, or was attributable to, his defence service – smoking habit pre-dated defence service – decision under review affirmed

[Green and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1526 (1 June 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – claim for disability pension – claim for PTSD – whether veteran has PTSD – Statement of Principles concerning Post-Traumatic Stress Disorder No. 83 of 2014 (Cth) – category 1A stressor – decision under review affirmed

[Odgers and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1655 (9 June 2020);
Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – claim for disease related to service – persistent depressive disorder (dysthymia), major depressive episode with anxious distress, and alcohol use disorder – whether disease related to defence service – Statement of Principles concerning depressive disorder (No. 84 of 2015) (Cth) – having alcohol use disorder at the time of the clinical worsening of depressive disorder – decision under review remitted for reconsideration for assessment of pension

[Roll and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1649 (9 June 2020);
Senior Member Katter

VETERANS' AFFAIRS – special rate – section 24(1)(c) – decision under review varied

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
Birdseye and Tax Practitioners Board	[2020] AATA 1250
Douglas and Commissioner of Taxation	[2020] AATA 494
Gage and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 326
HGMZ and Secretary, Department of Social Services	[2020] AATA 978
Johnstone and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 907
MJPV and Commissioner of Taxation	[2020] AATA 1527
RTTW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1154
Sillars and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 994
Tran and Minister for Immigration, Migrant Services and Multicultural Affairs	[2020] AATA 1423
Zoing and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 375

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ascic v Comcare	[2017] AATA 1436	[2020] FCAFC 105 [2019] FCA 819
DJY16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 9	[2020] FCA 804

Makarov v Minister for Home Affairs	[2019] AATA 5161	[2020] FCA 734
Seddon v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 4361	[2020] FCA 806
Shillingford v Comcare	[2019] AATA 4972	[2020] FCA 775
Transcon Holding Pty Ltd v Aged Care Quality and Safety Commission	[2020] AATA 90	[2020] FCA 780
Umi v Minister for Home Affairs	[2019] AATA 2316	[2019] FCA 2148 [2020] FCAFC 101
XRXL v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 5984	[2020] FCA 813



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).