



AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Recent News

Changes to AAT application fees on 1 July 2020

Application fees in the Administrative Appeals Tribunal will increase on 1 July 2020.

General, Freedom of Information, Security, Taxation & Commercial and Small Business Taxation Divisions

From 1 July 2020 application fees for the review of a decision, where a fee is payable, will increase:

- The standard application fee will increase to **\$952**
- The fee payable for review of Small Business Taxation Decisions will increase to **\$511**.
- The fee payable for certain taxation applications will increase to **\$94**
- Concession: no change from **\$100**

These fee increases will apply where an application fee is paid on or after 1 July 2020, even if the application was lodged before that date.

Migration and Refugee Division

For applications for review of a decision which are lodged on or after 1 July 2020, the application fee will increase to **\$1,826** where a fee is payable.

In cases where a 50% fee reduction is granted, the reduced fee will be **\$913**.

User feedback survey extended until 9 July 2020

The AAT's annual user feedback survey is currently underway and the closing date has been extended to 9 July 2020 for practitioners and other representatives.

Our research provider, ORIMA, has emailed a unique survey link to people who represented a party in cases finalised between December 2019 and April 2020.

Thank you to those practitioners who have already taken the opportunity to complete the survey which will help us understand people's experiences at the AAT and identify areas for improvement, including in relation to the impact of COVID-19 on our ability to deliver services.

For those who are yet to complete the survey, we encourage you to have your say before 9 July 2020.

Find out more about the [survey](#) on our website.

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, 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.

Archives

[McGrath and Director-General, National Archives of Australia](#) [2020] AATA 1790 (9 June 2020); Deputy President S A Forgie

Archives – access to records – claim that certain records subject to parliamentary privilege and not subject to access under the Archives Act 1983 – claim that all records exempt under s33(1)(a) – claim that certain records exempt records as subject to legal professional privilege – claim that disclosure of certain records would be a breach of confidence – decisions affirmed

Child Support

[Alden and Alden](#) (Child support) [2020] AATA 1016 (4 March 2020); S Letch, Member

CHILD SUPPORT - opt-in arrears - whether there were unpaid amounts - application for collection of unpaid amounts should be accepted - decision under review affirmed

[Merritt and Child Support Registrar](#) (Child support) [2020] AATA 1021 (10 March 2020); T Bubutievski, 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

[Garbutt and Crewe](#) (Child support) [2020] AATA 882 (11 March 2020); K Dordevic, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – business income – no earning capacity - a ground for departure established – decision to depart - decision under review set aside and substituted

[Leavitt and Easom](#) (Child support) [2020] AATA 1032 (6 March 2020); H Schuster, Member

CHILD SUPPORT – Application for administrative assessment – whether the non-parent carer application should have been accepted – extreme family breakdown – application should be accepted – decision under review affirmed

[Raines and Owston](#) (Child support) [2020] AATA 1405 (10 March 2020); Y Webb, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income accepted – decision under review set aside and remitted to the Child Support Registrar for reconsideration

Citizenship

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

(Citizenship) [2020] AATA 1862 (22 June 2020); Ms A Burke AO, Member

CITIZENSHIP – refusal to grant citizenship by conferral - whether applicant met the general residence requirement at the time she applied for Australian citizenship – whether the applicant was an unlawful non-citizen in Australia during the four year period of residency requirement – whether an administrative error lead to the applicant being unlawful – whether Ministerial discretion is enlivened – decision under review set aside and remitted

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

(Citizenship) [2020] AATA 1774 (16 June 2020); Senior Member C J Furnell

CITIZENSHIP – residency requirements – special residency requirement – whether person engaged in work on a resources installation – nature of duties as production technician on floating liquefied natural gas facility – facility located beyond Australia’s coastline – person required to regularly travel outside of Australia – decision set aside and remitted

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

(Citizenship) [2020] AATA 1923 (26 June 2020); K Parker, Member

CITIZENSHIP – application for citizenship by conferral – extensive history of criminal offending – offending occurred while Applicant under influence of alcohol and/or cannabis – lengthy period of abstinence from consumption of alcohol and cannabis – lengthy period since commission of last offence – omission by Applicant to disclose criminal history on citizenship application form – whether Tribunal can be satisfied Applicant is of good character – decision under review affirmed

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

(Citizenship) [2020] AATA 1921 (26 June 2020); Mr R Reitano, Member

CITIZENSHIP – eligibility – where application for Australian citizenship refused – driving offences – whether applicant is of good character – considerations to be taken into account when assessing good character – whether applicant has demonstrated the “enduring moral qualities” associated with “good character” over a sufficient period of time – applicant found to be of good character – decision under review set aside and remitted to the Respondent for determination

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

(Citizenship) [2020] AATA 1724 (12 June 2020); R Maguire, Member

CITIZENSHIP – citizenship by conferral – character test – whether Applicant is of good character – prior criminal convictions – Applicant not of good character – decision affirmed

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

(Citizenship) [2020] AATA 1916 (25 June 2020); K Parker, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Tribunal satisfied as to Applicant’s identity – inconsistent information provided about identity of the Applicant in previous visa applications – Tribunal not satisfied as to Applicant’s identity – approval of application for citizenship by conferral prohibited under s 24(3) of the Australian Citizenship Act 2007 (Cth) – reviewable decision affirmed

Sakhi Zada and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 1729 (12 June 2020); Deputy President Boyle

CITIZENSHIP – citizenship by conferral – Citizenship Policy – identity – identity documents – obtaining documents through unlawful means – expanding scope of review by Tribunal – documents procured through third party – failure to obtain documents through proper process renders documents of no probative value to evidence identity – efforts to procure identity documents not exhausted – character implications where applicant would reasonably expect that documents have no probative value – protection visa – COVID-19 – Tribunal not satisfied of identity – reviewable decision affirmed

Shastri and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 1928 (26 June 2020); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant has satisfied section 21(2)(h) – good character requirement – Citizenship Policy – meaning of ‘good character’ – enduring moral qualities – common assault – domestic violence – the weight to be given to references – decision under review set aside and remitted

Tahery and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 1725 (12 June 2020); K Parker, Member

CITIZENSHIP – refusal of application for conferral of citizenship – whether Tribunal satisfied as to Applicant’s identity – inconsistent information provided in previous visa and citizenship applications and during interview – credibility issues – new photographic and documentary evidence provided as proof of identity – decision set aside and substituted with decision that Tribunal satisfied as to Applicant’s identity – matter remitted for reconsideration of citizenship application with direction that no prohibition applies in respect of conferral of citizenship on the Applicant by reason of s 24(3) of the Australian Citizenship Act 2007 (Cth)

Wang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 1924 (26 June 2020); Dr D Cremean, Senior Member

CITIZENSHIP – application for Australian citizenship refused – good character requirement not satisfied – detention warrant issued in China for Applicant’s detention – Chinese authorities claim Applicant illegally absorbed public deposits in her role as a business manager – decision under review set aside and remitted

WVZN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 1920 (24 June 2020); Senior Member T Tavoularis

CITIZENSHIP – Citizenship by Descent – Citizenship Act 2007 (Cth) – Born Outside Australia - Biological Parent Child Relationship - Non Biological Parent Child Relationship – Evidence Required to Prove Non Biological Parent Child Relationship – Insufficient Evidence Provided – Decision Affirmed

Compensation

[Delaney and Comcare](#) (Compensation) [2020] AATA 1772 (15 June 2020); R West, Member

COMPENSATION – accepted conditions of synovitis and tenosynovitis, adhesive capsulitis of shoulder and lateral epicondylitis (left) – claim for aggravation of asymptomatic degenerative cervical spondylosis – whether employment contributed to rendering condition symptomatic – claim under s. 14 of the Safety Rehabilitation and Compensation Act 1988 – refused – decision affirmed – nerve block treatment – whether treatment in relation to an injury – section 16(1) – claim for medical expenses refused – decision affirmed

[Hook and Comcare](#) (Compensation) [2020] AATA 1792 (17 June 2020); Deputy President I Hanger AM QC

WORKERS COMPENSATION – cervical spondylosis – whether applicant suffered a disease or an aggravation of a disease for the purposes of section 5B(1)(b) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether the disease or aggravation of disease was contributed to in a significant degree by the applicant’s employment – whether the applicant suffered an injury which arose out of or in the course of his employment pursuant to section 5A(1)(c) of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision under review affirmed

[Kallimanis and Linfox Australia Pty Ltd](#) (Compensation) [2020] AATA 1796 (11 June 2020); Deputy President J W Constance

WORKERS’ COMPENSATION – application for review of decision affirming determination that Applicant not presently entitled to payments for incapacity benefits and medical expenses in respect of accepted left elbow condition – where Tribunal satisfied Applicant has not been incapacitated for work as a result of the accepted injury since the decision that the Applicant had no present entitlement – decision affirmed

WORKERS’ COMPENSATION – application for review of decision denying liability for claimed conditions – left ulnar neuritis – left axillary nerve lesion – left lateral epicondylitis – where Tribunal not satisfied on the balance of probabilities that the conditions were contributed to, to a significant degree, by the Applicant’s employment – decision affirmed

[Larsen and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 1882 (22 June 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – Safety, Rehabilitation and Compensation Act (Defence-related Claims) 1988 (Cth) – claims for cervical spondylosis and thoracic spondylosis – whether the injuries arose out of the applicant’s employment – decisions under review affirmed

[Matthews and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 1728 (15 June 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – claim for compensation for spinal injury – whether sequela of accepted condition – degenerative constitutional condition – decision under review affirmed

[Mohan Raja and Comcare](#) (Compensation) [2020] AATA 1782 (16 June 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – claim for medical expenses under section 16 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – hydrotherapy for lumbo-sacral strain (episode only) – whether treatment reasonable – whether applicant continues to suffer the effects of the compensable condition – decisions under review affirmed

[Payten and Australian Postal Corporation](#) (Compensation) [2020] AATA 1925 (26 June 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – where liability accepted for closed (internal) head injury – whether the applicant continues to suffer from the effects of the accepted injury – whether the applicant is entitled to compensation pursuant to sections 16 and 19 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision under review affirmed

Corporations

[Raber and Australian Securities and Investments Commission](#) [2020] AATA 1851 (19 June 2020); Deputy President B J McCabe

CORPORATIONS – banning order – applicant banned from managing companies for two and a half years – refusal of leave to manage a specific company notwithstanding the disqualification – applicant involved in setting up contract for company to undertake major construction project – decision affirmed

Customs

[Smoothflow Australia Pty Ltd and Comptroller-General of Customs](#) [2020] AATA 1890 (23 June 2020); Deputy President B W Rayment OAM QC

CUSTOMS AND EXCISE – Customs duty – identification of goods – correct tariff classification under appropriate heading – where English and French text of the Harmonized Commodity Description and Coding System contains differences – whether appropriate to use explanatory notes – whether Canadian approach should be supported in Australia – where General rules for interpretation applied – where more specific description available – decision set aside and remitted

[Southern Forest Export Pty Ltd and Comptroller-General of Customs](#) [2020] AATA 1892 (22 June 2020); Deputy President Boyle

CUSTOMS – Tariff Concession Order – equipment – TCO criteria – performance based criterion – statutory interpretation – hypothetical performance – “wharfside test” – implied term – gloss – decision affirmed

Migration

[Alagaelua and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1776 (15 June 2020); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa under s 501 – substantial criminal record – whether cancellation should be revoked – Ministerial Direction 79 – primary considerations – other considerations – decision under review affirmed

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

(Migration) [2020] AATA 1777 (15 June 2020); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – convictions include grievous bodily harm, assault occasioning bodily harm and aggravated burglary with intent – illicit drug use linked to offending – Applicant is a 29-year-old man who arrived in Australia as a 1-year-old child – Reviewable Decision affirmed

PRACTICE AND PROCEDURE – whether representations made in accordance with invitation – whether discretion under s 501CA(4) of the Migration Act 1958 (Cth) to revoke cancellation decision enlivened – role of Tribunal to conduct merits review and not to examine flaws made by the delegate in the Reviewable Decision – Tribunal’s role is not to review decisions according to the principles applicable to judicial review – facts of offending put forward by Applicant inconsistent with facts the conviction and sentence were based on – written statements omitted details of relevant minor children – two-day rule – leading questions – weight to be given to expert report when expert not provided with all relevant documents concerning the Applicant’s offending

DIRECTION NO 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – parole – completion of rehabilitation programs – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to New Zealand – impact of COVID-19 pandemic – Applicant likely to be detained for uncertain period if decision affirmed

Castle and Minister for Home Affairs (Migration) [2020] AATA 1778 (12 May 2020); Senior Member N A Manetta

MIGRATION – cancellation of applicant’s visa – applicant has substantial criminal record including most recently an assault against a woman – whether visa should be cancelled – interests of minor children – prospects of rehabilitation – decision set aside and visa reinstated

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

(Migration) [2020] AATA 1773 (15 June 2020); R Bellamy, Member

MIGRATION – Cancellation of Applicant’s visa under s501(2) of the Migration Act 1958 – where Applicant does not pass the character test – whether discretion not to exercise the power to cancel the subject visa – consideration of Ministerial Direction No. 79 – decision under review set aside and substituted

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

(Migration) [2020] AATA 1771 (15 May 2020); Emeritus Professor P A Fairall, Senior Member

MIGRATION – subclass 444 special category visa – citizen of New Zealand – failure to pass character test – substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – decision under review set aside

[Hodgson-Te Tau and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1770 (12 June 2020); Senior Member B J Illingworth

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

[ZLYD and Minister for Home Affairs](#) (Migration) [2020] AATA 1737 (8 May 2020); Senior Member N A Manetta

MIGRATION – cancellation of applicant’s visa – applicant has substantial criminal record including most recently indecent assault against a woman – whether visa should be cancelled – interests of minor children and impediments on removal to Sudan – decision set aside and visa reinstated given interests of minor children, interests of partner and impediments on removal – non-refoulement obligations not decisive but also relevant

[1726920](#) (Migration) [2020] AATA 1519 (13 February 2020); L Holub, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – sponsorship limitation – sponsor of two previous successful Partner applications – compelling circumstances affecting the sponsor – separation from two previous wives – long term relationship – applicant’s studies in Aged Care Nursing – impact on the sponsor’s dependent son – custody arrangements for the sponsor’s son – decision under review remitted

[Kaensan](#) (Migration) [2020] AATA 1803 (20 February 2020); M Bishop, Member

MIGRATION – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – financial capacity – genuine access to funds – current evidence of enrolment – secondary visa applicant is offshore – death of Australian partner – beneficiary of partner’s estate – request for Ministerial Intervention referral – strong compassionate circumstances – decision under review affirmed

[Arok](#) (Migration) [2020] AATA 1564 (29 April 2020); J Owen, Senior Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Child (Orphan Relative)) – bogus documents or false or misleading information – death certificates for child visa applicants’ parents obtained from hospitals by children’s guardian – not true copies of national register – fraudulent hospital discharge summaries – review applicant’s purposeful falsity – no definite evidence of deaths – waiver of requirements – compassionate or compelling circumstances – review applicant’s mental health – no documentary evidence of diagnosis or treatment – decision under review affirmed

[Panapa](#) (Migration) [2020] AATA 1558 (1 May 2020); K Millar, Senior Member

MIGRATION – Special Category (Temporary) (Class TY) visa – Subclass 444 (Special Category) – behaviour concern non-citizen – sentenced to imprisonment for periods totalling at least one year – applicant sentenced to imprisonment with leave to apply for home detention – application to parole board and sentence served as home detention – amendment to NZ Sentencing Act – established life and no convictions in Australia – family would remain in Australia – decision under review affirmed

[Sheraz](#) (Migration) [2020] AATA 1735 (7 May 2020); J Cipolla, Senior Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – work only in occupation specified in most recently approved nomination – information about applicant’s duties provided to department by part-time employee – information provided to tribunal by owner/manager – applicant’s duties compared to ANZSCO listing – assisting with other tasks on day of department’s phone call – decision under review set aside

National Disability Insurance Scheme

[Jourfian and National Disability Insurance Agency](#) [2020] AATA 1883 (23 June 2020); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – back injury – depression – whether the applicant meets the disability requirements – permanency – substantial reduction in functional capacity – whether the applicant needs the NDIS for life – early intervention requirements – decision under review affirmed

Practice and Procedure

[Chouman and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1853 (19 June 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – whether there is an acceptable explanation for delay – whether Respondent is prejudiced by delay – whether Applicant rested on her rights – considerations of fairness between Applicant and others in a similar situation – whether substantive application has merits – qualification for carer payment – cessation of care beyond allowable period – cancellation of carer payment – waiver of debt arising from error – waiver of debt in special circumstances – writing off debt – prejudice to the public – whether it is reasonable in all the circumstances to grant the extension – extension of time application refused

[Conchie and Comcare](#) (Compensation) [2020] AATA 1791 (17 June 2020); Senior Member D O'Donovan

PRACTICE AND PROCEDURE – adjournment application made by applicant – applicant’s mental health considered – medical evidence does not satisfy Tribunal of need to exercise discretion to adjourn hearing – whether the respondent completely altered the nature of its case as contended by the applicant – lack of appreciation of the issues – nature of issues in dispute for some time – no procedural unfairness identified – adequate evidence available to ventilate the issues at hearing – no prejudice to applicant arising – adjournment application dismissed

[Connelly and Comcare](#) (Compensation) [2020] AATA 1780 (3 June 2020); Senior Member B Pola

EXTENSION OF TIME – extension of time to lodge application for review – principles to be applied – length of delay – whether there is an acceptable explanation for delay – whether reasonable prospects of success – whether there is any prejudice caused to the Respondent – whether there are alternate avenues of relief – extension of time not granted

[Cro Travel Pty Ltd and Decision-Maker](#) [2020] AATA 1888 (19 June 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – jurisdiction – nature of power exercised by tribunal in undertaking a review is administrative and not judicial – jurisdiction founded on Parliament’s having expressly provided that an application may be made to the Tribunal to review a decision – no general investigative powers – tribunal has no jurisdiction

[Dallal and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1723 (15 June 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – whether there is an acceptable explanation for delay – whether Respondent is prejudiced by delay – whether Applicant rested on her rights – considerations of fairness between Applicant and others in a similar situation – whether substantive application has merits – carer payment – carer allowance – Adult Disability Assessment Tool – claimant questionnaire score – professional questionnaire score – prejudice to the public – whether it is reasonable in all the circumstances to grant the extension – extension of time application refused

[Garrett and Other](#) [2020] AATA 1726 (9 June 2020); Deputy President Britten-Jones

Practice and procedure – bias – apprehended bias – conflict of interest – pecuniary interest – recusal – no jurisdiction – decision made under a Commonwealth enactment – freedom of Information – application for review of decisions relating to requests for access to documents – where no IC review application made – no jurisdiction to review decisions of which review sought – extension of time sought – extension of time dismissed – applications dismissed

[Jakovceski and Comcare](#) (Compensation) [2020] AATA 1917 (13 May 2020); Deputy President G Humphries AO

WORKERS COMPENSATION - PRACTICE AND PROCEDURE – Extension of time applications – significant delay – whether acceptable explanation of the delay – whether extension fair and equitable in the circumstances – merits of substantial application – duplication of claim with another claim already before the Tribunal – abuse of process considered – extension of time application refused

[JVSG and Commissioner of Taxation](#) (Taxation) [2020] AATA 1847 (12 May 2020); Deputy President A G Melick AO SC

PRACTICE AND PROCEDURE – application dismissed - abuse of process – matter resolved between parties but Applicant still seeks matter to be heard

[Morrison-Francis and Commissioner of Taxation](#) (Taxation) [2020] AATA 1860 (22 June 2020); Senior Member R Olding

PRACTICE AND PROCEDURE – TAXATION – jurisdiction of the Tribunal – where applicant asserts that a notice of objection was lodged and a notice given under s 14ZYA of the Taxation Administration Act 1953 (Cth) – where Commissioner of Taxation denies receiving the notices – where application for review filed before expiry of 60 days from giving of notice under s 14ZYA – application for review dismissed for want of jurisdiction

[NPXL and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1891 (23 June 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – whether there is an acceptable explanation for delay – whether Respondent is prejudiced by delay – whether Applicant rested on her rights – considerations of fairness between Applicant and others in a similar situation – whether substantive application has merits – overpayment of Newstart Allowance and Sickness Allowance – recalculation of debt – waiver of debt in special circumstances – jurisdiction for second review of a first review decision to set aside and remit – prejudice to the public – whether it is reasonable in all the circumstances to grant the extension – extension of time application refused

[Peris and Anti-Doping Rule Violation Panel](#) [2020] AATA 1855 (17 June 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – application for extension of time to apply for review – application is made seven months after the prescribed time – whether respondent would be prejudiced by extension – whether applicant's reasons sufficient to explain delay – whether notice of review rights given to applicant misleading – limited nature of review that may be undertaken by Tribunal in the matter – application refused

[Site Skills Group Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 1919 (24 June 2020); Deputy President I Hanger AM QC

PRACTICE AND PROCEDURE – whether additional documents are required to be lodged under s37(2) of the Administrative Appeals Tribunal Act 1975 (Cth) – whether the documents are relevant to the review of the decision under review by the Tribunal – where the Other Party seeks a direction for the Respondent to produce documents under s37(2) – whether the Tribunal should direct the respondent to produce documents pursuant to subsection 37(2) – Respondent directed to produce documents sought in part.

[Wagner and National Disability Insurance Agency](#) [2020] AATA 1775 (2 June 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – whether application has reasonable prospects of success – whether applicant meets age requirements under s 21(1)(a) of the National Disability Insurance Act 2013 – applicant aged over 65 when applicant made – cannot meet age requirements – no earlier application for internal review – application dismissed under s42B(1)(b) of the Administrative Appeals Tribunal Act 1975

[Yvonne Anderson and Associates Pty Ltd and Tax Practitioners Board](#) (Taxation) [2020] AATA 1881 (22 June 2020); D K Grigg, Member

TAX AGENT REGISTRATION – termination of applicants' registrations as tax agents – application for a stay pending decision under review – prospects of success – public interest – stay applications refused

Refugee

[1923409](#) (Refugee) [2020] AATA 1576 (20 January 2020); D McCulloch, Member

REFUGEE – protection visa – Sri Lanka – ethnicity – LTTE conscript – active service and injury – surrender and escape from displaced persons' camp without being identified – political campaigner and assistant – arrest and mistreatment by police and army, and escape from detention – departure using false passport – credibility – weighing implausible aspects against overall consistent, detailed evidence – country information – status of returned former LTTE members – status of Tamil political parties – real chance of serious harm in all areas of country – decision under review remitted

[1834254](#) (Refugee) [2020] AATA 1930 (13 February 2020); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Iran – risk to the health or safety of a segment of the Australian community – sexual assault convictions – risk during custodial sentence – presumption of innocence – double jeopardy – mental health issues – continued fear of return to Iran – impact on family relationships – decision under review affirmed

[1619347](#) (Refugee) [2020] AATA 1544 (20 April 2020); D Dragovic, Senior Member

REFUGEE – protection visa – Ethiopia – race – Oromo ethnicity – imputed and actual political opinion – Oromo Liberation Front – applicant's past occupation – opposition to the current and past governments – changed political environment – release of political prisoners – religion – Eastern Orthodox Christian faith – particular social group – failed asylum seeker – women in Ethiopia – gender based violence – degree of harm required to constitute persecution – decision under review affirmed

[1713052](#) (Refugee) [2020] AATA 1744 (11 May 2020); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – membership of a particular social group – conscientious objector to military service – study abroad and avoidance of military service on return – harassment by Basij – departure on false passport – religion – non-religious before conversion to Christianity in Australia – low-level membership and activity – medical condition and physical and mental health – status as returned illegal departee and failed asylum seeker – country information on military service and prisons – father's ethnicity and country of birth – sister's protection visa – decision under review remitted

[1801345](#) (Refugee) [2020] AATA 1739 (22 May 2020); Dr C Huntly, Member

REFUGEE – protection visa – Brazil – political opinion – outspoken and high-profile political and civil society activism – advocating for the rule of law – endured bogus charges and false litigation – credibility assessment – delay in seeking protection – State protection – right to enter and reside in a third country – porous borders within the Mercosur region – permanent resident of Paraguay – temporary right to enter the US – decision under review remitted

Social Services

[Bontes and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1910 (16 June 2020); S Barton, Member

DISABILITY SUPPORT PENSION – DSP – fully diagnosed – fully stabilised – fully treated – reasonable treatment – applicant does not meet impairment rating requirement – decision under review affirmed

[Dunstan and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1779 (16 June 2020); Deputy President G Humphries AO

SOCIAL SECURITY – mobility allowance – whether the applicant was engaged in any voluntary activity for 32 hours in every 4 week period on a continuing basis – whether the applicant was unable to use public transport without substantial assistance because of her disability – applicant volunteers for 32 hours in every 4 week period on a continuing basis – applicant is unable to use public transport without substantial assistance – decision under review varied

[Farhat and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1859 (29 May 2020); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – whether impairments fully diagnosed, fully treated and fully stabilised – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – whether applicant has continuing inability to work – whether applicant has severe impairment – whether applicant has completed program of support – Meniere's disease – lower back pain – PTSD – synovitis of shoulder and upper arm – retinal disease – decision under review affirmed

[Hamed and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1914 (25 June 2020); R West, Member

SOCIAL SECURITY – Disability Support Pension – cancellation – spinal condition – fully diagnosed, treated and stabilised – moderate impairment – decision affirmed

[Hamilton and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1918 (26 June 2020); Senior Member D R Davies

SOCIAL SECURITY – claim made for new start allowance – lump sum compensation payment – whether applicant subject to lump sum compensation payment preclusion period – whether special circumstances under subsection 1184K(1) of the Social Security Act 1991 (Cth) – where Applicant subject of severe financial hardship and abusive domestic relationship – where special circumstances relate to totality of circumstances and not a specific element of the compensation payment – decision under review set aside – preclusion period reduced

[Hardiman and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1794 (17 June 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – claim made for Newstart allowance — lump sum compensation payments – application rejected – whether preclusion period applies – whether special circumstances — applicability of the Guide to Social Security Law – decision under review set aside

[He and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1848 (19 June 2020); D Mitchell, Member

SOCIAL SECURITY – parenting payment single – separated parents with shared care – principal carer – parenting payment child – financial considerations – comparison of assets – comparison of earning potential – decision under review affirmed

[King and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1793 (17 June 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – chronic right-leg cellulitis – gastrointestinal disturbance – whether applicant had severe functional impairment on activities using lower limbs – decision under review affirmed

[Lapworth and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1887 (23 June 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – whether the Applicant had an impairment rating of 20 points or more – Impairment Table 1 – heart disease, diabetes and other conditions – Reviewable Decision affirmed

[Negro and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1911 (16 June 2020); S Barton, Member

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

[Nicholson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1849 (18 May 2020); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – whether the Applicant has an impairment rating of 20 or more points according to the Impairment Tables – whether the Applicant has a continuing inability to work – whether the Applicant was exempt from participating in a program of support – qualification period – decision under review affirmed

[Ogden and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1727 (15 June 2020); S Evans, Member

SOCIAL SECURITY – age pension – debt – overpayment of benefits – value of assets – account-based pension – annuity – whether debt can be written off – whether debt can be waived – whether debt arose solely due to administrative error – whether special circumstances exist – decision under review affirmed

[Phillips and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1819 (18 June 2020); Senior Member P J Clauson

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Social Security Administration Act 1999 (Cth) – Commonwealth Debt – Underreported Income – Sole Administrative Error – Whether Department Erred in Raising Debt – Error not Found – Decision Affirmed

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

AATA 1841 (18 June 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension – several conditions including gastritis and anxiety with agoraphobia and depression – whether fully diagnosed, treated and stabilised – qualification period – medical appointments after qualification period – self-reporting – JCA report – decision set aside

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

1850 (18 June 2020); The Hon. M Groom, Senior Member

SOCIAL SECURITY – Family Tax Benefit – FTB – whether there was a change in the percentage of care split – whether an interim care determination should apply – Tribunal satisfied of special circumstances – legislative requirements for interim care determination not satisfied – decision affirmed

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

1880 (16 June 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – special benefit—new entrant to Australia—change in circumstances- whether ‘substantial’ or not --whether or not preventable—whether any requirement of reasonableness—Guide to Social Security Law—departure from Guide—decision set aside

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

AATA 1912 (24 June 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – cancellation of disability support pension – whether disability support pension should have been suspended or cancelled – whether overpayment of disability support pension – debt owed to the Commonwealth – recovery of a debt – whether Applicant should be required to repay the overpaid amount – whether debt attributable solely to administrative error of Centrelink – waiver for sole administrative error – whether special circumstances – whether debt should be written off – Applicant’s spouse received lump sum compensation payment deposited into joint bank account – whether Applicant advised Centrelink of wife’s compensation payment – monies in bank account exceeded asset limit – two month delay in investing compensation payment into special superannuation fund – superannuation fund an exempt asset – special circumstances established – Reviewable Decision set aside and substituted

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

1889 (19 June 2020); Mr S Evans, Member

SOCIAL SECURITY – age pension – overpayment – where applicant did not declare regular monthly payment – whether applicant overpaid aged pension in the relevant period – whether there are any grounds to waive or remit the debt – tribunal satisfied debt correctly imposed – decision affirmed

Taxation

[AJ & PA McBride Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 1909 (19 June 2020); Deputy President Britten-Jones

TAXATION – Income tax – deductions – depreciating assets – capital allowance system – Division 40-F of the Income Tax Assessment Act 1997 – where a primary producer purchases a sheep station which includes fencing assets – where parties request a preliminary issue to be determined – the preliminary issue is whether the primary producer is entitled to an immediate deduction for capital expenditure on fencing assets acquired as part of the purchase of the sheep station – no deduction allowed

[Hamilton and Commissioner of Taxation](#) (Taxation) [2020] AATA 1812 (4 June 2020); Deputy President B J McCabe and Senior Member L Kirk

TAXATION – whether income from IMF exempt from Australian income tax – does the applicant hold an office in an international organisation – does the applicant hold an office within a specialised agency – Revenue Administration Adviser of the IMF – short term assignments – application of the test in Jayasinghe – do the positive and negative criteria in Jayasinghe apply – decision affirmed

[LQNN and Commissioner of Taxation](#) (Taxation) [2020] AATA 1915 (24 June 2020); Dr P McDermott RFD, Deputy President

TAXATION – income tax – whether payments were ordinary income – overpayments – penalties – whether penalties should be remitted – decisions under review affirmed

[McAteer and Commissioner of Taxation](#) (Taxation) [2020] AATA 1795 (17 June 2020); Senior Member R L Hamilton SC

TAXATION – deductibility to employee of home office expenses – working at home required by employer – equipment for home use supplied by employer – live chat advice not an ‘oral ruling’ – claim allowed in part – matter remitted

[Seribu Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 1840 (16 June 2020); Deputy President B J McCabe

TAXATION – statutory interpretation – meaning of ‘foreign currency’ – cryptocurrency – Bitcoin – whether Bitcoin is a foreign currency under Div 775 of the Income Tax Assessment Act – decision affirmed

[TKGY and Commissioner of Taxation](#) (Taxation) [2020] AATA 1839 (18 June 2020); D Mitchell, Member

TAXATION – goods and services tax – input tax credits – four year rule to claim input tax credit – eligibility to claim input tax credits – adjustment event – taxpayer’s burden to prove assessment excessive or otherwise incorrect – decision under review affirmed

Veterans' Affairs

[Fill and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1913 (24 June 2020); Senior Member Katter

VETERANS' AFFAIRS – claim for service pension – s 36A and s 37A of the Veterans' Entitlements Act 1986 – decision under review set aside and remitted for reconsideration

[Jefferys and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1927 (26 June 2020); Senior Member T Tavoularis

VETERANS' COMPENSATION – Veterans' Entitlements Act 1986 (Cth) – Service Related Injury or Disease – Post Traumatic Stress Disorder – Whether PTSD Service Related – Whether pre existing sensitivity is relevant consideration – PTSD requires objectively traumatic experience – Decision affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, 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
Mailau and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1506
Stewart and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1257

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Kemp	[2019] AATA 3552	[2020] FCA 865

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986](#) (VEA) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004](#) (MRCA). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

Notification of Investigations relating to existing Statements of Principles

On 12 June 2020, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

gait disturbance as a factor in trochanteric bursitis and gluteal tendinopathy –
<https://www.legislation.gov.au/Details/C2020G00483>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

trochanteric bursitis and gluteal tendinopathy – No. 45 of 2015
<https://www.legislation.gov.au/Details/F2015L00010>

trochanteric bursitis and gluteal tendinopathy – No. 46 of 2015
<https://www.legislation.gov.au/Details/F2015L00011h>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These took effect from **22 June 2020**:

Coronavirus disease 2019 (COVID-19) (Reasonable Hypothesis) - No. 46 of 2020
<https://www.legislation.gov.au/Details/F2020L00709>

Coronavirus disease 2019 (COVID-19) (Balance of Probabilities) - No. 47 of 2020
<https://www.legislation.gov.au/Details/F2020L00710>



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