



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

Resumption of limited in-person hearings

The AAT is taking steps to resume limited in-person hearings at all registries except Melbourne.

We are mindful that there are some circumstances in which a remote hearing may not be practicable and where the matter may not be deferred. We will consider the listing of in-person hearings on a case by case basis in accordance with the [AAT's practice directions](#). In appropriate matters, in-person hearings are expected to commence within the next few weeks. Parties will be contacted by the Tribunal as to hearing arrangements.

Most AAT hearings and all AAT conferences will however continue to be conducted remotely by video conference or telephone for some time. We are taking a staged approach to recommencing in-person hearings because the health and wellbeing of our members, staff, visitors and the wider community remains our key priority.

Keep monitoring our website, www.aat.gov.au for updates and for information about the [impact of COVID-19](#) on our services.

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

[CSQG and Child Support Registrar](#) (Child support second review) [2020] AATA 2050 (1 July 2020); L M Gallagher, Member

CHILD SUPPORT – percentage of care – whether there was a change in care – actual care – extent of care – inconsistent evidence – conflicting evidence – no pattern of care – decision under review affirmed

[DQFY and Child Support Registrar](#) (Child support second review) [2020] AATA 2174 (6 July 2020); K Parker, Member

CHILD SUPPORT – review of care percentage determination – assessment of accuracy of records of care maintained by each parent over care period – consideration of recent new parenting arrangement – decision under review set aside – original care percentage determination revoked – new care percentage determination made

[Elfers and Child Support Registrar](#) (Child support) [2020] AATA 1399 (2 April 2020); S Letch, Member

CHILD SUPPORT – refusal to grant an extension of time to object – very lengthy delay – arguable merit – significant prejudice to other party – weighing all factors the extension of time was correctly refused – decision under review affirmed

[Hatlestad and Hatlestad](#) (Child support) [2020] AATA 1403 (1 April 2020); S Brakespeare, Member

CHILD SUPPORT – non-agency payment – whether payment made to a third party in lieu of child support – intention of both parents – decision under review varied

[Moeling and Child Support Registrar](#) (Child support) [2020] AATA 1040 (2 April 2020); R Ellis, Senior Member

CHILD SUPPORT – application for extension of time - no satisfactory explanation for the delay - no merit - extension of time refused

[Rebert and Turville](#) (Child support) [2020] AATA 1475 (1 April 2020); F Staden, Member

CHILD SUPPORT – percentage of care –likely pattern of care from the commencement of the child support assessment - decision under review affirmed

[Wilhoit and Mangrum](#) (Child support) [2020] AATA 2139 (7 April 2020); S Letch, Member

CHILD SUPPORT – percentage of care – what was the likely pattern of care from the start of the administrative assessment – shared care appropriate determined - decision under review affirmed

CHILD SUPPORT – date of effect of objection decision – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances - decision under review affirmed

Citizenship

[Faiz Mohammad and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 2053 (1 July 2020); M O'Loughlin, Member

IMMIGRATION AND CITIZENSHIP – application for citizenship by conferral – application for citizenship refused – whether Tribunal satisfied as to identity – inconsistency in evidence – credibility - decision under review remitted

[KSHD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1969 (19 June 2020); Senior Member B J Illingworth

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to identity – fraudulent documents – whether Tribunal is satisfied Applicant is of good character – decision under review set aside and remitted

[QJHL and Minister for Immigration and Border Protection](#) (Citizenship) [2020] AATA 1997 (30 June 2020); Senior Member T Tavoularis

CITIZENSHIP – citizenship by conferral – cancellation of citizenship approval – whether the Applicant is of good character – where Applicant submitted fraudulent document – decision under review affirmed

[Tella and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 2115 (7 July 2020); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant's identity – whether Tribunal satisfied Applicant was of good character – evidence that residence identification not genuine – conduct of Applicant when responding to adverse information – reviewable decision affirmed

[YQCV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1994 (29 June 2020); Deputy President J W Constance

CITIZENSHIP – citizenship by conferral – whether special residence requirement relating to persons engaging in activities of benefit to Australia met – responsible parent – dependent children – where Tribunal not satisfied there is insufficient time for the Applicant to satisfy the general residence requirement in section 22 – separate consideration of dependent children's applications – best interests of the child – where no significant hardship or disadvantage found – decisions under review affirmed

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

(Citizenship) [2020] AATA 2000 (30 June 2020); Senior Member T Tavoularis

CITIZENSHIP – revocation of Applicant’s Australian citizenship pursuant to section 34(2) – Applicant convicted of a serious offence – whether it is contrary to the ‘public interest’ for the Applicant to retain his citizenship – whether the Applicant has re-established his ‘good character’ – whether the discretion to revoke the Applicant’s Australian citizenship should be exercised – decision under review set aside

Compensation

DVFW and Comcare (Compensation) [2020] AATA 2055 (1 July 2020); Senior Member J C Kelly

WORKERS’ COMPENSATION – Applicant employed by Commonwealth government department – Applicant has an accepted claim in 2016 of aggravation of borderline personality disorder – whether Duromine is reasonable medical treatment obtained in relation to the Applicant’s accepted injury – whether the Respondent is liable to pay for the medical treatment (Duromine (phentermine), an appetite suppressant) in respect of previously accepted liability – Applicant claims that her normal weekly earnings (NWE) should be calculated according to full-time hours of 37.5 and not part-time hours of 29.5 – in proceeding 2018/3869 the reviewable decision is set aside and substituted and in proceedings 2018/4369 the reviewable decision is affirmed

Flood and Comcare (Compensation) [2020] AATA 2152 (8 July 2020); S Taglieri SC, Member

COMPENSATION – accepted liability for “respiratory conditions due to external agents” and secondary “adjustment disorder” – the applicant does not suffer “multiple chemical sensitivity” but suffers “somatic symptoms disorder” – was there continuing incapacity for work – was there a need for reasonable treatment – entitlement to compensation for permanent impairment and non-economic loss

Ryan and Swire Pacific Ship Management (Australia) Pty Ltd (Compensation) [2020] AATA 2049 (1 July 2020); M East, Member

COMPENSATION – seafarer’s rehabilitation and compensation – whether applicant’s ailment was ‘contributed to in a material degree’ by his employment with the respondent as an Integrated Rating on the vessel – meaning of ‘ailment’ considered – meaning of ‘contributed to’ considered – meaning of ‘in a material degree’ considered – decision under review affirmed

Spradau and Comcare (Compensation) [2020] AATA 2054 (1 July 2020); W Frost, Member

WORKERS’ COMPENSATION – accepted injury of broken left wrist - whether the applicant suffers a degree of permanent impairment resulting from accepted injury – assessment of permanent impairment in accordance with Tables 9.9.1a, 9.9.1b and 9.14 of the approved Guide – applicant does not meet 10% whole person impairment threshold – applicant not entitled to compensation for permanent impairment and non-economic loss – decision under review affirmed

Education and Research

[Al-Huda Pty Ltd and Secretary, Department of Education and Training](#) [2020] AATA 2002 (29 June 2020); Senior Member J C Kelly

CHILDCARE – education and care services – child care benefit – child care subsidy – non-compliance with the family assistance law – continued approval of a childcare service – whether the Applicant has not complied, or is not complying, with a condition for continued approval as a provider of child care services under the family assistance law – whether a sanction should be imposed – which sanction should be imposed – reviewable decision affirmed

Industrial Law

[Bullivant and Secretary, Attorney-General's Department](#) [2020] AATA 2047 (1 July 2020); Emeritus Professor P A Fairall, Senior Member

FAIR ENTITLEMENTS GUARANTEE – small business employer – redundancy – whether the applicant has a statutory entitlement to a FEG advance in respect of redundancy pay – governing instrument for employment – inducement – contractual obligations – decision under review set aside and remitted

Media and communications

[W & A Willmington Pty Ltd and Australian Communications and Media Authority](#) [2020] AATA 2102 (7 July 2020); Deputy President J W Constance

RADIOCOMMUNICATIONS – Low Power Open Narrowcasting (LPON) licence – licence cancelled pursuant to discretion – breach of licence conditions – whether licensee provided the service with “reasonable regularity” – meaning of “regularity” – decision affirmed

Migration

[Eswaran and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2048 (30 June 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class SN Subclass 190 Skilled – Nominated 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

[HYTB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1967 (22 June 2020); T Eteuati, Member

MIGRATION – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review affirmed

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

(Migration) [2020] AATA 2165 (9 July 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Resident Return (Class BB) (Subclass 155) 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 – consideration of Australia’s international non-refoulement obligations – decision under review affirmed

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

(Migration) [2020] AATA 2160 (7 July 2020); Deputy President J W Constance

MIGRATION – mandatory cancellation – failure to pass the character test – where offending very serious – where low risk of reoffending – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – strength, nature and duration of ties to Australia – decision set aside and substituted

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

(Migration) [2020] AATA 2175 (10 July 2020); R Reitano, Member

MIGRATION – cancellation of Applicant’s Class TY, Subclass 444 Special Category (Temporary) visa – Applicant is a citizen of New Zealand – failure of the character test – whether there is another reason to revoke the visa cancellation – Direction No. 79 – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

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

(Migration) [2020] AATA 2117 (7 July 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 – alcohol use linked to offending – Applicant is a 20-year-old man who arrived in Australia as a 12-year-old child – Reviewable Decision affirmed

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 nephew and niece – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to New Zealand – impact on victims – impact of COVID-19 pandemic – detention for uncertain period if decision affirmed

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

(Migration) [2020] AATA 1968 (26 June 2020); Deputy President B W Rayment OAM QC

MIGRATION – cancellation of visa on character grounds under s 501(3A) – where applicant involved in reckless wounding – whether to exercise discretion under Direction No. 79 – where applicant suffers from depression, anxiety and panic attacks as a result of childhood trauma – where protection of the Australian community reflected in sentencing – where applicant has low risk of recidivism – where behaviour in detention has been good – where applicant has desire to contact with daughters – where international non-refoulement obligations owed – where strength, nature and duration of ties exist – where impediments if removed exist – decision set aside and substituted

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

(Migration) [2020] AATA 2161 (9 July 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Burkina Faso – Class BC Subclass 100 Partner 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

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

(Migration) [2020] AATA 2179 (10 July 2020); Senior Member C Puplick AM

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

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

(Migration) [2020] AATA 2163 (9 July 2020); Senior Member A Nikolic AM CSC

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

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

(Migration) [2020] AATA 2153 (7 July 2020); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of Applicant's visa – Applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision under review set aside and substituted

Bajwa (Migration) [2020] AATA 1900 (15 May 2020); T Connellan, Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 572 (Vocational Education and Training Sector) – Federal Circuit Court remittal – bogus document or false or misleading information – financial support – departmental investigator concluded financial supporter was not applicant's grandfather – evidence of relationship – applicant's mother's school results includes grandfather's name – decision under review remitted

Goonewardena (Migration) [2020] AATA 1955 (6 May 2020); M Ison, Senior Member

MIGRATION – cancellation – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – incorrect information in visa application – bogus documents – employment history – two businesses with co-directors and shared office, staff and resources – employed by one company then the other, assisting the other company as required – decision under review set aside

[Masalkovski](#) (Migration) [2020] AATA 1867 (13 May 2020); S Witts, Member

MIGRANT – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse) (Provisional) – false or misleading information – attempted entry to another country on fraudulent passport not declared in application – departed voluntarily, not removed – told by interpreter that he didn't need to provide information more than 10 years old – credibility – waiver of criterion – compassionate or compelling circumstances – sponsor's adult daughter's medical condition and care – sponsor's mental health – decision under review affirmed

[Ruan](#) (Migration) [2020] AATA 1960 (27 May 2020); H Kroger, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – study requirement – eligible study within a reasonable time of completing high school – dispute between divorced parents about tuition fees and living expenses – non-eligible study during this period – steps to facilitate full-time study – decision under review remitted

[Sajid](#) (Migration) [2020] AATA 1943 (21 May 2020); S Conwell, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – not enrolled in registered course – not informed by education provider of cancellation of enrolment – administrative error or oversight – continued studying and completed course – enrolled in and almost completed another course with another provider – decision under review set aside

Practice and Procedure

[Bunnett and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 2178 (7 July 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – applicant had previously provided with hearing aids for compensable injury – respondent refused to pay for same type of hearing aids when legislation determining entitlement to compensation amended – whether a reviewable decision has been made – applicability of Safety, Rehabilitation and Compensation Act 1988, Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 and Military Rehabilitation and Compensation Act 2004 – no reviewable decision made – Tribunal has no jurisdiction

[Elliott and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2176 (10 July 2020); K Parker, Member

PRACTICE AND PROCEDURE – JURISDICTION – youth allowance overpayment debt raised against Applicant – Applicant sought review by Centrelink authorised review officer – decision affirmed – Applicant sought review by Social Services and Child Support Division of the AAT (‘AAT1’) – AAT1 waived a portion of the debt and directed that the remaining debt be recovered and recalculated – Applicant sought review of recalculated debt by the General Division of the AAT (‘AAT2’) – Applicant and Government lawyer executed an agreement to settle AAT2 proceedings – reduced portion of debt waived as required by s 1237AAB(2) of the Social Security Act 1991 (Cth) – AAT2 proceedings taken to be dismissed by force of s 181(2) of the Social Security (Administration) Act 1999 (Cth) – Applicant claimed he settled proceedings “under duress” because it was an obstacle to him being admitted as a legal practitioner in Victoria – after Applicant was duly admitted, he lodged a new application to the AAT seeking review of the “decision to agree to the settlement” – whether execution of agreement to settle AAT2 proceedings or consequential waiver decision (‘Decisions’) constituted reviewable decisions – whether Decisions reviewable by the AAT1 under s 142(1) of the Administration Act – whether Decisions were made by the Secretary “personally” – whether Decisions related to the exercise of the Secretary’s power to settle proceedings before the AAT within the meaning of s 135(3) or s 144(s) of the Administration Act – Applicant sought to rely upon the absence of a reference to s 181 in s 144(s) specifying “non-reviewable decisions” – whether reference to s 182 instead of s 181 in s 144(s) was a drafting error – whether s 144(s) should be interpreted in a way that disregards drafting error – whether Decisions were reviewable by the AAT2 under s 179 of the Administration Act – Tribunal concluded that the Decisions were not reviewable by the AAT1 as part of an AAT first review or consequently, by the AAT2 as part of an AAT second review – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Lauder and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1992 (11 May 2020); D Mitchell, Member

EXTENSION OF TIME – Application for Review of Decision filed out of time – Application for Extension of Time considered – Extension of Time Refused

[Leahy and Tax Practitioners Board](#) (Taxation) [2020] AATA 2164 (9 July 2020); Senior Member K James

PRACTICE AND PROCEDURE – stay application – termination of registration as a tax agent – consideration of principles in Scott – whether it is in the public interest for stay to be granted – consideration of purpose of legislative scheme – stay granted

[Mercer and Aged Care Quality and Safety Commissioner](#) [2020] AATA 2051 (26 June 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – whether the applicant has failed to comply with Tribunal directions – whether applicant has withdrawn application – explaining why Information Commissioner is not automatically a party to the application – explaining the issues raised by the application under review and that need to be addressed by the applicant

[VZVX and National Disability Insurance Agency](#) [2020] AATA 1972 (29 June 2020); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – interlocutory application to remit reviewable decisions – objection to the remittal of the matter – where NDIS support plans will expire before hearing – where further disability supports can be provided – request for reviewable decisions to be remitted to the respondent granted

Refugee

[1604952](#) (Refugee) [2020] AATA 1787 (20 May 2020); L Mojsin, Member

REFUGEE – protection visa – Ukraine – conscientious objection to call-up for reservist duty – civil conflict, not external enemy – not eligible for exemption – assault by call-up officers – no public expression of views – country information on military service and conscientious objection – military service non-selective – avoidance treated as criminal offence, not political – no current mobilisation program – decision under review affirmed

[1700682](#) (Refugee) [2019] AATA 6866 (16 December 2019); Dr C Huntly, Member

REFUGEE – protection visa – Libya – imputed political opinion – perceived to be a supporter of Gadhafi – particular social group – women in Libya – past recipients of a Gadhafi scholarship – supporter of equal rights for women – western qualifications – progressive approach to Islam – member of the same family unit – decision under review remitted

[1711932](#) (Refugee) [2020] AATA 1798 (19 February 2020); R Shanahan, Member

REFUGEE – cancellation – protection visa – Iraq – incorrect answers in visa application – multiple return visits to Iraq – imputed political opinion – supplier to Coalition forces – attacks from Islamic extremists – death certificate for wife – undisclosed children in Australia – decision under review affirmed

[1906587](#) (Refugee) [2020] AATA 1931 (5 February 2020); S Burford, Member

REFUGEE – protection visa – Iraq – race – ethnic Turkmen – particular social group – Sunni Turkmen single men of fighting age – fear of killing – mistreatment from Kurds, Arab groups and Islamic State (ISIS) – originating from formerly ISIS-held areas – limited family support available – mental health issues – employment and accommodation opportunities – effective protection – decision under review remitted

[1908883](#) (Refugee) [2020] AATA 1922 (6 March 2020); L Nicholls, Senior Member

REFUGEE – protection visa – Iran – Federal Circuit Court remittal – arrival at Ashmore Reef – unauthorised maritime arrival (UMA) status – granted a Temporary Safe Haven (Subclass 449) visa on the basis of UMA status – remained onshore after visa ceased – operation of s.91K statutory bar – validity of subsequent SHEV visa application – scope of the Tribunal’s jurisdiction – decision under review set aside

[1917715](#) (Refugee) [2020] AATA 2069 (25 February 2020); K Millar, Senior Member

REFUGEE – protection visa – Sri Lanka – religion – Catholic – particular social group – intersex person – perception as homosexual – sex worker – criminal offences – qualifications obtained – ability to obtain work – decision under review affirmed

Social Services

[Barbuto and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1953 (26 June 2020); K Parker, Member

SOCIAL SECURITY – claim for disability support pension – applicant has multiple physical and psychiatric medical conditions including Crohn’s disease – whether conditions were permanent as at the qualification period – whether conditions were fully diagnosed, treated and stabilised and likely to persist for more than two years – assessment of impairment rating under Impairment Tables in respect of functional impacts arising from permanent conditions – whether continuing inability to work – eligibility requirements were met as at qualification period – reviewable decision set aside

[Burke and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1995 (26 June 2020); D Mitchell, Member

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

[Caine and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2089 (6 July 2020); S Evans, Member

SOCIAL SECURITY – disability support pension – fibromyalgia – myalgic encephalomyelitis chronic fatigue syndrome – whether the applicant can perform tasks habitually or repetitively or once or rarely – post exertion malaise – severe impairment – decision under review set aside and substituted

[Caita-Mandra and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1971 (25 June 2020); R West, Member

SOCIAL SECURITY – disability support pension – effect of compensation preclusion period – program of support not undertaken – whether applicant has a severe impairment – chronic lower back pain – mental health condition – partial hearing loss – obstructive urinary symptoms – whether conditions fully treated and stabilised in the qualification period – decision under review affirmed

[Clark and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1970 (29 June 2020); G Hallwood, Member

SOCIAL SECURITY – Pensions, benefits and allowances – Family Tax Benefit – Claim lodged out of time – Whether special circumstances exist – Whether special circumstances prevented lodgement – Decision under review is affirmed

[Delta and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2091 (3 July 2020); Senior Member P J Clauson AM

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Disability Support Pension – Impairment Ratings – Functional Impairment – Whether impairment sufficient to rate as severe – Decision Affirmed

[Franklin and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2162 (9 July 2020); D K Grigg, Member

SOCIAL SECURITY – disability support pension – whether impairments permanent – whether impairments attracted 20 points or more under the impairment tables during the relevant period – whether severe impairment – whether continuing inability to work – decision under review affirmed

[Harrison and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 2100 (6 July 2020); Senior Member B Pola

SOCIAL SECURITY – Disability Support Pension – portability – DSP suspended – whether applicant qualifies for unlimited portability of DSP – whether applicant has a severe impairment of 20 points or more – applicant does not have a severe impairment under impairment tables – maximum portability period exceeded in the last 12 months – decisions under review affirmed

[HBF and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1998 (26 June 2020); Deputy President A G Melick AO SC and The Hon. S Parry, Member

SOCIAL SECURITY – disability support pension – rejection – qualification – medical – whether the Applicant's physical, intellectual or psychiatric issues are fully diagnosed, treated and stabilised – whether the conditions attract an impairment rating of at least 20 points – whether the Applicant has a continuing inability to work – decision under review affirmed

[Harpley and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 2052 (1 July 2020); Senior Member L Kirk

FAMILY TAX BENEFIT – percentage of care – factors relevant to the determination of actual care – principal carer – revoking a care determination – financial circumstances – pattern of care – hours in care rather than nights in care – decision set aside and substituted

[Keskin and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 2101 (6 July 2020); S Evans, Member

SOCIAL SECURITY – compensation preclusion period – lump sum compensation payment – application for newstart allowance – motor vehicle accident – whether discretion under s 1184K should be exercised – special circumstances – expenditure of compensation not accounted for – decision under review affirmed

[MacGregor and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 2122 (7 July 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 – conduct of Job Capacity Assessments – whether Applicant's impairments attract 20 points under the Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

[Osman and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 2045 (1 July 2020); The Hon. M Groom, Senior Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether conditions fully treated and stabilised at the qualification period – whether impairment attracts rating of 20 points or more under Impairment Tables – decision under review affirmed

[Petrovski and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 1993 (30 June 2020); Emeritus Professor PA Fairall, Senior Member

SOCIAL SECURITY – disability support pension – 20 points or more under single Impairment Table – severe impairment – mental health condition – depression – anxiety – continuing inability to work – whether continuing inability to work arose when applicant was Australian resident – reviewable decision set aside and substituted

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2046 (1 July 2020); Senior Member Katter

SOCIAL SECURITY – disability support pension – whether conditions fully diagnosed, treated and stabilised – whether impairment is 20 points or more under the Impairment Tables during the relevant period – decision under review set aside and remitted

[Vico and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2177 (10 July 2020); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – Social Security (Administration) Act 1999 (Cth) – disability support pension – suspension and cancellation of payment – notice given by Secretary to applicant pursuant to subsection 63(4) of the Act – questionnaire – involvement in companies – where applicant did not respond to notice – where failure to comply with requirements in notice – decision under review affirmed

Veterans' Affairs

[Au and Le and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1996 (30 June 2020); Senior Member L Kirk

VETERANS' AFFAIRS – service pension – overpayment – rate of payment – obligation to notify Commission of certain event or change of circumstances – question of jurisdiction – Tribunal does not have jurisdiction to review the decision – application dismissed

[Boys and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 2116 (7 July 2020); Senior Member Katter

VETERANS' AFFAIRS – cervical spondylosis – special rate – decision under review affirmed

[Cove and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1999 (29 June 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – claim for disability pension – claim for PTSD, irritable bowel syndrome and alcohol use disorder – whether conditions related to operational service – category 1A stressor – hostile or life-threatening environment – jurisdictional issue – whether PTSD can be determined if not claimed for under original application – decision under review varied – no jurisdiction found to review decision in respect of claim filed while earlier claim not finally determined

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
NKHH and Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs	[2019] AATA 5626

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Leone v Minister for Home Affairs	[2018] AATA 3363	[2020] FCAFC 117 [2019] FCA 1610
MNLR v Minister of Home Affairs	[2020] AATA 63	[2020] FCA 948
Chandra v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 4894	[2020] FCA 966

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.

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **27 July 2020**:

Diabetes mellitus (Reasonable Hypothesis) - No. 48 of 2020

<https://www.legislation.gov.au/Details/F2020L00823>

Diabetes mellitus (Balance of Probabilities) - No. 49 of 2020

<https://www.legislation.gov.au/Details/F2020L00822>

Retinal vascular occlusion (Reasonable Hypothesis) - No. 50 of 2020

<https://www.legislation.gov.au/Details/F2020L00825>

Retinal vascular occlusion (Balance of Probabilities) - No. 51 of 2020

<https://www.legislation.gov.au/Details/F2020L00831>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on **27 July 2020**:

Diabetes mellitus - No. 90 of 2011

<https://www.legislation.gov.au/Details/F2011L01451>

Diabetes mellitus - No. 89 of 2011

<https://www.legislation.gov.au/Details/F2016C00252>

Retinal vascular occlusive disease - No. 84 of 2011

<https://www.legislation.gov.au/Details/F2011L01441>

Retinal vascular occlusive disease No. 83 of 2011

<https://www.legislation.gov.au/Details/F2011L01440>



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