



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 20/2020

27 July 2020

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

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

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

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

Contents

AAT Recent Decisions	3
Child Support	3
Citizenship	4
Compensation.....	6
Freedom of Information	7
Migration.....	7
Practice and Procedure.....	9
Professions and Trades	10
Refugee	10
Social Services	11
Taxation.....	14
Veterans' Affairs.....	14
Appeals.....	15
Appeals lodged	15
Appeals finalised	15

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

[LGSG and Child Support Registrar](#) (Child support second review) [2020] AATA 2215 (15 July 2020); Mr R West, Member

CHILD SUPPORT – percentage of care determination – change of care percentage – revocation of existing care determination – interim determination considered – special circumstances – date of change – date of new determination – decision set aside and substituted

[MBXD and Child Support Registrar](#) (Child support second review) [2020] AATA 2324 (17 July 2020); Ms K Parker, Member

CHILD SUPPORT – review of care percentage determination – conflicting evidence by each parent of actual nights of care of children – Court orders for care arrangements not complied with until recently – limited corroborating evidence – decision under review set aside – care percentage determination revoked – new care percentage determination made – AAT first review was lodged out of time – whether special circumstances existed to justify an earlier date of effect of new care percentage determination

[NJTK and Child Support Registrar](#) (Child support second review) [2020] AATA 2386 (21 July 2020); Senior Member Katter

CHILD SUPPORT – percentage of care of child – consideration of entire care period – no pattern of care during care period – decision under review set aside and remitted

[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

[Goeser and Fluitt](#) (Child support) [2020] AATA 1392 (6 April 2020); H Schuster, Member

CHILD SUPPORT – departure determination – special needs of child – orthodontic treatment – effect of previous departure determinations – decision under review set aside and substituted

[Alarie and Blackert](#) (Child support) [2020] AATA 1387 (14 April 2020); W Budiselik, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – child no longer in care of either parent – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Legrand and Follweiler](#) (Child support) [2020] AATA 2025 (16 April 2020); A Schiwy, Member

CHILD SUPPORT – registrable maintenance liability – whether the overseas maintenance liability should have been registered – liability correctly registered – decision under review affirmed

[Symonds and Symonds](#) (Child support) [2020] AATA 2044 (30 April 2020); K Dordevic, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable income declared by the liable parent was correctly accepted – decision under review affirmed

Citizenship

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

(Citizenship) [2020] AATA 2314 (16 July 2020); Senior Member R Cameron

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – whether the Applicant is of good character – failure to disclose criminal history in application for citizenship – decision affirmed

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

(Citizenship) [2020] AATA 2325 (17 July 2020); Ms S Burford, Member

CITIZENSHIP – permanent resident – ‘close and continuing association’ – substantial periods of absence – spouse or de facto – intention to reside – purchase of property – decision affirmed

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

(Citizenship) [2020] AATA 2444 (23 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 and good character – identification obtained through unofficial channels – inconsistencies in Applicant’s representations in documentation submitted to the Department – reviewable decision affirmed

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

(Citizenship) [2020] AATA 2322 (17 July 2020); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal to approve citizenship – good character requirement – whether applicant is of good character at the time of decision – assault occasioning bodily harm (DV) – Citizenship Policy - decision under review set aside and remitted

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

(Citizenship) [2020] AATA 2387 (21 July 2020); Mr R Reitano, Member

CITIZENSHIP – Australian citizenship by conferral – refusal of citizenship application – Australian Citizenship Act – whether applicant satisfies requirements under section 21(2) – whether applicant of good character at the time of the decision – apprehended violence order – failure to disclose contravention – Citizenship Policy – meaning of ‘good character’ – decision under review affirmed

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

(Citizenship) [2020] AATA 2449 (24 July 2020); Ms K Parker, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Applicant met general residency requirement – Applicant absent from Australia for more than 90 days in 12-month period before making application – length of first absence due to serious illness of Applicant’s mother – second absence due to death of Applicant’s father – Tribunal not satisfied exemptions applied or Ministerial discretions enlivened – Applicant did not meet one of the mandatory criterion of satisfying the general residence requirement – decision under review affirmed

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

(Citizenship) [2020] AATA 2447 (24 July 2020); Senior Member K Millar

CITIZENSHIP – application for Australian citizenship by conferral – approval for citizenship cancelled – inconsistent information – whether Tribunal is satisfied Applicant is of good character – decision set aside and remitted

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

(Citizenship) [2020] AATA 2420 (21 July 2020); Deputy President Boyle

CITIZENSHIP – citizenship by conferral – Citizenship Policy – identity – prohibition on approval of citizenship application unless Minister satisfied of applicant’s identity – children under the age of 16 applying in their own right – applicant turning 18 years of age after making application – children applying on the same form and at the same time as responsible parent – effect of responsible parent’s application being refused – First-named applicant’s reviewable decision affirmed – Second and Third-named applicants’ reviewable decisions remitted

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

(Citizenship) [2020] AATA 2312 (16 July 2020); Senior Member A Poljak

CITIZENSHIP – application for Australian citizenship by conferral – refusal to approve citizenship – good character requirement – whether applicant is of good character – criminal conduct – traffic offences – false statements or representations – mitigating factors – Citizenship Policy – decision under review affirmed

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

(Citizenship) [2020] AATA 2440 (23 July 2020); Senior Member C Puplick AM

CITIZENSHIP – eligibility – where application for Australian citizenship by conferral is refused – failure to meet “general residency criteria” – the Department’s failure to re-issue the Applicant a permanent visa in a timely manner constituted an “administrative error” – whether the Tribunal is bound by the Australian Citizenship Policy – Applicant’s failure to meet the “special residency requirements” – Applicant found not to be present in Australia at the time of the Tribunal’s decision – decision under review affirmed

Compensation

[DTQR and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 2451 (22 July 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – Guide to the Assessment of the Degree of Permanent Impairment – claim for permanent impairment lump sum for psychiatric injury – undifferentiated somatoform disorder and major depressive disorder in partial remission – previously assessed at 10% WPI – whether increase of 10% or more from previous WPI assessment – activities of daily living – whether incapacity due to accepted conditions – decision under review affirmed

COMPENSATION – Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – claim for compensation for alcohol use disorder and cannabis use disorder – whether contributed to, to a significant degree, by military service – whether medical treatment – policy – decision under review affirmed

[Perry and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 2385 (17 July 2020); Mr A Ward, Member

WORKERS' COMPENSATION – entitlement to compensation – failure to serve notice of accident or make claim for compensation - Lumbar spondylosis – Commonwealth prejudiced by failure to give timely notice of accident – Facts do not prove fall causing alleged injury occurred – no service link as causative of alleged condition - decision under review affirmed

[Tamene Desta and Australian Postal Corporation](#) (Compensation) [2020] AATA 2448 (24 July 2020); Ms D Mitchell, Member

COMPENSATION – accepted injury of lower back strain – 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

[Wilson and Australian Postal Corporation](#) (Compensation) [2020] AATA 2446 (23 July 2020); The Hon. John Pascoe AC CVO, Deputy President

WORKERS COMPENSATION – accepted claim for canal stenosis and right shoulder impingement – proposed C7/T1 anterior cervical discectomy surgery and fusion surgery – whether this is reasonable medical treatment obtained in relation to the applicant's accepted injury – whether the respondent is liable to pay for the medical treatment in respect of previously accepted liability – decision under review affirmed

Freedom of Information

[Farrell; Chief Executive Officer, Services Australia and](#) (Freedom of information) [2020] AATA 2390 (21 July 2020); Senior Member D O'Donovan

FREEDOM OF INFORMATION – documents held by Services Australia – whether a practical refusal reason exists – whether work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations – meaning of ‘other operations’ considered – consultation notice provided under s 24AB – where respondent refused to refine scope of his request – where the work involved in processing the request is substantial but is not an unreasonable diversion – decision under review affirmed

Migration

[Aitchison and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2422 (22 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 – obtain financial advantage by deception – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – risk of recidivism in older offenders – international non-refoulement obligations considered – multiple medical conditions – extent of impediments if removed – implications of COVID-19 – decision affirmed

[CHJK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2330 (16 July 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – Mandatory visa cancellation – Class XA-866 Protection visa – multiple convictions – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – non-refoulement obligations – indefinite detention – best interests of the child – decision set aside and substituted

[Long and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2313 (15 July 2020); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 – mandatory visa cancellation – section 501(3A) – subclass 856 visa – Applicant failed character test – sentenced to a term of imprisonment for 12 months or more – whether another reason why the cancellation should be revoked – application of Direction No. 79 – weighing of primary and other considerations – best interests of minor children in Australia – decision under review affirmed

[MTBC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2214 (10 July 2020); Senior Member M Griffin QC

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 affirmed

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

(Migration) [2020] AATA 2216 (14 July 2020); Senior Member M Griffin QC

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 affirmed

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

(Migration) [2020] AATA 2327 (18 June 2020); Emeritus Professor P A Fairall, Senior Member

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

Kansal (Migration) [2020] AATA 2303 (23 March 2020); J Cipolla, Senior Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visas – Subclass 457 (Temporary Work (Skilled)) – applicant ceased employment over 60 days – wage dispute – sponsor's business closed – Fair Work mediation – applicant seeking permanent residence pathways – closure of the 457 program – decision under review affirmed

1836216 (Migration) [2020] AATA 2105 (5 May 2020); R Gagliardi, Member

MIGRATION – cancellation – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – incorrect information in visa applications – two children with another partner not declared – breakdown of relationship with first partner and claim of family violence – children with second partner granted visas, sponsored by applicant, and application for partner visa – credibility – applicant's migration history – passport and visa fraud – citizenship and residence rights of second partner and children – family unit and best interests of children – children's mental health – first partner impeding access to Australian citizen children – Family Court proceedings – decision under review set aside

Singh (Migration) [2020] AATA 2113 (7 May 2020); P Newtown, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – not enrolled in registered course – study history and PRISMS record – enrolled in and completed lower-level course – confirmations of enrolment in courses at original and higher levels – no evidence of non-enrolment – department erred in finding applicant was not enrolled – decision under review set aside

Parirehwa (Migration) [2020] AATA 2294 (25 May 2020); J Murphy, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Graduate Work stream – Accountant – skills assessment – application not accompanied by required evidence – consideration of alternative stream – Post-Study Work stream – Australian study requirement – Masters (by Coursework) of Professional Accounting – decision under review remitted

[Singh](#) (Migration) [2020] AATA 2078 (30 June 2020); Dr J Harkess, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 572 Vocational Education and Training Sector visa – Federal Circuit Court remittal – genuine temporary entrant criterion not met – enrolment criterion – application of Direction No. 53 – principles in Kumar conflict with ruling of Judge Riley – Tribunal to give Kumar precedence– reside in Australia continuously for the last decade – economic circumstances – changed his career plans frequently – series of short, inexpensive courses – maintain ongoing residence– decision under review affirmed

Practice and Procedure

[Frank and National Disability Insurance Agency](#) [2020] AATA 2367 (17 July 2020); Senior Member D O'Donovan

PRACTICE AND PROCEDURE – extension of time – National Disability Insurance Scheme – decision by delegate to approve a plan under section 33 which did not include funding of certain assistive technology and transportation costs – interlocutory application for an extension of time – application for review made outside the prescribed time – explanation for the delay incomplete – delay significant – whether it is reasonable in all the circumstances to grant the extension of time – where Agency concedes funding of some items worthy of consideration – application granted

[Gillespie and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2442 (23 July 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – 13 months delay in filing application – whether there is an acceptable explanation for delay – whether Respondent is prejudiced by delay – whether Applicant rested on her rights – Applicant found to provide a reasonable explanation of delay – whether substantive application has merits – qualification for disability support pension during the period between December 2017 and April 2019 – Applicant did not provide sufficient medical evidence to support her claim for DSP during qualification period – whether it is reasonable in all the circumstances to grant the extension – Application found to have little prospects of success – extension of time application refused

[LSNZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 2419 (22 July 2020); D K Grigg, Member

PRACTICE AND PROCEDURE – Confidentiality Order – potential impact on Applicant's family — Confidentiality Order Granted

[WKVM and Comcare](#) (Compensation) [2020] AATA 2213 (15 July 2020); The Hon. John Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – implied undertaking – medical evidence – application for direction from Tribunal to use documents in raising a professional conduct complaint – whether medical witness should be released from the undertaking – any prejudice as a result of the information being used or disclosed for other purposes – whether the use of the document was in the “public interest”

[ZWHJ and Child Support Registrar](#) (Child support second review) [2020] AATA 2323 (16 July 2020); Deputy President A G Melick AO SC

CHILD SUPPORT – application for extension of time – whether there is an acceptable explanation for the delay - possible merit of substantive application – extension of time granted

Professions and Trades

[Bell and Tax Practitioners Board](#) [2020] AATA 2424 (14 July 2020); Deputy President BJ McCabe

TAX AGENT – cancellation of registration – whether cancellation was the appropriate sanction – conduct of personal affairs – large personal tax debt – no payment plan in place – no other concerns regarding tax practice – decision affirmed

Refugee

[1608209](#) (Refugee) [2020] AATA 2359 (3 January 2020); M Moustafine, Member

REFUGEE – protection visa – Israel – race – refugee subsequently granted citizenship – religion – atheist in predominantly religious country – harassment by neighbours, authorities and right-wing and/or religious activists – credibility – evolving claims and inconsistent evidence – delay in departure after visa granted – decision under review affirmed

[1717958](#) (Refugee) [2020] AATA 2439 (15 April 2020); M Hawkins, Member

REFUGEE – protection visa – Iraq – religion – atheism – renunciation of Muslim faith – political opinion – criticism of certain powerful political and religious figures – past abduction by Jaish Al-Mahdi (JAM) militia members – social media activities – delay in seeking protection – visa and migration history – decision under review remitted

[1731457](#) (Refugee) [2020] AATA 2361 (18 May 2020); S Roushan, Senior Member

REFUGEE – Protection Visa – Iraq – Federal Circuit Court remittal– religion –Shi’a Muslim – particular social group – Occupation – person with chronic and acute mental health conditions – person with no close familial ties– imputed political opinion– risk of harm from Islamic fundamentalists –mental health condition – medical evidence provided – no access to family or social support networks – decision under review remitted

[1723852](#) (Refugee) [2020] AATA 2159 (3 June 2020); J Redfern, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Albania – application for protection on the grounds of an abusive relationship with an ex-partner – applicant claimed to fear harm from ex-partner on return – claim that State would not provide protection – member of a particular social group – applicants claims found not to be credible – applicant found to not be a person in respect of whom Australia has protection obligations under s.36 of the Migration Act 1958 (Cth) – decision under review affirmed.

PRACTICE AND PROCEDURE – original decision of previous tribunal upheld on judicial review – case subsequently remitted for reconsideration after leave to appeal – existence of s.438 non-disclosure certificates not previously disclosed to the applicant – information included in the decision under review – invitation to attend directions hearing – prior to directions hearing applicant conceded that she is not a person in respect of whom Australia has protection obligations under s.36 of the Migration Act 1958 (Cth) – basis for concession not provided – request for decision on the papers – obligation of tribunal to make findings on claims made by the applicant – invitation to comment or respond to adverse information and provide further information under ss.424A and 424(2) of the Migration Act 1958 (Cth)

[1611744](#) (Refugee) [2020] AATA 2225 (18 June 2020); M Foster, Member

REFUGEE – protection visa – Germany/Nigeria – racial harassment and discrimination – validity of protection visa application – dual citizenship – German Nationality Act – Nigerian Constitution – Nigerian citizenship not ceased upon naturalisation as German citizen – decision under review substituted

Social Services

[Armstrong and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2417 (22 July 2020); Ms L Rieper, Member

SOCIAL SECURITY – disability support pension – qualification – medical – whether the Applicant had an impairment rating of 20 points or more under the impairment tables - Tribunal unable to assign impairment ratings – decision affirmed

[Bednarski and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2364 (3 June 2020); Emeritus Professor PA Fairall, Senior Member

SOCIAL SECURITY – rate of age pension – residence requirement – pension portability rate calculator – Australian Working Life Residence – applicant resident of Poland – application of Social Security (International Agreements) Act 1999 (Cth) Sch 25 – totalisation – qualifying period – decision under review affirmed

[Conway and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2450 (24 July 2020); Senior Member PJ Clauson AM

SOCIAL SECURITY – Disability Support Pension – DSP – Whether impairment fully treated – whether impairment fully stabilised – whether impairment can be assigned 20 points – whether Applicant has undertaken reasonable treatment – decision under review affirmed

[Eminoglu and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2217 (14 July 2020); Senior Member A Poljak

SOCIAL SECURITY – Newstart Allowance – debt – overpayment of benefit – ordinary income – unexplained deposits – whether debt can be written off – whether debt can be waived – special circumstances – decision under review affirmed

[Fuller and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2209 (13 July 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension – several conditions including Major Depressive Disorder – whether fully treated and diagnosed – qualification period – medical appointments etc after this – self-reporting – ESA and JCA reports – extreme functional impact – decision set aside – decision substituted

[Gerace and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2438 (10 July 2020); Mr R Reitano, Member

SOCIAL SECURITY – disability support pension – payment suspended – portability – whether applicant exceeded his portability entitlement – severely impaired disability support pensioner – indefinite portability – decision under review set aside and substituted

[JXLT and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2326 (16 July 2020); Ms L Rieper, Member

SOCIAL SECURITY – disability support pension – rejection – qualification – physical or psychiatric impairments – whether the impairments are fully diagnosed, treated and stabilised – whether the impairments attract at least 20 points under the impairment tables – insufficient medical and treatment evidence – decision under review affirmed

[Kaivan and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2443 (22 June 2020); Ms A Burke AO, Member

CHILD SUPPORT – family tax benefit – care percentage determination finding applicant had 51 per cent care of child and other party had 49 per cent – pattern of care not agreed by the parties – lack of clear evidence of permanent change in care arrangement – decision under review set aside and substituted

[Kim and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2311 (16 July 2020); A George, Member

SOCIAL SECURITY – disability support pension – post-traumatic stress disorder – thyroid cancer – chronic back pain - decision affirmed

[Law and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2208 (13 July 2020); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – spinal condition – shoulder condition – knee condition – depression – other conditions – whether the impairments are permanent – whether applicant has severe functional impairment – Tribunal satisfied applicant attracts a total of 15 points under Impairment Tables – decision under review affirmed

[McGinnis and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2421 (22 July 2020); Ms LM Gallagher, Member

SOCIAL SECURITY – disability support pension – applicant’s conditions fully diagnosed, fully treated and fully stabilised – applicant has 25 impairment points – whether applicant has severe impairment – osteoarthritis condition – spinal condition – carpal tunnel syndrome – mental health condition – whether applicant has continuing ability to work – whether applicant has completed program of support – decision under review affirmed

[Morrison and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2210 (13 July 2020); Mr I Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances, claim for disability support pension rejected – whether conditions were fully diagnosed, treated and stabilised, severe impairment – decision under review set aside and substituted

[Mountford and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2207 (13 July 2020); Senior Member PJ Clauson AM

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Disability Support Pension – Whether impairment fully diagnosed – Whether impairment fully treated – Whether impairment fully stabilised – Whether impairment entitled to 20 points – decision affirmed

[Pelyva and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2418 (22 July 2020); Mr R West, Member

PARENTAL PAYMENTS – overpayments – whether debt to the Commonwealth – whether debt recoverable – not solely due to administrative error per s 1237A – no grounds for waiver under s 1237AAD – not prescribed circumstances under s 1236 – decision under review affirmed

[Reiter and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2212 (15 July 2020); Deputy President J Sosso

SOCIAL SECURITY – seniors health card – whether the applicant purchased a new pension account – whether the deeming provisions apply - cancellation of card where applicant does not meet income test – decision affirmed

[Saber and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2321 (16 July 2020); Dr L Bygrave, Member

SOCIAL SECURITY – age pension – rate – member of a couple – whether the applicant is living separately and apart from the other person on a permanent or indefinite basis – separated under one roof – circumstances of the relationship – decision under review affirmed

[Wells and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2365 (25 June 2020); Deputy President AG Melick AO SC

SOCIAL SECURITY – carer allowance – debt – whether the Applicant has a carer payment and carer allowance debt – whether all or part of the debt may be written-off or waived – whether a notional entitlement can be applied – reduction of debt set aside and substituted – matter remitted to Centrelink to reduce debt

Taxation

[Chadbourne and Commissioner of Taxation](#) (Taxation) [2020] AATA 2441 (10 July 2020); Deputy President Britten-Jones

TAXATION – Income Tax – Discretionary Trust – where the applicant took out a personal loan and provided funds to the trust to purchase real estate and trade in shares – Claimed deductions for interest and expenditure on rental properties and shares – Rental properties and shares owned by the Trust – beneficiary not presently entitled to income of the trust – insufficient nexus between outgoings and assessable income – decision affirmed

[Sushi Yachiyo Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 2328 (17 July 2020); Senior Member JC Kelly

TAXATION – superannuation guarantee charge – whether a prescribed employee – whether employee holds a position as a senior executive – whether the employee was nominated as mentioned in paragraph 457.223 (2) (c), (4) (d) or (5) (d) of Schedule 2 to the Migration Regulations 1994 – whether employee’s position carries substantial executive responsibility – whether the employee’s qualifications for the position are appropriate – decision under review affirmed

Veterans' Affairs

[Lewis and Repatriation Commission](#) (Veterans’ entitlements) [2020] AATA 2366 (17 July 2020); Senior Member Katter

VETERANS’ AFFAIRS – claim for travel expenses – where claims received after the statutory twelve-month time limit – whether exceptional circumstances exist – decision under review set aside and remitted for reconsideration

[Nguyen and Repatriation Commission](#) (Veterans’ entitlements) [2020] AATA 2445 (23 July 2020); A George, Member

VETERANS’ ENTITLEMENTS – age service pension – is an asset value to be correctly recorded in the applicant’s service pension assessment? – is the net assessable amount to be correctly held as a deprived asset in the applicant’s service pension assessment? – decision under review is set aside and remitted for reconsideration

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Law and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1469
Maryvan and Minister for Home Affairs	[2019] AATA 4951
NWWJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1631
Smoothflow Australia Pty Ltd and Comptroller-General of Customs	[2020] AATA 1890

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Securities and Investments Commission v Hutchison	[2018] AATA 3520	[2020] FCA 978
Bornecrantz v Secretary, Department of Social Services and Anor	[2019] AATA 1471	[2019] FCA 1733 [2020] FCA 981
Mayes v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 32	[2020] FCA 1036
Nguyen v Minister For Immigration, Citizenship, Migrant Services And Multicultural Affairs	[2020] AATA 132	[2020] FCA 985



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

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

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

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

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

