



AAT Bulletin

Issue No. 21/2020

10 August 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.

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AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

[Bopara and Essa](#) (Child support) [2020] AATA 2038 (6 May 2020); P Noonan, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations were correctly revoked and new determinations made – decision under review affirmed

[Groves and Kurland](#) (Child support) [2020] AATA 1759 (6 May 2020); M Kennedy, 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 - court orders not complied with – should an interim period apply - special circumstances exist to determine only one percentage of care - decision under review affirmed

[Gurung and Gurung](#) (Child support) [2020] AATA 2131 (4 May 2020); C Breheny, 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

[Promphat and Child Support Registrar](#) (Child support) [2020] AATA 2134 (6 May 2020); M Martellotta, 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 – whether the repealed legislation should apply in relation to dates of revocation – repealed legislation applies - decision under review set aside and substituted

[Rowell and Child Support Registrar](#) (Child support) [2020] AATA 2039 (5 May 2020); Y Webb, 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

CHILD SUPPORT – date of effect of the tribunal's decision – whether there were special circumstances that prevented the application for review being lodged in time – special circumstances do not exist – tribunal refuses to make a determination – the date of effect of the tribunal's decision is the date the application for review was lodged

Citizenship

[CKLL and Minister for Immigration and Border Protection](#) (Citizenship) [2019] AATA 6871 (24 July 2019); R Maguire, Member

CITIZENSHIP – citizenship revoked – serious criminal offences – public interest criterion – decision affirmed

[Egan and Minister of Home Affairs](#) [2020] AATA 2632 (4 August 2020); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – application for review of decision to revoke Applicant’s Australian citizenship – where the Applicant was convicted of serious child sexual offences – whether it would be contrary to public interest for the Applicant to remain an Australian citizen – whether discretion not to revoke citizenship should be exercised – whether the Applicant would become a person who is not a national or citizen of any country – whether the Applicant renounced their Irish citizenship – decision under review affirmed

[Guo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 2650 (7 August 2020); Dr S Fenwick, Senior Member

CITIZENSHIP – application for citizenship by conferral – whether applicant likely to reside or to continue to reside in Australia – whether applicant likely to maintain close and continuing association with Australia – where applicant overseas at time of decision refusing citizenship – decision under review set aside

[MDQK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 2576 (30 July 2020); Deputy President J W Constance

CITIZENSHIP – citizenship by conferral – identity – alleged inconsistencies in Applicant’s evidence – meaning of identity – identification of characteristics which distinguish the Applicant at all times and in all circumstances from others – Feyli Kurd – decision set aside and remitted

Compensation

[Barry and BIS Industries Limited](#) (Compensation) [2020] AATA 2651 (6 August 2020); Senior Member Katter

Safety, Rehabilitation and Compensation Act 1988 (Cth) – Section 62(3)(b) – Statutory 30-day limitation period – decision under review set aside

[Macdonald and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 2643 (3 August 2020); Dr P McDermott RFD, Deputy President

VETERANS’ AFFAIRS – Military Rehabilitation and Compensation Act 2004 (Cth) – claim for compensation in respect of injury – Achilles tendinopathy - Statement of Principles concerning Achilles tendinopathy and bursitis (Balance of Probabilities) (No. 97 of 2015) – connection between service and injury – reasonable satisfaction – decision under review affirmed

Conflict of Laws

[Abdou and Victorian Building Authority](#) [2020] AATA 2637 (2 June 2020); Deputy President S A Forgie

COSTS – mutual recognition – whether costs should be ordered under s 35 of the Mutual Recognition Act 1992 – meaning of costs – who can be awarded costs – meaning of proceedings – whether actions of a party in proceedings considered unreasonable – costs not awarded

[Vuong and Building Services Board](#) (WA) [2020] AATA 2663 (6 August 2020); Senior Member A Poljak

MUTUAL RECOGNITION – equivalence of occupation – building surveying practitioner level 2 – building surveying work – imposition of conditions – application of Mutual Recognition Act 1992 – WA registration – NSW registration – decision under review affirmed

Corporations

[Everlyte Ltd and Registrar of Personal Property Securities](#) [2020] AATA 2584 (30 July 2020); K Parker, Member

PERSONAL PROPERTY SECURITIES REGISTER (PPSR) – Applicant registered purported security interest in collateral (helicopter) on the PPSR – helicopter stolen from Applicant and sold to Other Party – Other Party subsequently sold helicopter to third party and applied to register financing change statement to end registration – Applicant alleged Other Party knowingly provided false information to Registrar to support application to end registration – Registrar registered financing change statement – whether Other Party had requisite “interest” under s 178 of Personal Properties Securities Act 2009 (Cth) (PPSA) to make amendment demand – whether Other Party made amendment demand on behalf of third party purchaser or as the person in possession of the helicopter – whether Tribunal suspects on reasonable grounds that removal of registration from PPSR not authorised under s 178 – meaning of definition of “security interest” under s 12 of PPSA – whether helicopter constituted prescribed property under r 5.3 of Personal Properties Securities Regulations 2010 (Cth) – decision under review affirmed

[Lee and Australian Securities and Investments Commission](#) [2020] AATA 2661 (7 August 2020); Deputy President B J McCabe and P Ranson, Member

CORPORATIONS – DISQUALIFICATION FROM MANAGING CORPORATIONS – discretion to disqualify enlivened – whether the applicant should be disqualified – whether the applicant should be refused permission to manage a particular company – failure of two companies – companies related – where the failure arose from the same circumstances – applicant’s behaviour deserving of censure – disqualification not appropriate on balance – decision set aside

Education and Research

[Access Training Institute Pty Ltd and Australian Skills Quality Authority; Kirana Training Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 2470 (24 July 2020); Senior Member C Puplick AM

VOCATIONAL EDUCATION AND TRAINING – registered training organisations – cancellation of registrations as NVR Act registered training organisations – non-compliance with regulatory standards – sufficiency of educational and support services – defining ‘sufficient’ – determining support needs of individual learners – implementing compliant assessment system – Principles of Assessment – Rules of Evidence – ongoing systematic validation of assessment practices – complying with standards at all times – issuing certification to learner whom has met requirements of the training product – remedial action – sanctions – conditions on registration – decision under review affirmed (2018/3222: Access) – decision under review set aside and substituted (2018/3223: Kirana)

VOCATIONAL EDUCATION AND TRAINING – refusal of application to renew registration as a NVR Act registered training organisations – non-compliance with regulatory standards – sufficiency of educational and support services – defining ‘sufficient’ – determining support needs of individual learners – implementing compliant assessment system – Principles of Assessment – Rules of Evidence – ongoing systematic validation of assessment practices – complying with standards at all times – issuing certification to learner whom has met requirements of the training product – remedial action – decision under review affirmed (2019/2046: Access)

Migration

[BVLD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2582 (29 July 2020); Senior Member R Cameron

MIGRATION – mandatory cancellation of visa – applicant formerly held protection visa – applicant is a citizen of Sri Lanka – protection of Australian community – best interests of affected minor children – expectations of Australian community – non-refoulement – strength, nature and duration of ties to Australia – extent of impediments if removed – decision affirmed

[DHHH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2523 (28 July 2020); T Eteuati, Member

MIGRATION – cancellation of Applicant’s visa under s 501(2) – Applicant failed to pass the character test – whether to exercise the discretion to cancel the Applicant’s visa – application of Direction No. 79 – decision set aside

[DZHK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2634 (16 July 2020); Senior Member L Kirk

MIGRATION – Class TY subclass 444 Special Category (Temporary) visa – citizen of New Zealand – failure to pass character test – affray offences – assault offences – behaviour in criminal and immigration detention – whether discretion to revoke mandatory visa cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – decision under review affirmed

FHND and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 2647 (4 August 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 character test – whether another reason for revocation – protection of Australian community – interests of minor child – expectations of Australian community – whether non-refoulement obligations owed due to fear of gangs – interests of victims – strength, nature and duration of ties – extent of impediments if removed - decision affirmed

Francisco and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 2452 (24 July 2020); Deputy President B W Rayment OAM QC

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – where offending relating to destruction of property and assault – whether to exercise discretion under Direction No. 79 – primary considerations – protection of the Australian community – where history of offending involved drugs – where applicant is no longer influenced by drugs – where applicant has showed signs of rehabilitation – where likelihood of reoffending is low – best interests of minor children – where applicant has multiple minors that would be affected – other considerations – strength, nature and duration of ties – where applicant’s extended family is in Australia – where mother and father would not be able to visit applicant if deported – where applicant has support of large family, friends and workmates – extent of impediments if removed – where applicant’s future country where he would be deported to is uncertain – decision set aside and substituted

Harris & Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 2578 (30 July 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review set aside and substituted

JDDM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 2472 (27 July 2020); Senior Member M Griffin QC

MIGRATION – non-revocation of mandatory cancellation of a visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record under s 501(7) – history of mental illness – schizophrenia – reduced culpability – protective factors – best interest of minor children – decision under review set aside and substituted

Kwatra and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 2633 (3 August 2020); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of a minor child – expectations of the Australian community – other considerations – decision affirmed

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

(Migration) [2020] AATA 2631 (30 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 affirmed

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

(Migration) [2020] AATA 2656 (3 August 2020); Senior Member L Kirk

MIGRATION – cancellation of Applicant’s Class TY, Subclass 444 Special Category (Temporary) visa – citizen of New Zealand – failure to pass character test – domestic violence offences – whether there is another reason to revoke the visa cancellation – Direction No. 79 – primary considerations – other considerations – decision under review affirmed

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

(Migration) [2020] AATA 2664 (4 August 2020); Deputy President S A Forgie

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke cancellation of revocation of cancellation of Class UF Subclass 309 Partner (Provisional) Visa – whether applicant unacceptable risk of reoffending – decision under review set aside

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

(Migration) [2020] AATA 2630 (31 July 2020); Deputy President F D O’Loughlin QC

MIGRATION – Direction No. 79 applied – Turkish citizen – married to an Australian citizen – attempted murder – adolescent offending – risk of reoffending can be taken as non-existent – decision set aside

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

(Migration) [2020] AATA 2581 (27 July 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BF Transitional (permanent) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review affirmed

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

(Migration) [2020] AATA 2504 (20 May 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Refugee Class XB, Subclass 200 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

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

[2020] AATA 2659 (3 August 2020); Senior Member C J Furnell

MIGRATION – mandatory cancellation of Class BF Transitional (Permanent) visa – section 501 of the Migration Act – applicant does not pass character test – substantial criminal record - whether another reason to revoke mandatory cancellation – direction 79 – primary and other considerations - decision affirmed

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

(Migration) [2020] AATA 2648 (21 July 2020); Senior Member L Kirk

MIGRATION – visa refusal – Bridging E (Class WE) visa – substantial criminal record – sexual and violent offences against a woman – where applicant has judicial review pending for Protection visa cancellation – whether the applicant will be released into the community or remain in immigration detention – moderate risk of re-offending – protection of the Australian community – decision under review affirmed.

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

(Migration) [2020] AATA 2473 (27 July 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of an Employer Nomination Scheme (Permanent) (Class BW) (Subclass 856) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review affirmed

Gumber (Migration) [2020] AATA 2550 (14 May 2020); R Gagliardi, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – genuine spousal relationship now ceased – general unhappiness and distress in relationship and non-judicially determined claim of family violence – statutory declaration – independent experts' opinion – inconsistent evidence – escalating and new claims – adequacy of language interpretation and applicant's level of English – claim of embarrassment at interview with woman independent expert – decision under review affirmed

Mengue (Migration) [2020] AATA 2343 (10 June 2020); A Younes, Senior Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – incorrect information in previous visa application – incorrectly claimed specified work in regional Australia in working holiday extension visa application – discretion to cancel visa – study now completed – intention to apply for a partner visa – relationship registered – partner's serious mental health conditions – decision under review set aside

Nguyen (Migration) [2020] AATA 2553 (18 May 2020); B Darcy, Member

MIGRATION – Bridging A (Class WA) visa – Subclass 010 (Bridging A) – criminal convictions and imprisonment – visa, study, work and relationship history – breakdown of first relationship and withdrawal of sponsorship – bridging visa granted in association with partner visa application with second partner – partner a business owner experiencing downturn because of coronavirus – applicant primary carer of young Australian citizen child with possible developmental delays – decision under review set aside

[Shaheen](#) (Migration) [2020] AATA 2568 (18 May 2020); C Burnett-Wake, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – incorrect information in related position nomination applications – bogus documents with forged signatures provided by recruitment consultant – employers stated they have never sponsored or employed applicant – applicant has not worked on either visa granted, without informing department – dob-in allegation that applicant paid for visa sponsorship scheme – operation of s 116(1AB) – nomination and visa applications directly related – probable fraud by consultant, with applicant’s knowledge – discretion to cancel visa – child secondary applicant’s health – rights of Australian citizen child – health care and education in home country – decision under review affirmed

[You](#) (Migration) [2020] AATA 2590 (14 May 2020); M Cooke, Senior Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – incorrect information in application – bogus document – information and documents related to completed English tests – alleged misconduct of agent – expectation that competent English would be required to comply with rigorous standards of applicant’s profession – indications of applicant’s ‘reckless indifference’ and ‘wilful blindness’ – disruption and hardship – decision under review affirmed

National Disability Insurance Scheme

[Johnston and National Disability Insurance Agency](#) [2020] AATA 2583 (30 July 2020); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – whether funding practising certificate a reasonable and necessary support – meaning of reasonable and necessary support – whether support related to a participant’s disability – National Disability Insurance Scheme Rules – decision affirmed

Practice and Procedure

[Chick and Comcare](#) (Compensation) [2020] AATA 2579 (31 July 2020); Deputy President A G Melick AO SC

PRACTICE AND PROCEDURE – summons – summons to third party to produce documents – third party objects to supplying documents – whether costs are payable in relation to the summons objection and compliance with the summons – costs not payable for the setting aside of summons – costs payable for compliance with summons

[Equanimity Consultants Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 2657 (12 June 2020); Senior Member R Cameron

Practice and Procedure – whether to grant stay order – whether to impose condition on stay order – consideration of relevant principles – balance of considerations – where public interest considerations outweigh countervailing considerations – stay granted with conditions

[Hickey and Australian Postal Corporation](#) (Compensation) [2020] AATA 2646 (24 July 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – remittal following appeal – constitution to tribunal as previously constituted – President’s Direction – no reasonable apprehension of bias – appropriate test – factors in favour of constituting matter to tribunal as previously constituted

[NHYG and Child Support Registrar](#) (Child support second review) [2020] AATA 2653 (10 July 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – whether applicant entitled to refund of application fee paid on lodgement of application for AAT second review – analysis of application fee provisions – analysis of decision of which applicant sought review – applicant lodged application under a misapprehension of inter-relationship between AAT first review decision and subsequent determination made by Child Support Registrar – application and documents lodged with application for AAT second review showed no application made for review of any decision reviewable by AAT second review – Tribunal does not have jurisdiction – Tribunal notes that applicant is entitled to fee refund

[NVCV and Secretary, Department of Infrastructure, Transport, Regional Development and Communications](#) [2020] AATA 2662 (22 July 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – standing of applicant to make an application – whether applicant is a person whose interests are affected by the Minister’s decision under s 81 of the Airports Act 1996 – whether other persons claiming to be persons interested in the decision may be joined as parties to the application before the applicant’s entitlement to do so is determined – whether reasons exist to make order under s 35 of Administrative Appeals Tribunal Act – applicant not a person affected by minister’s decision – applicant has no standing to apply to the Tribunal – parties cannot be joined – confidentiality order made

[Schroeder and Australian Securities and Investments Commission](#) [2020] AATA 2453 (24 July 2020); The Hon Justice D G Thomas, President and Deputy President B J McCabe

STATUTORY INTERPRETATION – amended legislation – where Corporations Act 2001 (Cth) was amended by the Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Act 2020 (Cth) during the course of the Tribunal’s proceedings – whether the Tribunal should apply the Corporations Act 2001 (Cth) in its current form or its pre-amended form – effect of transitional provisions – Tribunal to apply Corporations Act 2001 (Cth) as amended by the Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Act 2020 (Cth)

[Shah and Child Support Registrar](#) (Child support) [2020] AATA 2644 (31 July 2020); Deputy President Boyle

CHILD SUPPORT – interlocutory – practice and procedure – refusal to issue a departure authorisation certificate – dismissal of application on basis that it is frivolous, vexatious, lacking merit – no utility in review – application dismissed

[Tutty and Commonwealth Superannuation Corporation](#) [2020] AATA 2636 (14 July 2020); W Frost, Member

PRACTICE AND PROCEDURE – dismissal for lack of jurisdiction – decision not made under an enactment – application dismissed

Ungormus and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 2654 (5 August 2020); Mr C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – extension of time application – short delay – whether there is an acceptable explanation for delay – Applicant found to provide a reasonable explanation of delay – whether substantive application has merits – application for Australian citizenship by conferral – Applicant failed the citizenship test on multiple occasions – whether it is reasonable in all the circumstances to grant the extension – Application found to have little prospects of success – other options for applying for Australian citizenship open to the Applicant – extension of time application refused

Professions and Trades

Abedi and Migration Agents Registration Authority [2020] AATA 2477 (28 July 2020); Senior Member A Poljak

MIGRATION AGENTS REGISTRATION – suspension of applicant's registration as migration agent – breaches of the Code of Conduct for migration agents prescribed under Migration Agents Regulations 1998 – whether breaches warrant a sanction – decision under review affirmed

Refugee

1607109 (Refugee) [2020] AATA 2571 (29 June 2020); C Cody, Member

REFUGEE – Protection Visa – Ethiopia – race – Sunni Muslim of Ogaden ethnicity – membership of a particular social group – victim of domestic violence – elderly female and without family support – decision under review remitted

1614112 (Refugee) [2020] AATA 2428 (10 June 2020); L Symons, Member

REFUGEE – protection visa – India – particular social group – interfaith marriage – threats from wife's family – credibility issues – non-genuine relationship – inconsistent evidence – decision under review affirmed

1621844 (Refugee) [2020] AATA 2425 (8 April 2020); J Marquard, Member

REFUGEE – protection visa – Thailand – particular social group – homosexual men – non-acceptance by family – fear of discrimination – complex medical needs – unavailability of new antiviral medication in Thailand – decision under review remitted

1807450 (Refugee) [2020] AATA 2251 (13 May 2020); J Pennell, Senior Member

REFUGEE – Protection visa – Sri Lanka – Federal Circuit Court remittal – perceived as a “key threat” to the Peoples' Alliance Party – former supporter of PA – large inheritance – concerns about authenticity of support letters – evidence in relation to attack was vague, uncertain and lacking in any detail – wealth business person – credibility concerns – second applicant suffering depression – no evidence provided – decision under review affirmed

[1819862](#) (Refugee) [2020] AATA 2457 (8 May 2020); J Lambie, Senior Member

REFUGEE – protection visa – Pakistan – Federal Circuit Court remittal – religion – Shia – race – Hazara – particular social group – returnee from a Western country – communal violence – fear of killing – attacks by Muslim militants – attack on family business – reasonable relocation – decision under review affirmed

[1907107](#) (Refugee) [2020] AATA 2388 (5 June 2020); M Hawkins, Member

REFUGEE – protection visa – Papua New Guinea – Federal Circuit Court remittal – victim of domestic violence – particular social group – single women in Papua New Guinea – separated Papua New Guinean women – credible evidence – relocation not reasonable – systemic failure to protect women from violence – discriminatory denial of state protection – effective state protection not available – member of the same family unit – decision under review remitted

Social Services

[Al-Najjar and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2628 (29 July 2020); D K Grigg, Member

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

[Baker and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2641 (4 August 2020); Senior Member P J Clauson AM

SOCIAL SECURITY – Disability Support Pension - DSP – Whether Applicant accrued 20 points on the impairment tables – Whether Applicant had a continuing inability to work – Whether Applicant had participated in a program of support – Decision Affirmed

[Bozic and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2652 (6 August 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – Applicant previously in receipt of DSP from approximately 2008 to 2018 – whether the Applicant met the eligibility requirements for disability support pension – qualification period – whether the Applicant's conditions were fully diagnosed, treated and stabilised – whether the Applicant had an impairment rating of 20 points or more – Impairment Tables – mental health conditions, chronic motor axonopathy, osteoarthritis, fatty liver/ mild hepatomegaly – Reviewable Decision affirmed

[Brookes and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2642 (4 August 2020); S Taglieri SC, Member

SOCIAL SECURITY – disability support pension – debt – member of a couple – whether the Applicant was partnered in the relevant period – whether correct that debt raised due to being paid at the single rate – whether all or part of the debt can be written-off or waived – special circumstances established – decision varied

[Cardona Ossa and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2649 (3 August 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension — decision under review affirmed

[Dauguet and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2475 (28 July 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – Newstart/Jobseeker allowance – cancellation – failure to attend employment services assessments – whether reasonable excuse – decision affirmed

[Fielding and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2521 (29 July 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 fully diagnosed, treated and stabilised – whether the Applicant had an impairment rating of 20 points or more – Impairment Table 1 – rheumatoid arthritis, Barmah Forest virus, fibromyalgia, Raynaud’s syndrome, spinal disorder – some overlap in functional impact of conditions – Reviewable Decision affirmed

[Hadzich and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2655 (5 August 2020); Senior Member B Pola

SOCIAL SECURITY – Disability Support Pension – DSP – whether condition is fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Qualification Period - decision under review affirmed

[Hajjar and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2476 (16 July 2020); Senior Member C Puplick AM

SOCIAL SECURITY – Newstart allowance – whether the Applicant’s assets exceed the assets value limit – intra-familial financial transactions – whether the transfer of \$400,000 was a loan or a gift – bank loan – gift certificate – credibility – decision under review set aside and remitted

[MDXJ and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2520 (28 July 2020); M Kennedy, Member

SOCIAL SECURITY – Family Tax Benefit – percentage of care – care arrangement – application for recusal – whether any substantive matter remained that justified a further hearing in the reviews or whether final orders should be made – decision under review set aside and substituted

[O’Sullivan and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2541 (28 July 2020); R West, Member

SOCIAL SECURITY – disability support pension – left knee osteoarthritis – right shoulder condition – depression and anxiety – chronic back and hip pain – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – program of support not undertaken – whether applicant has a severe impairment – decision under review affirmed

[Rae and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2629 (31 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

[Roberts and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2638 (4 August 2020); I Thompson, Member

SOCIAL SECURITY – pensions, benefits and allowances – commencement date – date of contact of change in circumstances – date of lodgement of claim – vulnerable claimant - special circumstances - youth allowance – decision under review set aside

[Shehata and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2454 (12 May 2020); K Parker, Member and J Griffin, Member

SOCIAL SECURITY – claim for disability support pension – applicant suffered from multiple physical and mental health conditions – whether conditions were fully diagnosed, treated and stabilised and likely to persist for more than two years – applicant was not enrolled in a program of support – whether applicant had a “severe impairment” – applicant’s permanent conditions did not attract an impairment rating of 20 points or more under any single impairment table – “continuing inability to work” eligibility requirement not met – decision affirmed

[Slade and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2639 (4 August 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 4 – lower back pain – Reviewable Decision affirmed

[Spall and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2524 (29 July 2020); R Maguire, Member

SOCIAL SECURITY – Disability Support Pension – whether Applicant suffered a physical, intellectual or psychiatric impairment – where Applicant suffers from spinal, upper and lower limb, mental health and heart conditions – whether conditions fully diagnosed in the qualification period – whether conditions fully treated and stabilised in qualification period – whether Applicant’s impairment is 20 points or more under the Impairment Tables – whether the Applicant has a continuing inability to work – whether Applicant participated in Program of Support – where overall impairment arising from fully diagnosed, fully treated, and fully stabilised conditions is nil points – decision under review affirmed

[Tang and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2522 (29 July 2020); Brigadier A G Warner, Member

SOCIAL SERVICES – special benefit – whether a special benefit debt is owed to the Commonwealth – whether debt should be waived – whether debt due solely to administrative error – whether Applicant received overpayments in good faith – whether there are special circumstances – should debt be written off – decision under review affirmed

[Tukana and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2503 (7 July 2020); R Reitano, Member

SOCIAL SECURITY – parenting payment – overpayment – debt owed to the Commonwealth – entitlement to family assistance – whether whole or part of entitlement should be set off against the debt – Family Assistance Guide – whether exceptional and/or unforeseen circumstances – severe financial hardship – decisions under review affirmed

[Wheatley and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2658 (5 August 2020); Senior Member B Pola

SOCIAL SECURITY – Disability Support Pension – DSP – whether condition is fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Qualification Period - decision under review affirmed

[Wignall and Secretary, Department of Social Services](#) (Migration) [2020] AATA 2471 (27 July 2020); R Maguire, Member

SOCIAL SECURITY – Disability Support Pension – Social Security Act 1991 (Cth) – Impairment Tables – Absence of corroborating evidence – decision affirmed

Superannuation

[Gilliland and Australian Securities and Investments Commission](#) [2020] AATA 2660 (5 August 2020); Deputy President I R Hanger AM QC

SUPERANNUATION – Self Managed Superannuation Fund – where applicant was disqualified from being an approved Self Managed Superannuation Fund auditor – whether applicant failed to perform adequately and properly an auditor’s duties – auditing of funds of family members – decision under review set aside.

Taxation

[Dapper Coelho and Commissioner of Taxation](#) (Taxation) [2020] AATA 2474 (27 July 2020); Senior Member L Hespe

TAXATION – residency of taxpayer – where applicant is a citizen of a foreign country – “working holiday maker” – where applicant assessed for income tax as non-resident – where applicant submitted they were Australian resident for taxation purposes – definition of “resident” – s 6(i) Income Tax Assessment Act 1936 (Cth) – where the applicant had continuous presence in Australia for more than 183 days of the income year – whether the Commissioner erred in being satisfied the applicant’s usual place of abode was outside Australia and the applicant did not have the intention to take up residence in Australia – decision affirmed

[Duncan and Commissioner of Taxation](#) (Taxation) [2020] AATA 2540 (30 July 2020); Senior Member J C Kelly

TAXATION – whether outgoing incurred in gaining or producing assessable income – whether outgoing of capital or of a capital nature – whether Applicant acted in his capacity as a director – insolvent trading – company in liquidation – decision under review affirmed

[Joubert and Commissioner of Taxation](#) (Taxation) [2020] AATA 2645 (3 August 2020); Mrs J C Kelly, Senior Member

TAXATION – residency of tax payer – whether resident according to ordinary concepts – Applicant worked overseas to financially support family residing in Australia – Applicant lived in rented accommodation leased by employer – decision affirmed

[Kander and Commissioner of Taxation](#) (Taxation) [2020] AATA 2635 (31 July 2020); Senior Member R Olding

TAXATION – INCOME TAX - where applicant intended to enter into salary sacrifice arrangement – where applicant mistakenly directed employer to make after-tax superannuation contributions – whether ordinary income – decision affirmed

Veterans' Affairs

[Spies and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 2580 (31 July 2020); D Mitchell, Member

VETERANS' AFFAIRS – war widow's pension – whether death was war caused – Statement of Principles concerning hypertension – alcohol consumption – decision under review affirmed

[Toyer and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 2640 (28 July 2020); Senior Member Katter

VETERANS' AFFAIRS – claim for defence-caused conditions – claim for disability pension – decision under review 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
Al-Huda Pty Ltd and Secretary, Department of Education and Training	[2020] AATA 2002
Allen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1777
Cove and Repatriation Commission	[2020] AATA 1999
Fill and Repatriation Commission	[2020] AATA 1913
Spaleta and Secretary, Department of Social Services	[2018] AATA 2581
Tukana and Secretary, Department of Social Services	[2020] AATA 2503

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Anita, in the matter of Anita	[2019] AATA 4239	[2020] FCA 1087
Bullmore v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 4679	[2020] FCA 1106
KYMM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 5174	[2020] FCA 1069
Nugawela v Commissioner of Taxation (No 4)	[2018] AATA 979	[2020] FCA 1128
PQSM v Minister for Home Affairs	[2019] AATA 603	[2020] FCAFC 125 [2019] FCA 1540



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