



# 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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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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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

[ZHQF and Child Support Registrar](#) (Child support second review) [2020] AATA 2936 (10 August 2020); D K Grigg, Member

FAMILY ASSISTANCE – percentage of care – what is the correct percentage of care – decision under review set aside

[Goodman and Goodman](#) (Child support) [2020] AATA 2675 (5 June 2020); M Martellotta, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – failure to provide full and frank financial disclosure - decision under review set aside and substituted

[Heinrich and Bannerman](#) (Child support) [2020] AATA 2670 (11 June 2020); Y Webb, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – child boarding away from home – decision under review affirmed

[Hyde and Hyde](#) (Child support) [2020] AATA 2169 (27 May 2020); F Hewson, Member

CHILD SUPPORT – application for collection of child support – whether application should have been accepted - opt-in arrears - whether there were unpaid amounts - decision under review set aside and substituted

[Pearce and Lacey](#) (Child support) [2020] AATA 2682 (11 June 2020); S Letch, Member

CHILD SUPPORT – dismissal of application for review - particulars of the administrative assessment – adjusted taxable income - no reasonable prospect of success - application for review dismissed

[Zanetti and Antonelli](#) (Child support) [2020] AATA 2679 (2 June 2020); M Douglas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – date of notification of the care change - existing percentage of care determinations revoked and new determinations made - decision under review set aside and substituted – 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 exist - the date of effect of the tribunal's decision is the date the change of care occurred

## **Citizenship**

**[Akhlaghi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 2837 (11 August 2020); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – refuse to approve application – whether applicant has a permanent or enduring physical or mental incapacity – depression and anxiety – insufficient evidence – decision under review affirmed

**[Dulalia and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 2874 (13 August 2020); Mr S Evans, Member

CITIZENSHIP – application for citizenship by conferral – rejection of citizenship application – good character requirement not satisfied – criminal history – domestic violence – apprehended violence order – traffic offences – decision under review affirmed

**[Fatovic and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 2792 (7 August 2020); Deputy President JW Constance

CITIZENSHIP – citizenship by conferral – general residence requirement – special residence requirement – activities which are of benefit to Australia – participation in an Australian team – whether the Applicant needs to be an Australian citizen to engage in the activity – decision set aside and remitted

**[Fattah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 2938 (12 August 2020); S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the Applicant is of good character – common assault – domestic violence – driving offences – good behaviour bond – Citizenship Policy – decision under review set aside

**[Husseiyani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 3011 (19 August 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – refuse to approve application – whether applicant has a permanent or enduring physical or mental incapacity – hip dysplasia – osteoporosis – major depressive disorder – illiterate in Arabic and English – never attended English classes – never attempted the citizenship test – decision under review affirmed

**[Mikha and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 3007 (19 August 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – refuse to approve application – whether applicant has a permanent or enduring mental incapacity – depression – posttraumatic stress disorder – psychotic features – applicant has never attended English classes – applicant has not seen a specialist on a regular basis – decision under review affirmed

**[Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2020] AATA 3091 (21 August 2020); R West, Member

CITIZENSHIP – application for citizenship by conferral refused – conviction for aggravated assault – good character test per s 21(2)(h) – decision under review set aside and remitted to the Respondent

**SKML and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 2873 (11 August 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is of good character – high range PCA – assault – domestic violence – imposition – good behaviour bond – licence disqualification – Citizenship Policy – Australian Citizenship Procedural Instructions – decision under review affirmed

**VYWY and BRPN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 2953 (17 August 2020); Ms A Burke AO, Member

CITIZENSHIP – refusal to approve Australian citizenship by conferral – whether the applicant is of good character – seriousness of offending – offences of obtaining financial advantage from Commonwealth entity – Centrelink fraud – significant sum of funds – mitigating circumstances – domestic violence survivor – whether sufficient time has lapsed since offending – child under 16 assessed in her own right – best interests of the child – whether the applications for citizenship should be approved – decisions under review affirmed

## **Compensation**

**Chugha and Comcare** (Compensation) [2020] AATA 2835 (10 August 2020); A Ward, Member, A Durkin, Member, and L Stephan, Member

Application to cease payments – psychiatric injury – credit in dispute – Facebook and social media – hearing via Microsoft Teams – decision under review set aside

**Faulks and BIS Industries Limited** (Compensation) [2020] AATA 2951 (14 August 2020); Presiding Senior Member D O'Donovan

WORKERS COMPENSATION – accepted injury to L4/5 in 2011 – ceased work – deterioration at L5/S1 requiring surgery – whether surgery is medical treatment obtained in relation to accepted injury – was L5/S1 condition a disease significantly contributed to by the applicant's employment – significance of altered gait as a consequence of L4/L5 injury – section 14 liability for injury or disease at L5/S1 level – decisions under review set aside

**Thomas and Comcare** (Compensation) [2020] AATA 2942 (13 August 2020); Dr S Fenwick, Senior Member

COMPENSATION – initial lumbar spine condition – chronic pain syndrome – adjustment disorder – depression – anxiety – whether injury other than a disease or ailment – entitlement under sections 16, 19 and 29 of the SRC Act – decision set aside and remitted

## **Migration**

**Ahmad and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Migration) [2020] AATA 2882 (15 July 2020); The Hon. M Groom, Senior Member

MIGRATION – failure to pass character test - whether to revoke the mandatory cancellation of the applicant's Class BC Subclass 100 Partner (Migrant) visa – substantial criminal record – Ministerial Direction 79 – primary considerations – other considerations – decision affirmed

**Craig and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Migration) [2020] AATA 3006 (18 August 2020); Ms S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – whether the Applicant passes the character test – substantial criminal record – drug related offences – violence offences – driving offences – breach of court orders – whether the Tribunal can go behind or impugn a conviction – Applicant does not pass the character test – whether there is another reasons why the Cancellation Decision should be revoked - Direction No. 79 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – Applicant arrived in Australia as a three year old – impact on victims – extent of impediments if removed to New Zealand – impact of COVID-19 pandemic - Tribunal not satisfied there is another reason why the decision to cancel that Applicant’s visa should be revoked – reviewable decision affirmed

**CYTH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Migration) [2020] AATA 2940 (13 August 2020); Dr P McDermott RFD, Deputy President

MIGRATION – decision of delegate of Minister not to grant partner visa – character test – past criminal and general conduct – plea of guilty for two sexual assault charges – probation order – false declarations on visa applications – failure to disclose past criminal history – failure to disclose previous cancellation and overstay of student visa – visa applicant residing overseas – visa applicant married to sponsor – whether the discretion in section 501(1) should be exercised – decision under review affirmed

DIRECTION NO 79 – primary and other considerations – character test – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – expectations of the Australian community – impact on family members

**Dinh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Migration) [2020] AATA 2880 (12 August 2020); Senior Member C J Furnell

MIGRATION – mandatory cancellation of Five Year Resident Return (Class BB) (Subclass 155 visa – citizen of Vietnam – substantial criminal record – serious offending – drug related offending – convicted of stalk another person – concept of violence – Direction 79 – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

**FCFY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Migration) [2020] AATA 3092 (21 August 2020); Deputy President J W Constance and S Evans, Member

MIGRATION – mandatory cancellation – where offending very serious – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – international non-refoulement obligations – strength, nature and duration of ties to Australia – impediments to return – decision affirmed

**HJHC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2958 (17 August 2020); Mrs J C Kelly, Senior Member

MIGRATION – mandatory cancellation of visa – character test – substantial criminal record – primary considerations – other considerations – protection of the Australian community – risk of reoffending – best interests of minor children – expectations of the Australian community – strength nature and duration of ties – extent of impediments if removed – decision under review affirmed

**HYMC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2879 (11 August 2020); R Reitano, Member

MIGRATION – mandatory visa cancellation – cancellation of Applicant’s Class XA Subclass 866 Protection Visa – Applicant is a citizen of China – 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 set aside

**Keogh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3003 (9 July 2020); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – supply of prohibited drug – 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 – impediments to return – decision set aside and substituted

**Kleinberg and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2941 (13 August 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a 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

**McCarthy and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2939 (11 August 2020); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – another reason why the cancellation decision should be revoked – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – best interests of the child – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

**MPRP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3004 (18 August 2020); Deputy President J W Constance

MIGRATION – mandatory cancellation – protection visa – where offending very serious – where offending involved domestic violence – 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 – international non-refoulement obligations – strength, nature and duration of ties to Australia – impediments to return – decision set aside and substituted



**Ng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3005 (18 August 2020); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – whether Applicant properly served in accordance with s 501G of the Migration Act 1958 (Cth) – character test – substantial criminal record – border control drug convictions – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor nephews – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 44-year-old man who arrived in Australia as an 11-year-old child – extent of impediments if returned to Malaysia – impact of COVID-19 pandemic – Tribunal finds that there is another reason why the decision to cancel the Applicant’s Visa should be revoked – reviewable decision set aside and substituted

**Ratugolea and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2839 (11 August 2020); Senior Member M Griffin QC

MIGRATION – Five Year Resident Return (Class BB) (Subclass 155) visa – Applicant is a citizen of Fiji – failure to pass character test – substantial criminal record – whether there is another reason to revoke the mandatory visa cancellation – Direction No. 79 – primary considerations – other considerations – decision under review affirmed

**RXDD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2881 (11 August 2020); T Eteuati, Member

MIGRATION – Non-revocation of mandatory cancellation of Class TY Subclass 444 Special Category visa – Applicant does not pass character test – whether there is another reason why the mandatory cancellation of the Applicant’s visa should be revoked – consideration and application of Ministerial Direction No 79 – decision under review is affirmed

**QKJY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2689 (7 August 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 202 Global Special Humanitarian 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

**Vu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 2876 (13 August 2020); Senior Member C Puplick AM

MIGRATION – mandatory cancellation of 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 – strength, nature and duration of ties – extent of impediments if removed – weighing of primary and other considerations – reviewable decision is set aside and substituted



**Wadeley and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3013 (18 August 2020); Senior Member B. Pola

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Resident Return 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

**ZPBM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3012 (19 August 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – Class TY subclass 444 Special Category (Temporary) visa – failure to pass the character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – where offending very serious – where there is risk of reoffending – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties to Australia – decision set aside and substituted

**1712581** (Migration) [2020] AATA 2870 (24 February 2020); R Smidt, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information in previous protection visa application – stateless Faili Kurd – Iranian citizenship – alleged possession of Iranian passport – based on Queensland Police report – no onus of proof before the Tribunal – reasonable state of satisfaction not reached – decision under review set aside

**Huan** (Migration) [2020] AATA 2911 (8 July 2020); K Raif, Senior Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – remaining relative of Australian relative – no contact with applicant and sponsor's father and no knowledge of whereabouts – presumption of death cannot be applied – evidence to suggest that father did not wish to maintain contact – sponsor's health and applicant's support – referred to department for consideration by minister – decision under review affirmed

**Kaur** (Migration) [2020] AATA 2751 (27 May 2020); C Burnett-Wake, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – direct entry scheme – related position nomination refused – member of family unit – child applicant has been granted Australian citizenship – parent applicants' employment and community activity – referred to department for consideration by minister – decision under review affirmed

**Maryborough Highland Society Inc** (Migration) [2020] AATA 2849 (20 April 2020); A Ducrou, Member

MIGRATION – nomination of a position (employer nomination) – Temporary Residence Transition nomination stream – position of Chef – business actively and lawfully operating in Australia – financial capacity – recent write-off of bad debts from associated entity – terms and conditions of employment – genuine need for the position – training commitments and obligations – apprentice wages and training courses – employment of a qualified trainer – decision under review set aside

[Som](#) (Migration) [2020] AATA 2841 (17 April 2020); A Mercer, Member

MIGRATION – Temporary Activity (Class GG) visa – Subclass 408 (Temporary Activity) – sponsorship approval ceased but reinstated – genuine temporary entrant – maintaining ongoing residence in Australia – council approval for new temple – disregarding adverse information – Tribunal reinstated review application – compliance with visa conditions – non-hierarchical structure of Buddhist temple – settled intention to apply for permanent visa – adverse consequence for employment or training for Australians – continued shortage of Buddhist monks – Minister of Religion Labour Agreements (MORLA) – decision under review remitted

## **Practice and Procedure**

[CFMZ and Tax Practitioners Board](#) (Taxation) [2020] AATA 2955 (14 August 2020); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of decision to terminate tax agent registration – prospects of success – consequences of refusal – impact on ability to earn income – impact on professional reputation – public interest – confidence in the proper administration of taxation laws and operation of the regulatory system – whether stay necessary to preserve the efficacy of the review proceedings – stay refused

[Flahive and Comcare](#) (Compensation) [2020] AATA 3044 (18 August 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – interlocutory application – extension of time – deemed service of reconsideration decision – documents deemed to have been served by post by operation of Acts Interpretation Act and Evidence Act – electronic service made - Electronic Transactions Act – considerations relating to granting extension of time application – length of delay – awareness of appeal rights – explanation for delay – merits of substantive application – prejudice to respondent – extension of time application granted

[Le'Sam Accounting Pty Ltd and Tax Practitioners Board](#) (Taxation) [2020] AATA 3041 (19 August 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – termination of registration as tax agent – breach of code of professional conduct – failure to respond to request and directions from the Board in a timely, responsible and reasonable manner and respond to request for information – prospects of success – interests of persons affected by the review – public interest – impact of respondent's regulatory role – whether the review would be rendered nugatory if stay not granted – stay granted

[Osmond and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 2877 (6 August 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – jurisdiction – Migration Act 1958 (Cth) – s 500(6B) – Migration Regulations 1994 (Cth) – decision of delegate of the Minister not to revoke mandatory cancellation of visa – application for review lodged out of time – Tribunal cannot extend time – Administrative Appeals Tribunal Act 1975 (Cth) – s 42A(4) – Tribunal satisfied no jurisdiction – application dismissed

[The Magazine Company and Commissioner of Taxation](#) (Taxation) [2020] AATA 2791 (29 July 2020); Deputy President B W Rayment OAM QC

PRACTICE AND PROCEDURE – release from implied undertaking – use of transcript and affidavit evidence of witness from previous proceedings – where material to be used in Federal Court proceedings – where evidence goes towards a defence in the Federal Court proceedings – whether specific purpose for documents has been identified – where specifying documents sought to be released generally or usually necessary – where impossible to predict all purposes for documents – documents and purpose identified – whether to release part of whole document – whether to vary confidentiality orders made in previous proceedings – application granted

[Will Studd Enterprises Pty Ltd and Food Standards Australia New Zealand](#) [2020] AATA 3080 (17 August 2020); Deputy President S A Forgie

Catchwords – PRACTICE AND PROCEDURE – application to vary standards 2.5.4 and 1.6.2 from the Australia New Zealand Food Standards Code – whether application should be dismissed under s 42B(1)(b) of the Administrative Appeals Tribunal Act 1975 – whether application has reasonable prospects of success – standards 2.5.4 and 1.6.2 removed from Food Standards Code – no reasonable prospects of success – application dismissed

## Refugee

[1616977](#) (Refugee) [2020] AATA 2914 (6 March 2020); N Lamont, Member

REFUGEE – protection visa – Italy – fear of mafia due to assisting friend – delay in applying for protection – third country protection – credibility issues – decision under review affirmed

[1620413](#) (Refugee) [2020] AATA 2872 (16 June 2020); P Vlahos, Member

REFUGEE – protection visa – Thailand – debt to loan shark – Thai criminal syndicate – threatened with servitude in a local brothel – credibility concerns – effective state protection – Royal Thai Police – judicial system in Thailand – decision under review affirmed

[1705053](#) (Refugee) [2019] AATA 6878 (17 December 2019); Dr C Huntly, Member

REFUGEE – protection visa – Libya – imputed political opinion – recipients of Gaddafi scholarships – family members' links to participants in civil war – generalised violence – religious and socio-political views – youngest child's health – no adequate state protection – decision under review remitted

[1712356](#) (Refugee) [2020] AATA 2834 (29 May 2020); A Murphy, Member

REFUGEE – cancellation – protection visa – Afghanistan – incorrect information in visa application – identity and nationality – Pakistani identity card and passport – Afghani Hazaras in Pakistan not entitled to documents or citizenship – father purchased genuinely issued but fraudulent identity cards – country information on Pakistani document fraud – applicant's and relatives' Afghani documents – decision under review set aside

[1718569](#) (Refugee) [2020] AATA 2789 (16 July 2020); A Cranston, Member

REFUGEE – cancellation – protection visa – Iraq – incorrect information – applicant's return to Iraq on two occasions soon after protection visa grant – engagement and marriage – issue of same flight numbers for both trips – tribunal's concerns with applicant credibility – seriousness of cancelling permanent visa – return to Iraq should not lead to conclusion of incorrect information – decision under review set aside

## Social Services

[BPNT and VMNP and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2952 (14 August 2020); Ms K. Parker, Member

PARENTING PAYMENT – DISABILITY SUPPORT PENSION – whether payments should be paid at “single” or “partnered” rate – Applicants have three biological children and they reside together in the same household – children have hyphenated surname containing surnames of both Applicants – Applicants claim they have never been in a relationship and lead separate lives – Tribunal satisfied that Applicants are members of a couple – decisions under review affirmed

[Cai and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3047 (20 August 2020); Mr S Evans, Member

SOCIAL SECURITY – carer payment debt – where applicant’s assets exceed the assets value limit – failure to comply with reporting obligations – \$790,000 loan – money received from family and friends – on-lent loan to son – whether the debt can be waived or written off – no sole administrative error – no special circumstances — decision under review affirmed

[Cassell and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3010 (19 August 2020); Ms L M Gallagher, Member

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

[Farag and Farag and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2961 (17 August 2020); Ms K. Parker, Member

SOCIAL SECURITY – age pension – rate of pension – members of a “pensioner couple” – assessment of “ordinary income” – treatment of account-based superannuation income stream – legislative change took effect 2015 – Applicants rolled over superannuation to new fund not realising savings provisions in respect of those legislative changes would no longer apply – consequently deeming provisions under s 1077 of Social Security Act 1991 (Cth) apply to income stream after rolling over funds – Applicants’ assessed “ordinary income” increased – consequently rate of age pension of Applicants reduced – Tribunal has no discretion not to apply deeming provisions on account of adverse circumstances of Applicants – decision affirmed

[Galluzzo and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2836 (11 August 2020); Dr L Bygrave, Member

SOCIAL SECURITY – carer payment debt – where applicant’s assets exceed the assets value limit – failure to comply with reporting obligations – two investment properties – rental income – share portfolio – whether the debt can be waived or written off – no sole administrative error – no special circumstances – debt period increased – decision under review set aside and substituted

[Garcia and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2949 (17 August 2020); C Puplick AM, Senior Member

SOCIAL SECURITY – widow allowance – transfer to age pension – applicant owner of investment properties – cancellation of payment – debt to the Commonwealth – whether overpayment should be recovered – no administrative error – debt recoverable – no special circumstances – decision under review affirmed

[Halimi and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2878 (12 August 2020); A Burke AO, Member

SOCIAL SECURITY – cancellation of disability support pension – whether qualified – from shoulder condition and depression – whether impairment attracts rating of 20 points or more under Impairment Tables – whether continuing inability to work – decision under review set aside

[Kirk and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2793 (10 August 2020); W Frost, Member

SOCIAL SECURITY – Disability Support Pension – mental health condition – chronic pain condition – whether conditions are fully diagnosed, fully treated and fully stabilised – mental health condition is fully diagnosed but not fully treated or fully stabilised – chronic pain condition is fully diagnosed but not fully treated or fully stabilised – decision under review affirmed

[Priest and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3048 (13 August 2020); Member S Barton

SOCIAL SECURITY – Carer Payment – social security – failure to disclose employment – Carer Payment overpayment – waiver of debt – administrative error – special circumstances – write off debt – FBT debt – legally recoverable debt – decision affirmed

[Piper and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2959 (17 August 2020); C Puplick AM, Senior Member

SOCIAL SECURITY – debt – disability support pension – where Applicant granted stay during proceedings before Tribunal – where effect of stay order was to restore disability support payments during review process – where decision to cancel disability support pension affirmed – overpayment – whether the Applicant owed a debt to the Commonwealth – whether the debt amount was correctly calculated – whether there were any grounds to waive or write-off the debt – decision affirmed

[Prowse and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2937 (12 August 2020); Dr Damien Cremean, Senior Member

SOCIAL SECURITY – disability support pension – several conditions including spinal pain, shoulder and hip pain – whether fully diagnosed, treated and stabilised – qualification period – effect of concession of 10 impairment points regarding spinal condition – assignment of points – severe functional impact – decision set aside and substituted

[Ramsay and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2943 (14 August 2020); Brigadier A G Warner AM LVO (Retd), Member

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

[Ratcliffe and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3009 (19 August 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – Family Tax Benefit – income tax return – notification obligations – Australian Taxation Office – 2016/2017 financial year – online tool – Acts Interpretation Act 1901 (Cth) – special circumstances – decision under review affirmed

[Senturk and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2950 (14 August 2020); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – from fibromyalgia, Raynaud’s disease and anxiety/depression – whether impairment attracts rating of 20 points or more under Impairment Tables – whether exemption to having undertaken program of support – whether continuing inability to work – decision under review set aside and remitted

[Solomons and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 2944 (14 August 2020); A E Burke AO, Member

SOCIAL SECURITY – disability support pension – overpayment – debt due to the Commonwealth – undeclared income received from superannuation – recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – whether applicant knowingly made false statements or gave false representation in claims – special circumstances not found – decision under review affirmed

[Sutcliffe and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3046 (20 August 2020); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – right pontine stroke – hypertension – hypercholesterolemia – depression – reasonable treatment available – impairments not fully diagnosed, fully treated and fully stabilised – impairments cannot be assigned an impairment rating – program of supports not completed – decision under review affirmed

[Tang and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3042 (19 August 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – spine condition – lower limb condition – hearing impairment – whether mental health condition permanent – whether the Applicant had an impairment rating of at least 20 points – decision under review affirmed



[The Executor Estate of the late Mrs Maria Drakos; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 2875 (10 August 2020); Emeritus Professor P A Fairall, Senior Member

Age pension debt – overpayment – whether age pension debt must be waived – whether special circumstances exist for the age pension debt to be waived – coding error which resulted in a failure to reassess the property at the conclusion of the applicable exemption period – income test – asset test – whether the debt is solely attributable to centrelink’s coding error – whether a daily fee can be construed as an accommodation charge – whether the overpayment of age pension was received in good faith – Respondent failed to notify Centrelink of significant change in circumstances – decision set aside – age pension debt fully recoverable from the Respondent

[Thomson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3043 (19 August 2020); Senior Member P J Clauson AM

SOCIAL SECURITY – Disability Support Pension – Whether Applicant has fully diagnosed, treated and stabilised conditions – Whether Applicant has physical, intellectual or psychiatric impairments – Mental health Impairments – Limb function impairments – Spinal impairments – Heart condition impairments – Whether impairments merit 20 points – Decision affirmed.

## **Taxation**

[Zhang and Commissioner of Taxation](#) (Taxation) [2020] AATA 3008 (10 July 2020); Deputy President B J McCabe, Ms D Mitchell, Member

TAXATION – Goods and Services Tax – taxable supplies – what is the taxable supply – whether the applicants operated a brothel or sex-on-premises venue – unable to identify the supply – onus under section 14ZZK on the taxpayer to provide a more accurate explanation of the correct amount – onus not discharged – issues with double counting – decision varied to the extent of the double counting  
TAXATION – company’s income tax – nil assessment – whether the Tribunal’s finding on the supply question should lead to the income tax decision to be remitted – whether the monies received should be taxable in the hands of Banksia – onus under section 14ZZK – onus not discharged – decision affirmed

TAXATION – individuals’ income tax – whether the amounts deposited by the individual applicants and held in cash was income – whether the amounts were gifts from family and friends – evidence of money exchange – records of dates of transfers – evidence insufficient to establish the amounts were loans – onus under section 14ZZK – onus not discharged – issues with double counting – decision varied to the extent of the double counting

TAXATION – penalties – whether the penalties were properly applied - whether the penalties should be remitted – whether shortfalls resulted from misunderstanding or recklessness and intentional disregard – insufficient evidence to disturb Commissioner’s findings in relation to rate of penalty or remission – issues with double counting – decision varied to the extent of the double counting



# 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
<b>Access Training Institute Pty Ltd and Australian Skills Quality Authority; Kirana Training Pty Ltd and Australian Skills Quality Authority</b>	<a href="#">[2020] AATA 2470</a>
<b>Aitchison and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2422</a>
<b>Au and Le and Repatriation Commission</b>	<a href="#">[2020] AATA 1996</a>
<b>Bristowe and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 1217</a>
<b>BVLD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2582</a>
<b>Doyle and Commissioner of Taxation</b>	<a href="#">[2020] AATA 345</a>
<b>Kwatra and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2633</a>
<b>Mareiti and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2175</a>
<b>Palu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2581</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>FAK19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4622</a>	<a href="#">[2020] FCA 1124</a>
<b>Commissioner of Taxation v Fortunatow</b>	<a href="#">[2018] AATA 4621</a>	<a href="#">[2020] FCAFC 139</a> <a href="#">[2019] FCA 1247</a>
<b>MBJY v Minister for Immigration, Citizenship, Migrant Services and</b>	<a href="#">[2019] AATA 4055</a>	<a href="#">[2020] FCA 1161</a>

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**Multicultural Affairs**

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**XFCS v Minister for Home Affairs**[\[2019\] AATA 201](#)[\[2020\] FCAFC 140](#)[\[2020\] FCA 71](#)

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**Uolilo v Minister for Home Affairs**[\[2019\] AATA 5411](#)[\[2020\] FCA 1135](#)

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**WKMZ v Minister for Home Affairs**[\[2019\] AATA 4381](#)[\[2020\] FCA 1127](#)

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