



AAT Bulletin

Issue No. 24/2020

21 September 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.....	4
Migration.....	5
National Disability Insurance Scheme.....	9
Practice and Procedure.....	9
Refugee.....	11
Social Services.....	12
Taxation.....	13
Appeals	14
Appeals lodged	14
Appeals finalised	14

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

[BMGV and Child Support Registrar](#) (Child support second review) [2020] AATA 3449 (8 September 2020); Dr M Evans-Bonner, Senior Member

CHILD SUPPORT – percentage of care – whether interim period applies – family court order regarding care of child in force – child refusing to participate in contact with father – whether Tribunal should make two separate percentage of care decisions – whether father took reasonable action to ensure compliance with care arrangement – whether special circumstances – meaning of “a care arrangement applies” in s 51(1)(b) of the Child Support (Assessment) Act 1989 (Cth) – characterisation where statute conflicts with policy – whether mother took reasonable action to participate in family dispute resolution – whether shorter interim period should apply – Reviewable Decision varied

[Eden and Ross](#) (Child support) [2020] AATA 2671 (2 June 2020); M Douglas, Member

CHILD SUPPORT – application to extend child support assessment beyond a child's 18th birthday – whether there were exceptional circumstances justifying the making of the application after the child's 18th birthday – decision under review set aside and substituted

[Essington and Corben](#) (Child support) [2020] AATA 3677 (9 July 2020); J Longo, Member

CHILD SUPPORT – percentage of care – pattern of care from start of child support case – decision under set aside and substituted

[Horvath and Horvath](#) (Child support) [2020] AATA 2676 (2 June 2020); R Ellis, Senior 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 - reasonable action taken by both parents - interim period applied - decision under review set aside and substituted

[Kuhn and Olthoff](#) (Child support) [2020] AATA 3675 (16 July 2020); J Longo, 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 - reasonable action taken - interim period applied - decision under review set aside and substituted

[Rossiter and Rossiter](#) (Child support) [2020] AATA 3647 (13 July 2020); M Kennedy, Member

CHILD SUPPORT – percentage of care – pattern of care from beginning of child support case – decision under review set aside and substituted

Citizenship

[Bhavsar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3438 (4 September 2020); Deputy President Boyle

CITIZENSHIP – citizenship by conferral – relevant policy applying to applicant in the circumstances – inconsistency between differing policy/procedure documents – applicant aged 16 to 17 years old at time of application – residency requirements – significant hardship, disadvantage or detriment – HECS-HELP – reviewable decision affirmed

[Mabith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3509 (14 September 2020); Deputy President Boyle

CITIZENSHIP – citizenship by conferral – good character – delay in response to department requests – provision of bogus documents – wilful dishonesty – inadvertent provision of false document – illiteracy – decision remitted with direction

[Mocenigo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3599 (17 September 2020); Ms A E Burke AO, Member

CITIZENSHIP – citizenship by descent – Applicants born outside of Australia – whether a parent of the Applicant was an Australian citizen at the time of the Applicants' birth – whether parent lost her citizenship when she derived Italian citizenship from her father – whether citizenship can be lost without formal notification to the Australian government – the interaction of Australian and Italian law – Nationality and Citizenship Act 1948 – decision under review set aside and remitted

[NPRT and Minister for Home Affairs](#) (Citizenship) [2020] AATA 3641 (18 September 2020); Deputy President J Sosso

CITIZENSHIP – revocation – where Applicant was convicted of three counts of indecent treatment of a child under the age of 16 – where Applicant applied for and was granted citizenship before conviction – whether it would be contrary to the public interest for the Applicant to remain an Australian citizen – whether the discretion to deprive a person of their citizenship ought to be exercised to revoke the Applicant's Australian citizenship – decision under review set aside – Applicant's citizenship should not be revoked

Compensation

[Matthews and Comcare](#) (Compensation) [2020] AATA 3503 (11 September 2020); A Ward, Member and A Durkin, Member

SOCIAL SECURITY – Disability support pension - workers compensation – whether applicant suffers incapacity for work arising from employment – multiple claims at request of decision maker – employer ignoring clear medical recommendations - employment significant contributing factor to worsening of accepted injury – plaintiff's evidence not subject to significant challenge – Respondent accepts all but one of the outstanding disputes at the outset of the hearing – relief at being away from acute stress at work does not equate recovery – Treating Doctor not an advocate - Decision under review set aside

[Ortolan and Australian Postal Corporation](#) (Compensation) [2020] AATA 3642 (18 September 2020); D Mitchell, Member

COMPENSATION – what is correct diagnosis of condition – Scheuermann’s disease – whether condition is an injury (other than a disease) or disease – whether the Applicant’s employment contributed, to a significant degree, to the onset or aggravation of the Applicant’s condition – where Respondent determined no liability for compensation pursuant to section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision under review affirmed

[Wuth and Comcare](#) (Compensation) [2020] AATA 3625 (3 September 2020); Deputy President G Humphries AO

WORKERS COMPENSATION – chronic daily headache – whether the applicant continues to suffer the effects of an injury – whether the applicant suffers permanent impairment as a result of the condition – whether the respondent is liable to pay for non-economic loss in respect of the condition – Military Rehabilitation and Compensation Commission v May (2016) 257 CLR 468 considered – applicant does not suffer from an injury for the purposes of section 14 of the Safety, Rehabilitation and Compensation Act 1988 – decision under review affirmed

WORKERS COMPENSATION – chronic daily headache – what the applicant’s normal weekly earnings were at the time of the injury – applicant does not suffer an injury for the purposes of the Safety, Rehabilitation and Compensation Act 1988 – decision under review affirmed

Migration

[DPGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3523 (17 August 2020); Senior Member D O’Donovan

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test - substantial criminal record under s 501(7) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – minor children – non-refoulement obligations and need to consider - strength nature and duration of ties – impediments to applicant if removed – giving meaningful consideration to risk of harm - decision under review affirmed

[Dzik and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3498 (3 September 2020); Ms 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

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

(Migration) [2020] AATA 3441 (7 September 2020); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – offences include indecently deals with a child over 13 and under 16, unlawful & indecent assault and stalking – 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 siblings – expectations of the Australian community – non-refoulement – strength, nature and duration of ties to Australia – Applicant is a 24-year-old man who arrived in Australia as a 16-year-old child – extent of impediments if returned to Papua New Guinea – impact of COVID-19 pandemic – reviewable decision affirmed

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

(Migration) [2020] AATA 3445 (8 September 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – 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 – impediments to removal – decision affirmed

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

(Migration) [2020] AATA 3442 (8 September 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 – driving offences – Applicant does not pass the character test – whether there is another reason 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 nineteen year old – impact on victims – extent of impediments if removed to Ireland – impact of COVID-19 pandemic – Tribunal satisfied there is another reason why the decision to cancel that Applicant’s visa should be revoked – reviewable decision set aside and substituted

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

(Migration) [2020] AATA 3529 (14 September 2020); Senior Member Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Partner (Class BS) (Subclass 801) 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

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

(Migration) [2020] AATA 3527 (15 September 2020); Senior Member K Millar

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – serious drug offences – protection of the Australian community – decision under review affirmed

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

(Migration) [2020] AATA 3448 (9 September 2020); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – domestic violence – dispute as to primary facts – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – strength, nature and duration of ties to Australia – decision affirmed

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

(Migration) [2020] AATA 3602 (15 September 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Afghanistan – Class XB Subclass 202 Global Special Humanitarian visa – substantial criminal record – failure to pass character test – whether discretion to revoke mandatory cancellation should be exercised – consideration of Ministerial Direction No. 79 – decision affirmed

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

(Migration) [2020] AATA 3510 (10 September 2020); Senior Member B Pola

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 affirmed

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

(Migration) [2020] AATA 3600 (16 September 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 – extent of impediments if removed – strength, nature and duration of ties – weighing of primary and other considerations – Melbourne Corporation principle – reviewable decision affirmed

Vasudevan and Migration Agents Registration Authority

(Migration) [2020] AATA 3640 (16 September 2020); Senior Member C Puplick AM

MIGRATION AGENTS – registration – cancellation of registration as a migration agent – whether non-compliance with Code of Conduct – whether the applicant is not a person of integrity or is otherwise not a fit and proper person to give immigration assistance – whether the Tribunal should exercise its discretion to cancel the Applicant's registration – immigration assistance – failure to act diligently – where failure to properly respond to complaint – where provision of misleading and deceiving information to the Respondent and the Department – where failure to maintain proper records – decision under review affirmed

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

(Migration) [2020] AATA 3502 (7 September 2020); Senior Member C J Furnell

MIGRATION – mandatory cancellation of Class XB Subclass 202 – Global Special Humanitarian visa – South Sudan – substantial criminal record – applicant does not pass character test – another reason why mandatory cancellation should be revoked – serious offending – Direction 79 – protection of the Australian community – non-refoulement obligations – extent of impediments if removed – decision under review set aside and in substitution decision to revoke cancellation

XMZH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 3497 (8 September 2020); Mr S Evans, 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 – international non refoulement obligations – strength nature and duration of ties – extent of impediments if removed – decision under review set aside and substituted

XSRZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 3639 (24 August 2020); Senior Member L Kirk

MIGRATION – visa cancellation – Class TY, Subclass 444 Special Category (Temporary) visa – substantial criminal record – home invasion – driving offences – violent offending – drug and alcohol misuse – Direction No. 79 – primary considerations – low risk of reoffending – rehabilitative course completed – best interests of the Applicant’s three minor children – expectations of the Australian community – other considerations – where Applicant has strong ties to Australia – extent of impediments if returned – decision under review set aside and substituted

Bokhari (Migration) [2020] AATA 3413 (19 August 2020); W Shum, Member

MIGRATION – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – applicant not in migration zone when application for review made – COVID-19 travel restrictions – advised by department before restrictions applied that he could travel – unable to return after restrictions applied – no jurisdiction

ETHNIC CUISINES PTY LTD (Migration) [2020] AATA 3486 (6 July 2020); D Kelly, Member

MIGRATION – application for approval of nomination of position – temporary residence transition stream – nominee did not hold Subclass 457 visa or visas for total of two years in three years immediately before position nomination lodged – held visa for three days less than two years – no discretion in matter of fact – no response to invitation to provide updated and current information – decision under review affirmed

Jamal-UD-Din (Migration) [2020] AATA 3411 (1 July 2020); V Plain, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – enrolment in a higher level course ceased – applicant obtained course medical deferment – applicant returned to his home country for treatment – new enrolment not obtained – decision under review set aside

Mercado (Migration) [2020] AATA 3369 (1 July 2020); K Raif, Senior Member

MIGRATION – Other Family (Residence) (Class BU) – Subclass 835 (Remaining Relative) – remaining relative of an Australian relative – ‘daily care and control’ – no near relative requirement – decision under review affirmed

[NUGROHOWATI](#) (Migration) [2020] AATA 3488 (30 June 2020); G Chapman, Senior Member

MIGRATION – Partner (Temporary (Class UK)) visa – Subclass 820 (Spouse) – de facto partner – relationship ceased and sponsorship withdrawn – non-judicially determined claim of family violence – verbal and psychological abuse – statutory declarations by applicant and relevant professionals – opinion of independent expert – not family violence but arguments and anxiety about termination of partnership – procedural fairness – video-conferencing and cultural differences – two adverse letters from sponsor – expert’s opinion properly made – decision under review affirmed

National Disability Insurance Scheme

[Ray and National Disability Insurance Agency](#) [2020] AATA 3452 (8 September 2020); Ms K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – disability arising from impairments resulting from autism spectrum disorder, attention deficit hyperactivity disorder, anxiety and depression – whether impairments result in “substantially reduced functional capacity” to undertake any one or more specified activities – methodology used by experts to conduct assessment of level of impairment – whether streamlined process in National Disability Insurance Agency’s Operational Guidelines was considered and applied – Tribunal satisfied the Applicant met mandatory “age”, “residence” and “disability” access requirements – decision set aside and substituted with decision that the Applicant met access criteria under s 21 of the National Disability Insurance Scheme Act 2013 (Cth)

Practice and Procedure

[Australian and International Pilots Association and Civil Aviation Safety Authority](#) [2020] AATA 3444 (4 September 2020); Deputy President B W Rayment OAM QC

PRACTICE AND PROCEDURE – whether Tribunal has jurisdiction to review approval instrument of the Civil Aviation Safety Authority – whether conditions imposed, or existing conditions varied to flight crew licences – where Tribunal satisfied it did have jurisdiction to review

[Cassaniti and Commissioner of Taxation](#) (Taxation) [2020] AATA 3447 (8 September 2020); Mr R Reitano, Member

PRACTICE AND PROCEDURE – interlocutory application – extension of time – application for review of taxation objection decision – principles to be applied – acceptable explanation for the delay – resting on rights – prejudice – arguable case – where extension of time reasonable in all the circumstances – extension of time granted

[Hayes and National Disability Insurance Agency](#) [2020] AATA 3643 (18 September 2020); K Buxton, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – Application for review of decision to approve statement of supports in participant plan – jurisdiction to review decision – Whether internal review conducted by National Disability Insurance Agency in accordance with section 100 of the Act – Whether internal review request made – whether decision apparently made under subsection 33(2) is outcome of internal review request – Decision not reviewable by Tribunal pursuant to section 103 – Application for review dismissed pursuant to subsection 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

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

[2020] AATA 3601 (7 August 2020); Senior Member A Poljak

PRACTICE AND PROCEDURE – jurisdiction question – decision refusing to give notice that applicant is an Australian citizen – section 37 of the Australian Citizenship Act 2007 – freedom of information requests – NSW Roads and Maritime Services – decision to refuse to renew or issue driving licence – no jurisdiction found – applications dismissed

Riger and Commonwealth Bank of Australia Limited (Compensation) [2020] AATA 3528 (9 September 2020); Senior Member P J Clauson AM

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act 1975 (Cth) – Summons – Objection to Summons – Relevance of evidence to facts in issue – propensity evidence – similar fact evidence – rules of evidence in the Tribunal – objection refused – summons varied in scope – summons to be complied with

Shahi and Migration Agents Registration Authority (Migration) [2020] AATA 3508 (11 September 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application for dismissal of substantive application – Migration Agents Registration Authority – decision to cancel migration agent registration – section 42A(5) – whether Applicant failed to proceed with the application – whether Applicant failed to comply with a direction by the Tribunal – application for dismissal granted

Sharma and Secretary, Department of Social Services (Social services second review) [2020] AATA 3443 (7 September 2020); Senior Member Mr C Puplick AM

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

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

[2020] AATA 3522 (11 September 2020); T Eteuati, Member

PRACTICE AND PROCEDURE – Non-revocation of mandatory cancellation of Class TY Subclass 444 Special Category visa – whether the Applicant was notified and invited to make representations as required by section 501CA(3) of the Migration Act 1958 – whether the Applicant made representations in accordance with the invitation including within the prescribed time for making representations – application of *EFX17 v Minister for Immigration and Border Protection* [2019] FCAFC 230 – whether the Applicant was capable of comprehending the section 501CA(3) notice and invitation – decision under review is affirmed

XQVK and Child Support Registrar (Child support second review) [2020] AATA 3495 (10 September 2020); Mr C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – extension of time application – 14 months delay in filing application – whether reasonable explanation for the delay – prejudice to others – merits of substantial application – extension of time application refused

Refugee

[1727894](#) (Refugee) [2019] AATA 6885 (27 August 2019); M Hawkins, Member

REFUGEE – cancellation – protection visa – stateless – false identity – citizenship – stateless Faili Kurd or Iranian citizen – previous travel to Australia and application for protection under another name, as Iranian citizen – identity proved by facial image comparison – religion – minority religion not recognised by Iranian government – credibility – factors for and against cancellation – family unity – extended family in Australia – statelessness claims of family members – no family support in Iran – decision under review set aside

[1816541](#) (Refugee) [2020] AATA 3476 (3 September 2020); J Redfern, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Malaysia – application for protection on basis the basis of the refugee and complementary protection criterion – applicant claims to fear harm from loan sharks – consideration of refugee criterion in s 36(2)(a) of the Migration Act 1958 – no refugee nexus – consideration of complementary protection criteria in s 36(2)(aa) of the Migration Act 1958 – whether real risk of significant harm – 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 – virtual Microsoft Teams hearing in circumstances of COVID-19 pandemic – applicant and brother made separate applications for a Protection visa based on similar claims – both applications constituted to the same Tribunal Member – Tribunal determined evidence in one application would be evidence in the other application – common witnesses.

[1820632](#) (Refugee) [2020] AATA 3477 (3 September 2020); J Redfern, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Malaysia – application for protection on basis the basis of the refugee and complementary protection criterion – applicant claims to fear harm from loan sharks – consideration of refugee criterion in s 36(2)(a) of the Migration Act 1958 – no refugee nexus – consideration of complementary protection criteria in s 36(2)(aa) of the Migration Act 1958 – whether real risk of significant harm – 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 – virtual Microsoft Teams hearing in circumstances of COVID-19 pandemic – applicant and sister made separate applications for a Protection visa with similar claims – both applications constituted to the same Tribunal Member – Tribunal determined evidence in one application would be evidence in the other application – common witnesses.

[1903303](#) (Refugee) [2020] AATA 3678 (23 July 2020); I O’Connell, Deputy Division Head

REFUGEE – protection visa – Syria – Federal Circuit Court remittal – no access to third country protection – protection visa grants for wife and children – decision under review remitted

[1935736](#) (Refugee) [2020] AATA 3679 (12 August 2020); J Pennell, Senior Member

REFUGEE – Protection visa – Nepal – divorce – ex-husband’s links to Maoist group – father’s link to Congress Party – threats from Moaist supporters after divorce and remarriage – credibility issues – decision under review affirmed

[2010249](#) (Refugee) [2020] AATA 3638 (31 August 2020); S Roushan, Senior Member

REFUGEE – protection visa – Palestinian Territories (West Bank) – Federal Circuit Court remittal – particular social group – homosexual male – individuals who have contracted a sexually transmitted disease – treatment for mental illness – family honour – state protection – Refugees Convention Article 1D – persons receiving protection or assistance from another United Nations agency – protection ceased – United Nations Relief and Works Agency (UNRWA) – decision under review remitted

Social Services

[Aliya and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3504 (11 September 2020); Ms M East, Member

SOCIAL SECURITY – rent assistance – whether the Applicant was overpaid rent assistance as a component of his DSP – if so, what the correct period and amount of debt is – whether the Applicant was, during the relevant period, paying rent – decision set aside and remitted to the Respondent with the direction that the Applicant was at all relevant times qualified for rent assistance

[Baradari and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3437 (4 September 2020); Mr D Cremean, Senior Member

SOCIAL SECURITY — Disability Support Pension — Medical conditions including chronic groin pain after hernia surgery — asthma — qualification period — whether conditions fully diagnosed, treated and stabilised — further treatments recommended — decision affirmed

[Berges and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3507 (11 September 2020); D Cox, Member

SOCIAL SECURITY – pensions, benefits and allowances - family tax benefit – lodgement of tax return – whether special circumstances - decision under review affirmed

[Dignam and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3439 (7 September 2020); Mr W Frost, Member

SOCIAL SECURITY – pensions, benefits and allowances – disability support pension — eligibility for disability support pension – whether the applicant’s impairments are fully diagnosed, fully treated and fully stabilised - whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed.

[Faatele; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 3499 (10 September 2020); Senior Member C J Fumell

SOCIAL SECURITY – childcare benefit – debt for overpayment – determination of weekly limit of hours – varying determination of weekly limit of hours – no variation to determination – no notice of variation – no variation decision – no debt – decision set aside and substituted

SOCIAL SECURITY – childcare rebate – debt for payment – entitlement to childcare benefit – eligibility for childcare rebate – weekly limit of hours – no debt – decision set aside and substituted

[Kotevski and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3598 (16 September 2020); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – age pension – newstart allowance – assets test – whether Applicant’s interest in the property a constructive trust – common intention to be beneficial owners – decision under review affirmed – decision set aside and substituted

[Sanders and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3440 (4 September 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

[SJSW and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3597 (9 September 2020); Senior Member C J Furnell

SOCIAL SECURITY – application for disability support pension refused – whether conditions were fully diagnosed, treated and stabilised in the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – whether applicant had a continuing inability to work – decision under review affirmed

[Taleb and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3451 (9 September 2020); Ms K Parker, Member

SOCIAL SECURITY – debts – whether debts correctly raised – applicants failed to disclose full extent of income – numerous unexplained bank deposits – overpayments of social security entitlements made to applicants over nine-year period – whether all or portion of debts should be written off or waived – decision affirmed

[Taylor and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3496 (10 September 2020); Mr I Thompson, Member

SOCIAL SECURITY – Disability support pension – conditions not fully diagnosed, treated or stabilised – depression – anxiety – sleep disorder - decision under review is affirmed

[Trajkovska and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3494 (10 September 2020); Senior Member D Cremean

SOCIAL SECURITY – disability support pension – conditions including mental health condition – whether fully treated and diagnosed – qualification period – whether severe functional impact – no DSP entitlement – decision affirmed.

Taxation

[LLJL and Commissioner of Taxation](#) (Taxation) [2020] AATA 3446 (17 August 2020); Mr R Reitano, Member

TAXATION – imposition of administrative penalties – failure to lodge income tax returns – Applicant did not receive letters reminding him to lodge – whether the penalties should be remitted – where no grounds for remission of administrative penalties exist – decision affirmed

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
Dzik and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3498
KLKN and Minister for Home Affairs	[2018] AATA 4603
Kleinberg and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2941
LJ TZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3356
Okoh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3313
QYFM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2161

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Carter v Commissioner of Taxation	[2019] AATA 5637	[2020] FCAFC 150
Clearihan v Repatriation Commission	[2019] AATA 1339	[2020] FCA 1276 [2020] FCA 1130
Eichmann v Commissioner of Taxation	[2019] AATA 162	[2020] FCAFC 155 [2019] FCA 2155
Gage v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 326	[2020] FCA 1298
JKPM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 365	[2020] FCA 1293



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](#). 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](#).