



# 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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# 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

[Pretorius and Child Support Registrar](#) (Child support) [2020] AATA 3670 (1 July 2020); J D'Arcy, Member

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

[Beckett and Jacques](#) (Child support) [2020] AATA 3659 (2 July 2020); M Martellotta, Member

CHILD SUPPORT – departure determination – costs significantly affected because of private school costs – children educated in manner expected by both parents – costs significantly affected because of special needs of child – decision under review set aside and substituted

[Wagner and Wagner](#) (Child support) [2020] AATA 3672 (14 July 2020); M Douglas, 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 not taken – interim period does not apply – decision under review affirmed

[Morris and Child Support Registrar](#) (Child support) [2020] AATA 3657 (15 July 2020); K Dordevic, Member

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

## Citizenship

[Anwar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3694 (21 September 2020); M O'Loughlin, Member

MIGRATION – eligibility for Australian Citizenship application – permanent or enduring physical or mental incapacity – demonstration of English language and Australia – decision under review affirmed

**Arok and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 3812 (25 September 2020); Brigadier A G Warner AM LVO (Retd),  
Member

CITIZENSHIP – permanent resident – whether Tribunal satisfied of identity – date of birth – origin of birth certificate – failure to attempt to secure evidence of life story – Tribunal not satisfied of identity – decision under review affirmed

**GFYX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 3761 (28 September 2020); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether Applicant is not of good character – whether the application for citizenship made by Applicant should be approved – decision under review set aside and remitted

**HGTY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 3728 (3 September 2020); Senior Member BJ Illingworth

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to identity – whether Tribunal is satisfied Applicant is of good character – decision under review affirmed

**Hossin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 3783 (24 September 2020); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – eligibility – where application for Australian citizenship by conferral is refused – failure to meet “identity” requirement – where Applicant claims to be stateless – where Applicant is on a protection visa – where the Applicant has provided insufficient material to establish his identity – decision under review affirmed

**Kevin Jones (previously known as Sarmad Jaderi) and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2020] AATA 3680 (17 September 2020); Senior Member BJ Illingworth

CITIZENSHIP – application to dismiss application for review for having no reasonable prospect of success – where applicant has pending criminal charges – Minister prohibited from approving citizenship application – application dismissed

**LSNZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**  
(Citizenship) [2020] AATA 3785 (25 September 2020); D K Grigg, Member

CITIZENSHIP – refusal of approval to grant citizenship – whether applicant of good character – previous convictions concerning procuring a child for a sexual purpose – conviction spent – decision under review affirmed

[Minogue and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3697 (9 September 2020); Deputy President SA Forgie

CITIZENSHIP – review of decision to refuse application to renounce citizenship under s 33 of the Australian Citizenship Act 2007 – whether applicant a national or citizen of a foreign country at time of application – applicant eligible for citizenship by descent under s 4C of the British Nationality Act 1981 – applicant not registered under s 4C of the British Nationality Act 1981 at time of application – reviewable decision affirmed

[Sharma and Minister for Home Affairs](#) (Citizenship) [2020] AATA 3803 (29 January 2020); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – general residence requirements – whether special residence requirements met – whether the Applicant is a Scientist – decision is affirmed

[XYQR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2019] AATA 6895 (19 December 2019); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – failure to satisfy the general residence requirement under section 22 of the Australian Citizenship Act 2007 (Cth) – whether the applicant satisfies the special residence requirement under section 22A through engagement in an activity that is of benefit to Australia – whether the applicant's business activities fall within a category of activities specified by legislative instrument IMMI 13/056 – decision under review affirmed

## **Compensation**

[Bowman and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 3758 (10 September 2020); A Ward, Member

MILITARY REHABILITATION AND COMPENSATION – liable for compensation – claimed condition of amputation of testicle – applicant now deceased – reliability of medical records – benefit of examining patient when history of alleged injury relevant – use of evidence of what would usually be expected – failure to challenge evidence of key witness observations – decision set aside and substituted

[Hovenden and Comcare](#) (Compensation) [2020] AATA 3695 (21 September 2020); R West, Member

WORKER COMPENSATION – s 14 of the Safety, Rehabilitation and Compensation Act 1988 – degenerative spinal condition – symptoms of tightness and pain – whether aggravation of an ailment – not a disease or an injury – decision affirmed

[MacFarlane and TNT Australia Pty Ltd](#) (Compensation) [2020] AATA 3721 (21 September 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – claim for medical treatment under section 16 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – L4/5 total disc replacement and L5/S1 anterior lumbar interbody fusion surgery – aggravation of pre-existing degeneration within lumbar spine – whether medical treatment obtained in relation to injury – whether reasonable treatment decision under review remitted under section 42D of the Administrative Appeals Tribunal Act 1975 (Cth) for reconsideration

COMPENSATION – determination to cease liability for compensation under section 16 and section 19 Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether applicant continues to suffer the effects of the compensable injury – aggravation – whether aggravation continues to be contributed to, to a significant degree, by employment with the respondent – whether compensable injury gives rise to the need for medical treatment or incapacity for work – decision under review set aside and substituted

COMPENSATION – determination to cease liability for compensation under section 16 and section 19 Safety, Rehabilitation and Compensation Act 1988 (Cth) – adjustment disorder/depression – whether applicant continues to suffer the effects of the compensable injury – sequela – adjustment disorder/depression – whether sequela continues to be contributed to, to a significant degree, by employment with the respondent – whether compensable injury gives rise to the need for medical treatment or an incapacity for work – decision under review set aside and substituted

COMPENSATION – claim for permanent impairment and non-economic loss under section 24 and section 27 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – adjustment disorder/depression – whether injury results in impairment – whether impairment permanent – degree of whole person impairment – decision under review affirmed

[Plummer and National Australia Bank Limited](#) (Compensation) [2020] AATA 3759 (25 September 2020); The Hon. John Pascoe AC CVO, Deputy President

WORKERS COMPENSATION – psychological injury – claim for anxiety disorder, panic attacks and agoraphobia – whether the applicant suffers an ailment, or an aggravation of an ailment – whether the ailment, or aggravation of the ailment, was contributed to, to a significant degree, by the applicant's employment – non-work related stressors affecting the employee's health – predisposition of employee to ailment, or aggravation of the ailment – whether the respondent is liable to pay compensation – decision under review affirmed

## **Migration**

[Bale and Minister for Home Affairs](#) (Migration) [2019] AATA 6894 (19 November 2019); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of the Applicant's class UK subclass 820 spouse visa – s 501(3A) – s 501CA – Applicant failed to pass the character test – sentenced to a term of imprisonment of 12 months or more – whether there is another reason why the cancellation should be revoked – application of Ministerial Direction No 79 – applicant demonstrates a lack of insight – risk of future offending – decision affirmed

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

(Migration) [2020] AATA 3734 (23 September 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 204 Woman at Risk 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

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

(Migration) [2020] AATA 3691 (21 September 2020); M Kennedy, Member

MIGRATION – Mandatory visa cancellation – Request for revocation of cancellation – Character test – Substantial criminal record – Drug offences – Protection of the Australian community – Expectations of the Australian community – Best interests of minor children – Other considerations – No strong ties to Australia – decision affirmed

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

(Migration) [2020] AATA 3814 (30 September 2020); Senior Member M Griffin QC

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

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

(Migration) [2020] AATA 3760 (17 August 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class XA Subclass 866 Protection 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 – International Treaties Obligations Assessment (“ITOA”) – decision under review affirmed

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

(Migration) [2020] AATA 3816 (29 September 2020); T Eteuati, Member

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

**FNSM and Minister for Home Affairs** (Migration) [2019] AATA 6896 (14 October 2019); Senior

Member L Kirk

MIGRATION – refusal of Resident Return (Subclass 155) visa – failure to pass the character test – substantial criminal record – whether discretion to set aside the delegate’s decision should be exercised – whether there is any risk of the applicant engaging in future criminal conduct – whether the applicant poses a risk of harm to the Australian community – Direction No. 79 – primary considerations – protection of the Australian community – expectations of the Australian community – other considerations – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review set aside

**Hafeez, Abdul Basit and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2020] AATA 3692 (21 September 2020); F O'Loughlin, Member

MIGRATION – eligibility for Australian Citizenship application – permanent or enduring physical or mental incapacity – demonstration of English language and Australia – decision under review affirmed

**Hafeez, Abdul Rehman and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2020] AATA 3689 (21 September 2020); F O'Loughlin, Member

MIGRATION – eligibility for Australian Citizenship application – permanent or enduring physical or mental incapacity – demonstration of English language and Australia – decision under review affirmed

**Ibrahim and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2020] AATA 3822 (1 October 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class WE Subclass 050 Bridging Visa E (General) 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

**JZNV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2020] AATA 3800 (30 June 2020); Senior Member T Tavoularis

MIGRATION – refusal of application for a Partner (Temporary) (Class UK) and a Partner (Residence) (Class BS) visa – applicant failed to pass the character test under section 501(6)(d)(i) – whether the discretion in section 501(1) should be exercised – decision under review set aside

**LHNC and Minister for Home Affairs** (Migration) [2020] AATA 3752 (30 June 2020); Senior Member T Tavoularis

MIGRATION – decision on remittal – 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

**Motufoaki and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2020] AATA 3719 (17 September 2020); Dr S Fenwick, Senior Member

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



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

(Migration) [2020] AATA 3762 (28 September 2020); R Reitano, Member

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

**Salam, Rehana and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3693 (21 September 2020); F O’Loughlin, Member

MIGRATION – eligibility for Australian Citizenship application – permanent or enduring physical or mental incapacity – demonstration of English language and Australia – decision under review affirmed

**Salam, Ihama and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 3688 (21 September 2020); F O’Loughlin, Member

MIGRATION – eligibility for Australian Citizenship application – permanent or enduring physical or mental incapacity – demonstration of English language and Australia – decision under review affirmed

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

(Migration) [2020] AATA 3823 (1 October 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 – Applicant declared a drug trafficker – 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 stepchildren – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 47-year-old man who arrived in Australia as a 4-year-old child – extent of impediments if returned to New Zealand – impact on victims – impact of COVID-19 pandemic – reviewable decision set aside and substituted

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

(Migration) [2020] AATA 3683 (18 September 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year 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

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

(Migration) [2020] AATA 3808 (30 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 – primary considerations – other considerations – decision under review affirmed

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

(Migration) [2020] AATA 3817 (30 September 2020); Senior Member B Pola

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

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

(Migration) [2020] AATA 3804 (21 January 2020); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction no. 79 – primary and other considerations – protection of the Australian community – expectations of the Australian community – best interests of child – strength, nature and duration of ties to Australia – extent of impediments if returned to Mauritius – reviewable decision affirmed

**Richardson** (Migration) [2020] AATA 3727 (7 July 2020); P Ranson, Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 892 (State/Territory Business Owner) visa – ownership interest in an actively operating main business – shares held equally among family members – beneficial ownership interest in the shares of a Trust – ownership proven by authenticated documents – ownership of discretionary trusts before vesting date – retrospective amendments to the original trust deeds – ownership interest at all relevant points in time – decision under review affirmed

**1802244** (Migration) [2020] AATA 3743 (8 July 2020); P Hunter, Member

MIGRATION – Employer Nomination (Permanent) Visa – Subclass 186 Employer Nomination Scheme – waiver of health requirement – significant cost to the Australian community in health care – current Medical Officer of the Commonwealth opinion – updated medical reports – likely costs of treatment greatly reduced – undue cost to the community – applicant committed to treatment and maintaining optimal health – significant earnings increase and capacity to mitigate treatment costs – possible stigma and discrimination accessing employment and healthcare – decision under review remitted

**1913179** (Migration) [2020] AATA 3763 (13 July 2020); A Murphy, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information in previous protection visa application – inclusion in brother's Global Special Humanitarian visa – close relatives in Australia – family composition – names previously known by – consideration of discretion – grant of protection visa not based on incorrect information – unaccompanied Hazara minors in Afghanistan – circumstances giving rise to non-compliance – non-refoulement obligations – Hazara Shia – security situation in Afghanistan, and specifically Ghazni province – decision under review set aside

**Murphy** (Migration) [2020] AATA 3609 (31 August 2020); M McAdam, Member

MIGRATION – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – criminal history statements and Form 80 provided to department by applicant – personal declaration requested by department not provided – personal statement not covered by regulation, so failure to provide it not a breach – decision under review remitted

[Chowdhury](#) (Migration) [2020] AATA 3811 (17 September 2020); M Urquhart, Member

MIGRATION – Aged Parent (Residence) (Class BP) visa – Subclass 804 (Aged Parent) – health criteria – assessment by medical officer of commonwealth for non-migrating husband – limited exception if unreasonable for person to undergo assessment – elderly and terminally ill husband holds medical treatment visa – some medical assessments provided – financial capacity to mitigate cost to Australian community – not unreasonable to undergo assessment – referred for ministerial consideration – decision under review affirmed

## **Practice and Procedure**

[Australian Academy of Commerce Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 3755 (25 September 2020); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application to stay decisions of ASQA – decision to cancel NVR Act registration – decision to reject renewal of CRICOS registration – decision to reject renewal of NVR Act registration – decision not to add certain VET and ELICOS courses to CRICOS registration – decision to cancel CRICOS registration for all VET courses at all locations – opinion on desirability of stay for the purpose of securing the effectiveness of the hearing and determination of the application for review – whether review would be rendered nugatory – interests of any persons who may be effected by the review – stay granted, subject to conditions

[Ehrenfeld and Australian Securities and Investments Commission](#) [2019] AATA 6892 (13 August 2019); Deputy President B W Rayment OAM QC

PRACTICE AND PROCEDURE – application for dismissal under s 42A(5) of the Administrative Appeals Tribunal Act 1975 – repeated non-compliance with Tribunal's directions – application not dismissed

[Gathani and Tax Practitioners Board](#) (Taxation) [2020] AATA 6888 (16 October 2019); Deputy President B J McCabe

PRACTICE AND PROCEDURE – stay application – whether a stay is necessary to secure the effectiveness of the final hearing – hardship to the applicant without a stay – prospects of success – interest of the respondent – public interest – stay not necessary – stay application refused

[Mack; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 3802 (20 July 2020); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – stay application with respect to AAT Tier 1 decision – Disability Support Pension – relevant factors – prospects of success – prejudice or hardship – likelihood of recovery of monies if Respondent unsuccessful at substantive hearing – public interest – whether the review application will be rendered nugatory if stay order is not granted – whether stay order would secure effectiveness of hearing – partial stay order granted

[Mayer and National Disability Insurance Agency](#) [2020] AATA 3720 (22 September 2020); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – dismissal of application for review – whether Tribunal satisfied that it is appropriate to dismiss the application – Applicant failed within a reasonable time to progress with his application – Applicant failed within a reasonable time to comply with a procedural direction of the Tribunal – Applicant failed to appear at second non-compliance directions hearing – procedural fairness – explanation for delay – substantive merits of the application – prejudice to the parties if application dismissed – application failed to proceed past preliminary stages in an 18 month period – Applicant given numerous opportunities to provide further evidence in circumstances where his application had poor prospects of success without it – Respondent attempted to assist Applicant to obtain further evidence and to pay for medical reports – Applicant sent numerous offensive, abusive and aggressive emails to the Tribunal Registry and the Respondent which included threatening and discriminatory language, including racist and misogynistic language – application dismissed under s 42A(5)(a), and in the alternative, ss 42A(5)(b) and 42A(2) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Morrison-Francis and Commissioner of Taxation](#) (Taxation) [2020] AATA 3757 (22 September 2020); Deputy President B J McCabe and D Grigg, Member

PRACTICE AND PROCEDURE – whether the Tribunal has jurisdiction to hear the matter – deemed decision of the Commissioner – whether the applicant provided written notice under s 14ZYA requiring a decision to be made by the Commissioner – Commissioner found not to have previously received the written notice – Commissioner has now received notice requiring decision within 60 days – 60 days not elapsed between notice and application for review – no deemed decision – no reviewable decision for the Tribunal to consider – no jurisdiction

[Omar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3753 (19 June 2020); Senior Member T Tavoularis

INTERLOCUTORY DECISION – Jurisdiction question – whether the Tribunal has jurisdiction to review decision – where Tribunal found it did not have jurisdiction to review decision – where application dismissed pursuant to s42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[O’Sullivan and P & O Maritime Services Pty Ltd](#) (Compensation) [2019] AATA 6889 (24 December 2019); S Webb, Member

SEAFARERS’ COMPENSATION – compensation claim refused by primary determination – request for reconsideration – time within which reconsideration decision is to be made – deemed refusal – application for review by the Tribunal – Tribunal has jurisdiction

PRACTICE AND PROCEDURE – dismissal – purported revocation of request for reconsideration of primary determination – purported revocation of application for review by the Tribunal – applicant requested dismissal for want of jurisdiction – effect of purported revocations – meaning of ‘notify the Tribunal to the effect that the application is discontinued or withdrawn’ – applicant self-represented, on medication and unwell – latitude – time allowed to obtain legal representation – no medical evidence of prospect of recovery – applicant failed to appear at a directions hearing – applicant failed to proceed with his application within a reasonable time – applicant failed to comply with directions within a reasonable time – mandatory considerations – assessment of applicant’s explanations – applicant expressly stated his unwillingness to participate further in the proceedings without legal representation – requirement for each party to be given a reasonable opportunity to present their case – obligation to proceed in fairness to both parties – application dismissed

[S & T Income Tax Aid Specialists Pty Ltd and Tax Practitioners Board](#) [2020] AATA 3722 (14 September 2020); Senior Member R Cameron

PRACTICE AND PROCEDURE – application to stay decision under review – decision to terminate tax agent registration – public interest – consequences to parties – prospects of success – stay refused

[Siong and Migration Agents Registration Authority](#) [2020] AATA 3699 (18 September 2020); D K Grigg, Member

PRACTICE AND PROCEDURE – SUMMONS – objection – whether documents sought are relevant to the issues to be decided – whether fishing expedition – relevance and admissibility of documents sought to the Tribunal’s determination – scope of the Tribunal’s jurisdiction on review – amended summons

[Sgaravizzi and Australian Securities and Investments Commission](#) [2020] AATA 6890 (16 December 2019); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – application for a stay of a decision to ban the applicant – prospects of success – consequences of no stay – whether the review would be nugatory without a stay – addressing the public interest with conditions – stay granted – CONFIDENTIALITY APPLICATION – application for a confidentiality order under section 35 – hearings to be conducted in public – suppression of information relating to a regulatory regime – public disclosure – weight of consumer protection – confidentiality order refused – SECTION 42D REMITTAL – whether matter should be remitted to the respondent for reconsideration – participation of the applicant

[SRSH and Commissioner of Taxation](#) (Taxation) [2020] AATA 3807 (9 April 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – application for the proceedings to be stayed pending the completion of criminal proceedings – whether the interests of justice require these proceedings to be stayed – consideration of whether requiring progression of these proceedings would adversely affect the applicant’s right to silence in criminal proceedings – application refused

[TNPX and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3729 (23 September 2020); D Mitchell, Member

PRACTICE AND PROCEDURE – reinstatement of Application for Extension of Time for Making an Application for Review of Decision – application dismissed due to Applicant’s failure to appear at the scheduled interlocutory hearing to consider the application – application for reinstatement refused

## **Professions and Trades**

[Ford v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3764 (28 September 2020); Senior Member D O’Donovan

MIGRATION AGENTS REGULATIONS – Migration agent registration – cancellation of registration – applicant failed to comply with requirements of the migration agents Code of Conduct – multiple complaints made by former clients – complaints made by the Administrative Appeals Tribunal – found that the applicant breached the Code of Conduct – applicant not a fit and proper person to give immigration assistance – applicant not a person of integrity – decision under review affirmed

[Middlebrook and Tax Practitioners Board](#) [2020] AATA 3698 (18 September 2020); Deputy President B J McCabe

TAX AGENT – termination of registration – reasons for misconduct/breach of Code of Professional Conduct – applicant found not to be fit and proper person – termination the correct form of regulatory action – reduction of ban from reapplying – decision varied

[Yildiz and Migration Agents Registration Authority](#) [2020] AATA 3744 (30 July 2020); A E Burke AO, Member

MIGRATION AGENTS REGISTRATION – review of decision to cancel registration – where complaints made in relation to applicant's conduct – whether applicant is a person of integrity – whether applicant breached the Code of Conduct for registered migration agents – where applicant failed to act in accordance with the legitimate interests of her clients and deal with the client competently, diligently and fairly – whether such failure is sufficient to warrant cancellation of registration – decision under review affirmed

## Refugee

[1711148](#) (Refugee) [2020] AATA 3724 (2 July 2020); R Smidt, Member

REFUGEE – cancellation – protection visa – Bangladesh – incorrect information provided – false claims of secretive marriage – dob-in information – marriage supported by both sides of the family – wife's mental health issues – Convention on the Rights of the Child – impact on applicant's young children – decision under review set aside

[2006126](#) (Refugee) [2020] AATA 3809 (21 July 2020); S Baker, Member

REFUGEE – protection visa – Nigeria – past employment in government – failure to return to Nigeria after conference in Australia – criminal convictions from overseas – Decree 33 – separation from Australian family – mental health condition – access to mental health service – impact on Australian-citizen wife and children – Ministerial Intervention requested – decision under review affirmed

[1811497](#) (Refugee) [2020] AATA 3810 (23 July 2020); K Millar, Senior Member

REFUGEE – cancellation – protection visa – Afghanistan – incorrect answer in application – evidence of citizenship in another country – applicant accused of crime under another name – applicant travelled under fraudulently obtained identity documents – decision under review set aside

[1724257](#) (Refugee) [2020] AATA 3737 (29 July 2020); D Dragovic, Senior Member

REFUGEE – Protection visa – Pakistan – father being a tribal chief – family being well known and wealthy – political opinions – supporter of the Pashtun cause – low level political commitment – family has never been harmed – decision under review affirmed

[1913224](#) (Refugee) [2020] AATA 3776 (11 August 2020); D McCulloch, Member

REFUGEE – cancellation – protection visa – Iran – ground for cancellation – incorrect information in visa application – citizenship status – claimed statelessness – Iranian citizenship – consideration of discretion – non-refoulement obligations – particular social group – homosexual – sexuality – decision under review set aside



[1620482](#) (Refugee) [2020] AATA 3820 (10 September 2020); Dr C Huntly, Member

REFUGEE – protection visa – fear of harm from extremist group as former medical program worker – threatening letters and phone calls, and kidnapping attempt – request for recusal due to apprehension of bias – credibility – inconsistent and changing claims and evidence – low-level, short-term, casual work – no reports to police or village committee – travel to third country and return – authenticity of documents – country information about document fraud and government security operations – decision under review affirmed

## **Social Services**

[Coombes and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3782 (29 September 2020); S Evans, Member

CARE PERCENTAGE – percentage of care provided in relevant care period for family tax benefit – whether applicant provided 35% of care in relevant care period – every Friday and Saturday night – every Sunday preceding public holiday Monday – half of all school holidays – care period A – care period B – where applicant provided 35% of care in care period B – decision under review set aside and substituted

[Davies and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3754 (24 September 2020); G Hallwood, Member

SOCIAL SECURITY – Age Pension – Overpayment debt – Right to recovery – Should debt be written off or waived – Decision under review is affirmed

[De Bartolo and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3748 (25 September 2020); Senior Member D J Morris

SOCIAL SERVICES – Benefits, payments and allowances – Disability Support Pension (DSP) – review of Social Services and Child Support Division decision – whether person qualified – whether impairments fully diagnosed, fully treated and fully stabilised – eye condition – right shoulder condition – conditions found to be permanent – allocation of points to impairments – decision under review affirmed

[Dixon and Secretary, Department of Social Services](#) (Social services second review) [2019] AATA 6893 (1 July 2019); S Evans, Member

SOCIAL SECURITY – eligibility for disability support pension – lower back damage and sciatica nerve damage – whether applicant's impairments are rated 20 points or more under the Impairment Tables – applicant unable to satisfy the qualification criteria under s 94 of Social Security Act 1991 – decision under review affirmed

[DLKP and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3682 (18 September 2020); K Parker, Member

SOCIAL SECURITY ENTITLEMENTS – application of “lump sum preclusion period” – substantial portion of workers’ compensation lump sum stolen – whether discretion enlivened under s 1184K of the Social Security Act 1999 (Cth) – whether “special circumstances” existed – applicant suffers from serious mental health conditions – applicant does not have access to any other income or assets – applicant’s prospects of obtaining employment are remote – whether appropriate to treat whole or part of lump sum payment as not having been made – consideration of different factors that contributed to funds being stolen – decision set aside and remitted for reconsideration in accordance with direction to treat 75 per cent of the stolen portion of compensation lump sum payment as not having been made for the purpose of calculating preclusion period

[Elskaf and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3806 (29 September 2020); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – debt – whether property of the Applicant should be treated as her asset for asset test – trust over property in NSW – constructive trust – assets and income as a member of a couple – whether deposits in bank account should be treated as Applicants’ income for income test – overpayment – whether the Applicants owed debts to the Commonwealth – whether there are any grounds to waive or write off the debts – decisions under review varied

[Forte and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3733 (23 September 2020); Senior Member BJ Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – physical, intellectual or psychiatric impairment – whether medical conditions fully diagnosed, fully treated and fully stabilised during the assessment period – whether an impairment rating of 20 points or more existed under the Impairment Tables – decision set aside and substituted with a decision that Applicant meets disability support pension qualification criteria

[Harper and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3819 (1 October 2020); P Ranson, Member

SOCIAL SECURITY – carer payment back paid – whether overpaid newstart allowance – whether overpayment constitutes debt to the Commonwealth – whether debt should be written-off or waived – medical condition – decision under review affirmed

[Hill and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3696 (21 September 2020); R Maguire, Member

SOCIAL SECURITY – Disability Support Pension – Impairment Tables – Whether impairment fully diagnosed, treated and stabilised within the qualification period – Whether Applicant suffers severe impairment – Whether Applicant has completed Program of Support – Where Applicant not entitled to 20 points – Where decision affirmed



[Hindmarsh and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3801 (1 April 2020); Brigadier A G Warner, Member

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

[James and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3732 (22 September 2020); L Rieper, Member

SOCIAL SECURITY – disability support pension – rejection – qualification – medical – whether the Applicant had an impairment that was fully diagnosed, treated and stabilised during the qualification period – whether the impairment has a rating of at least 20 points – impairment found not fully treated or fully stabilised – decision under review affirmed

[Lee and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3751 (23 September 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – whether the Applicant had an impairment rating of 20 points or more – decision under review affirmed

[Logan and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3815 (1 October 2020); I Thompson, Member

SOCIAL SECURITY – disability support pension – Parkinson’s disease – conditions fully diagnosed treated and stabilised – decision affirmed

[Mohammad and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3746 (2 September 2020); R West, Member

SOCIAL SECURITY – disability support pension – mental health condition, major depressive disorder, generalised anxiety disorder and agoraphobia with panic attacks – spinal condition – asthma – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under impairment tables – decision under review affirmed

[Moore; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 3731 (23 September 2020); D Mitchell, Member

SOCIAL SECURITY – Disability Support Pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Relevant Period – decision under review set aside and substituted

[Potterton and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3781 (28 September 2020); Senior Member A Poljak

PRACTICE AND PROCEDURE – extension of time application – disability support pension – principles to be applied – explanation for delay – merits of substantive matter – whether extension of time reasonable in all the circumstances – extension of time refused

[Reilly and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3747 (24 September 2020); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – paid parental leave – whether Applicant had returned to work before submitting an effective claim – whether work performed was for a permissible purpose – decision under review set aside and remitted

[Rumble and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3749 (24 September 2020); S Barton, Member

DISABILITY SUPPORT PENSION – DSP – fully diagnosed – fully treated – fully stabilised – applicant does not meet impairment rating requirement – decision under review affirmed

[Samachetty and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3730 (19 September 2020); Senior Member CJ Furnell

SOCIAL SECURITY – member of a couple – whether Applicant a member of a couple – whether special reason not to treat Applicant as a member of a couple for purposes of Act – decision affirmed

[Wylie and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3750 (25 September 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – eligibility – physical and psychological impairments – whether impairments fully diagnosed, treated or stabilised – whether impairments attract 20 or more points – impairment tables – decision under review affirmed

[Zuzul and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3681 (18 September 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – Carer Payment – application for payment – eligibility – lump sum compensation preclusion period – whether special circumstances exist to reduce preclusion period – meaning of special circumstances – financial hardship – decision under review affirmed

## **Taxation**

[Crookshanks and Commissioner of Taxation](#) (Taxation) [2019] AATA 6891 (6 August 2019); Deputy President B J McCabe

SMALL BUSINESS TAXATION DIVISION – amended income tax assessment – deduction for managing taxpayer's own affairs – deduction for the cost of managing tax affairs of an entity – applicant not a public officer of the company – no reasonable prospect of success – application dismissed

[Etmekdjian and Commissioner of Taxation](#) (Taxation) [2020] AATA 3821 (1 October 2020); Deputy President B J McCabe

SUPERANNUATION – application for waiver of disqualified status – where applicant disqualified person – where delay in lodging application for waiver – whether exceptional circumstances exist – where applicant convicted of dishonestly influencing a Commonwealth public official – where applicant lodged appeal against severity of conviction – where Tribunal satisfied no exceptional circumstances – decision affirmed

[Forest Enterprises Australia Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 3784 (29 September 2020); Senior Member R Olding

TAXATION – application for leave to extend grounds of objection – where Commissioner claimed potential prejudice – where Commissioner would consent to leave subject to conditions reserving leave to vary or impose further conditions – application deferred until Applicant files Statement of Facts Issues and Contentions

[Gurney and Commissioner of Taxation](#) (Taxation) [2020] AATA 3813 (30 September 2020); Deputy President F D O’Loughlin QC

INCOME TAX – whether applicant a resident of Australia – whether applicant had Australian domicile – whether applicant had permanent place of abode outside Australia – decision affirmed

[Jordyn Properties Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 3805 (10 July 2020); Deputy President B J McCabe

TAXATION – superannuation guarantee charge – whether the Commissioner is required to amend notices of assessments to allow offsets to the charge for late contributions – late contributions unable to be offset – election has no effect – decision affirmed

[Parekh and Commissioner of Taxation](#) (Taxation) [2020] AATA 3756 (24 August 2020); Senior Member T Tavoularis and P Ranson, Member

TAX AND COMMERCIAL – Income Tax – objection to default assessments – burden of proof on taxpayer – administrative penalty – decision under review affirmed

[VGDW and Commissioner of Taxation](#) (Taxation [2020] AATA 3745 (10 June 2020); Deputy President B J McCabe

TAXATION – individual income tax – treatment of payments made following termination of employment – whether payments made ‘in consequence of’ termination – discretionary sum paid to applicant following termination – decision set aside and remitted

## **Veterans' Affairs**

[Rogers and Repatriation Commission](#) (Veterans’ entitlements) [2020] AATA 3690 (21 September 2020); The Hon. D Cowdroy AO QC, Deputy President

VETERANS’ AFFAIRS – partner service pension – whether Applicant meets Australian residency requirements set out in s 38H of the Veterans’ Entitlements Act 1986 – decision under review 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
<b>Alpert and Secretary, Department of Defence</b>	<a href="#">[2020] AATA 1632</a>
<b>QSBL and Minister for Home Affairs</b>	<a href="#">[2018] AATA 2074</a>
<b>VXQB and Child Support Registrar</b>	<a href="#">[2020] AATA 697</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Mullen v Aged Care Quality and Safety Commissioner</b>	<a href="#">[2017] AATA 1805</a> <a href="#">[2017] AATA 2556</a>	<a href="#">[2020] HCASL 194</a> <a href="#">[2020] FCAFC 78</a> <a href="#">[2019] FCA 1726</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v CTB19</b>	<a href="#">[2020] AATA 93</a>	<a href="#">[2019] FCA 2128</a> <a href="#">[2020] FCAFC 166</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v PDWL</b>	<a href="#">[2020] AATA 485</a>	<a href="#">[2020] FCA 1354</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Singh</b>	<a href="#">[2020] AATA 237</a>	<a href="#">[2020] FCA 1384</a>



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