



# AAT Bulletin

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The *AAT Bulletin* is a fortnightly 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

[Cadwell and Cage](#) (Child support) [2020] AATA 3664 (17 June 2020); S Letch, Member

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

[Xander and Haage](#) (Child support) [2020] AATA 3667 (18 June 2020); K Dordevic, Member

CHILD SUPPORT – departure determination – costs of education - manner expected by both parents - cost of maintaining the children are significantly affected – financial resources of both parents – no full and frank disclosure of financial information by the liable parent - decision under review set aside and substituted

[Royce and Hong](#) (Child support) [2020] AATA 3676 (2 July 2020); J Longo, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – reconciliation of estimate – decision under review affirmed

[Halderman and Child Support Registrar](#) (Child support) [2020] AATA 3673 (21 July 2020); T Bubutievski, Member

CHILD SUPPORT – refusal to grant extensions of time to object – no satisfactory explanation for the delay – no merit – weighing all factors the extension of time was correctly refused – decisions under review affirmed

[Balderas and Sanchez](#) (Child support) [2020] AATA 3671 (22 July 2020); F Staden, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – if so, from what date had the care changed - existing percentage of care determination revoked and new determination made from the correct date – decision under review affirmed

## Citizenship

[Abugharaba and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3986 (9 October 2020); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal to approve application – whether applicant has a permanent or enduring mental incapacity at the time of application – citizenship test – PTSD – where applicant ceased treatment – CBT – decision under review affirmed

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

(Citizenship) [2020] AATA 3882 (2 October 2020); Mr M O'Loughlin, Member

IMMIGRATION – Conferral of Australian citizenship – citizenship refusal – good character test – drug offences – risk of recidivism – decision affirmed

**EI Mokdad and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2020] AATA 4122 (15 October 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 – major depressive disorder – unable to learn English – where applicant successfully completed NSW drivers licence test – where applicant is carer of his children – where applicant has travelled overseas on numerous occasions – never attempted the citizenship test – decision under review affirmed

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

(Citizenship) [2020] AATA 4124 (21 September 2020); Mr A Maryniak QC, Member

CITIZENSHIP – citizenship by conferral – approval of citizenship cancelled under section 25 of the Australian Citizenship Act 2007 – whether the Applicant likely to maintain a close and continuing association with Australia – where Applicant overseas at time of decision – family ties – ownership of property – decision under review affirmed

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

(Citizenship) [2020] AATA 3979 (8 October 2020); Brigadier A G Warner AM LVO (Retd), Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – unfit for citizenship examinations – whether Applicant has permanent or enduring incapacity – specialist qualifications – relevance of recent medications – decision under review affirmed

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

(Citizenship) [2020] AATA 4087 (14 October 2020); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – eligibility – where application for Australian citizenship by conferral is refused – failure to meet permanent resident requirement – where applicant departed Australia before application was received by Department – issue of when the application was made – meaning of the phrase 'at the time the person made the application' – whether when posted by applicant or when received by Department – decision under review set aside and remitted

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

(Citizenship) [2020] AATA 4085 (14 October 2020); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the Applicant is of good character – common assault – domestic violence – good behaviour bond – whether the Applicant has demonstrated good/enduring moral qualities – Citizenship Policy – decision under review set aside

## Compensation

[Dempsey and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 4123 (14 October 2020); Mr S Webb, Member

MILITARY COMPENSATION – claimed service injury – anosmia – defence service – reasonable satisfaction – statement of principles – bar on deciding claim where Repatriation Medical Authority has given Notice of an investigation – Tribunal jurisdiction where decision under review made in excess of power – no bar on proceeding – Tribunal has jurisdiction

[Mansfield and Comcare](#) (Compensation) [2020] AATA 3917 (8 September 2020); Deputy President A G Melick AO SC

COMPENSATION – did the Applicant suffer from an ailment or aggravation of an ailment within the meaning of the Act – was the ailment of aggravation contributed to, by a significant degree, by the Applicant's employment – whether the ailment was an injury of which the Respondent is liable - decision set aside and substituted

[Samy and Comcare](#) (Compensation) [2020] AATA 3850 (2 October 2020); Senior Member D O'Donovan

WORKERS COMPENSATION – left sided neck and shoulder condition – whether the symptoms suffered are an injury or a disease – whether employment contributed to a significant degree – non-work related factors including the degenerative nature of the condition considered – whether the applicant suffered the injury in the course of employment – where certified fit to return to work – further shoulder injury sustained – struck by lift doors – whether separate injury to shoulder suffered in course of employment – subsequent psychological claim made – whether depression caused by restrictions placed on leave and performance management amounted to reasonable administrative action under section 5A – original injury found to be a degenerative condition not related to employment – further shoulder injury found to be a temporary aggravation of underlying degenerative condition – psychological claim made out – exclusion for reasonable administrative action does not apply

## Education and Research

[Ibrahim and Secretary, Department of Education Skills and Employment](#) [2020] AATA 4127 (14 October 2020); Ms AE Burke AO, Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting – whether special circumstances apply – whether applicant's circumstances made their full impact on or after the census date – whether circumstances are beyond the applicant's control – whether applicant had withdrawn before the census date – decision affirmed

## Migration

[GMDN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)  
(Migration) [2020] AATA 3981 (9 October 2020); Deputy President G Humphries AO

MIGRATION – applicant’s Class BB Subclass 155 Five Year Resident Return Visa cancelled – mandatory cancellation of visa – non-revocation of mandatory cancellation by delegate on review – visa cancelled because applicant did not pass the character test – substantial criminal record under section 501(7) considered – whether discretion in section 501CA to revoke mandatory visa cancellation should be exercised – whether another reason to revoke exists – considerations under Direction No 79 – best interests of applicant’s minor child considered – minor child the subject of children’s proceedings – the protection and expectations of the Australian community considered – strength nature and duration of ties – impediments to applicant if removed to Papua New Guinea – evidence from expert on wantok system considered – applicant’s atrial fibrillation considered – decision under review set aside

[MKNT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)  
(Migration) [2020] AATA 4089 (14 October 2020); Emeritus Professor PA Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – child arrival – long-stay non-citizen – failure to pass the character test – 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 – extent of impediments if removed – decision set aside and substituted

[Pattison and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)  
(Migration) [2020] AATA 3953 (1 October 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 – impugning convictions – whether the conviction is the foundation for the exercise of power by decision-maker – concurrent and cumulative sentences – decision affirmed

[Tuaoi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)  
(Migration) [2020] AATA 3980 (9 October 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) Visa – where Applicant does not pass character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction Number 79 – decision under review affirmed.

[Wilson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)  
(Migration) [2020] AATA 3951 (8 October 2020); Mr R Reitano, Member

MIGRATION – subclass 444 special category visa – citizen of New Zealand – failure to pass character test – substantial criminal record – drug-related offences – domestic violence offences – Applicant received a warning of visa cancellation on character grounds – whether discretion to revoke mandatory cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – decision under review affirmed

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

(Migration) [2020] AATA 4125 (15 October 2020); Senior Member A Nikolic AM CSC

MIGRATION – Visa refusal – citizen of India – Bridging E (Class WE) visa – substantial criminal record – failure to pass character test – whether discretion to refuse visa should be exercised – consideration of Ministerial Direction No. 79 – decision affirmed

**1917208** (Migration) [2020] AATA 3818 (21 July 2020); G Cleary, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – multiple applications for adjournments – ground for cancellation – enrolment – not enrolled in a registered course – consideration of discretion – compelling need to remain in Australia – circumstances giving rise to non-compliance – mental health condition – beyond the applicant's control – consequential cancellations – separation of the family – best interests of child – decision under review set aside

**Parmar** (Migration) [2020] AATA 4139 (23 July 2020); T Connellan, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Graduate Work Stream – skills assessment – application to be accompanied by prescribed evidence – applicant mistakenly applied for the Graduate Work Stream – intended to apply for the Post-Study Work Stream – decision under review affirmed

**Panattu** (Migration) [2020] AATA 3945 (31 July 2020); M Cooke, Senior Member

MIGRATION – Special Category (Temporary) (Class TY) – Subclass 444 visa – applicant was removed from Australia over 20 years ago – 'behavioural concern non-citizen' – 1999 cancellation – procedural fairness – Ministerial Intervention – decision under review affirmed

**Randhawa** (Migration) [2020] AATA 4054 (7 September 2020); K Raif, Senior Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 – Graduate Work stream – qualifications – Painting Trades Worker – Diploma of Building and Construction (Management) not related to occupation – focused more on management skills than technical skills – decision under review affirmed

**Song** (Migration) [2020] AATA 4014 (10 September 2020); R Skaros, Member

MIGRATION – Employer Nomination (Permanent) (Subclass 186) – Federal Circuit Court remittal – whether applicant complicit in migration agent fraud – PIC4020 does not apply – tribunal unable to identify incorrect information – associated nomination not approved – decision under review affirmed

**Nguyen** (Migration) [2020] AATA 3891 (21 September 2020); D Petrovich, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – natural justice – circumstances beyond applicant's control – hearing postponed because of COVID-19 – death of sponsor – relationship assessed as at times of application and original hearing date – genuine and continuing relationship until sponsor's death – decision under review remitted



## **National Disability Insurance Scheme**

[Gretton and National Disability Insurance Agency](#) [2020] AATA 4126 (14 October 2020); Senior Member CJ Furnell

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – disability arising from impairments resulting from multiple sclerosis – disability requirements – impairments did not result in substantially reduced capacity to undertake one or more specified activities – social interaction – learning – not likely to require support for lifetime – early intervention requirements – early intervention not likely to reduce future needs for supports – decision affirmed

[GXYZ and National Disability Insurance Agency](#) [2020] AATA 3907 (2 October 2020); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – IgA nephropathy with End Stage Renal Failure – major depression – generalised anxiety disorder – whether the applicant meets the disability requirements – applicant currently on renal transplant waitlist – whether the impairments are permanent – whether transplant likely to remedy impairment – mental health conditions since 1992 – treatment resistant – where Tribunal finds impairments are permanent – substantial reduction in functional capacity – where applicant works part-time, volunteers, maintains friendships and relationships and completed university and TAFE qualifications – where evidence of functional capacity is inconsistent – whether the applicant needs the NDIS for life – decision under review affirmed

[Madelaine and National Disability Insurance Agency](#) [2020] AATA 4025 (13 October 2020); Deputy President G Humphries AO

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – rheumatoid arthritis – chronic regional pain syndrome – left eye visual impairments – whether the applicant's impairments result in substantially reduced functional capacity to undertake one or more of the activities listed in s 24(1)(c) of the National Disability Insurance Scheme Act (the NDIS Act) – where inconsistency between the NDIS Act and the National Disability Insurance Scheme (Becoming a Participant) Rules 2016 – decision under review affirmed

## **Practice and Procedure**

[Awad and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3985 (25 September 2020); Mr A Maryniak QC, Member

PRACTICE AND PROCEDURE – citizenship by conferral – interlocutory application to dismiss on basis of no reasonable prospect of success – where outstanding criminal charges – Tribunal satisfied that there is no reasonable prospect of success – dismissed

[C.C.D Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 3956 (8 October 2020); Senior Member R J Olding

PRACTICE AND PROCEDURE – jurisdiction of the Tribunal – where applicant sought review of decision to deny refunds of excess franking credits for the 2006, 2007 and 2008 income years – where assessments ascertained the applicant's taxable income was nil – where Income Tax Assessment Act 1936, s 175A provided at the relevant time that a taxpayer could not object against a nil assessment – decision not reviewable – application for review dismissed



[Filardo and National Disability Insurance Agency](#) [2020] AATA 4092 (9 October 2020); Ms K Parker, Member

PRACTICE AND PROCEDURE – issue regarding representation of applicant – applicant is an adult participant under National Disability Insurance Scheme (NDIS) – applicant suffers from mental health conditions – father of applicant previously appointed by National Disability Insurance Agency (NDIA) as his plan nominee – NDIA subsequently suspended appointment as plan nominee – whether Tribunal should permit father of participant to continue to represent applicant – father has sought inclusion of specialist disability accommodation (SDA) at specified location in the applicant’s NDIS plan – father proposes SDA be provided to applicant by an incorporated association wholly controlled by applicant’s father – specified location of SDA is located within family home of applicant and his parents – father has conflict of interest – applicant and applicant’s mother were not informed by father about application until recently – Tribunal not satisfied applicant knows what this application is about – Tribunal considers father is not able and willing to represent the applicant’s best interests – Tribunal satisfied applicant able to make his own decisions, with support from his mother and members of support team – history of father obstructing applicant’s involvement in this proceeding and from receiving therapeutic and support coordination supports under NDIS plan – father has made false representations to NDIA and Tribunal claiming that applicant was homeless when he was not – Tribunal satisfied continued representation of applicant’s father likely to hinder performance of Tribunal’s obligations to conduct proceeding – Tribunal orders that father be excluded from representing applicant with immediate effect

[Fresh Fields Aged Care Pty Ltd and Secretary, Department of Health](#) (Social services) [2020] AATA 3952 (2 October 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – production of documents relevant to the review of the decision – relevance – protected information – orders sought restricting publication or disclosure of documents – role of the Tribunal in conducting review – orders refused

[Johnson and Commissioner of Patents](#) [2020] AATA 3983 (5 October 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – application to join party – person whose interests are affected – role of the Tribunal in conducting review – extension of time for lodging patent application – directed that party be joined

[LWQH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 3855 (1 October 2020); Senior Member A Poljak

PRACTICE AND PROCEDURE – extension of time application – citizenship by conferral – permanent resident – principles to be applied – explanation for delay – merits of substantive matter – whether extension of time reasonable in all the circumstances – extension of time application refused

[Oztech Trade Training College Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 3982 (9 October 2020); Deputy President JW Constance

PRACTICE AND PROCEDURE – extension of time – refusal to renew registration as a registered training organisation – principles to be applied – whether reasonable in all the circumstances to grant the extension of time – reason for the delay – where Applicant relied on advice of Counsel that appeal was unnecessary – where Applicant failed to take steps to file an application – extension of time refused

[SPWX and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3883 (28 September 2020); Dr S Fenwick, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time to apply for review – whether satisfied that it is reasonable in all the circumstances to extend time – member of a couple decision – allegations of family violence – whether prejudice arising from significant delay – extension of time granted

[Uprety and Migration Agents Registration Authority](#) [2020] AATA 3854 (2 October 2020); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Summons – objection to Summons – whether documents sought are relevant to the issues to be decided – whether a summons can be issued to a party to the proceedings – Summons to be complied with

[Victorian Institute of Technology Pty Ltd and Tertiary Education Quality and Standards Agency](#) [2020] AATA 3884 (22 September 2020); The Hon. M Groom, Senior Member

PRACTICE AND PROCEDURE – application for stay order – where application concerns a single condition of the reviewable decision – consideration of relevant factors – consideration of consequences for applicant if application refused - whether grant of a stay is in the public interest – application granted

[Willis and National Disability Insurance Agency](#) [2020] AATA 4021 (1 October 2020); Deputy President SA Forgie

PRACTICE AND PROCEDURE – jurisdiction – initial decision made by the Agency but not reviewed by it – no decision that is reviewable by the Tribunal

## **Professions and Trades**

[Bebawy and Migration Agents Registration Authority](#) [2020] AATA 3987 (9 October 2020); Senior Member Katter

Cancellation of registration as a migration agent – whether the agent is a person of integrity – whether the agent is a fit and proper person to provide immigration assistance – whether the agent is honest – whether the agent dealt with his or her clients competently, diligently and fairly – decision under review varied

[Eckhardt and Migration Agents Registration Authority](#) [2020] AATA 4088 (28 September 2020); Deputy President SA Forgie

MIGRATION AGENTS – cancellation of registration as migration agent for five years – whether applicant is a person of integrity – whether applicant is a fit and proper person to give immigration assistance – whether applicant has acted in line with the Code of Conduct – whether applicant's health is a mitigating factor – applicant found to not have acted with integrity – applicant found to not be a fit and proper person to give immigration assistance – decision under review affirmed

[Yvonne Anderson and Associates Pty Ltd and Tax Practitioners Board](#) [2020] AATA 4022 (13 October 2020); Ms DK Grigg, Member

TAX AGENT REGISTRATION – termination of applicants’ registrations as tax agents – whether applicants breached Code of Professional Conduct – whether applicants “fit and “proper” as required by the Tax Agents Services Act 2009 – decisions under review affirmed

## Refugee

[1803255](#) (Refugee) [2020] AATA 3833 (31 July 2020); L Nicholls, Senior Member

REFUGEE – protection visa – Sri Lanka – Federal Circuit Court remittal – race – Tamil ethnicity – religion – Hindu – political opinion – Tamil National Alliance (TNA) member and campaigner – low profile political supporter – refusal to support or join the Karuna group – association with the United National Party (UNP) – imputed pro LTTE opinion – particular social group – wealthy Tamil businessmen in the Eastern Province – targeted for harm and extortion – failed asylum seeker – illegal departure under the Immigrants and Emigrants Act – fear of people smugglers – decision under review affirmed

[1621722](#) (Refugee) [2020] AATA 3913 (18 August 2020); M Sripathy, Member

REFUGEE – protection visa – stateless Palestinian/United Arab Emirates – no right to return to country of former habitual residence – right to residence under father’s working visa cancelled – travel document from third country expired – no right to enter or reside in any other country – status in country of former habitual residence if hypothetically returned – no legal work rights, access to basic services or state protection – possibility of fines, arrest or detention – particular vulnerability as stateless Palestinian – decision under review remitted

[1917136](#) (Refugee) [2020] AATA 3856 (7 September 2020); A Murphy, Member

REFUGEE – cancellation – Subclass 790 (Safe Haven Enterprise Visa) visa – Afghanistan – incorrect information provided in protection application – Afghan naming conventions – lack of official records – Hazara ethnicity – Shia religion – ethnicity and religion are not in dispute – applicant has contributed to the community through his volunteer work – applicant continues to face a real chance of persecution – decision under review set aside

[2010800](#) (Refugee) [2020] AATA 3832 (11 September 2020); R Shanahan, Member

REFUGEE – protection visa – Sudan – tribal war – found by department not to be stateless, but Sudanese citizen – mother died when applicant was young and father’s whereabouts unknown – raised by Australian citizen aunt and came to Australia on humanitarian visa – credibility and attitude – no real knowledge of or connection to conflict – peace agreement – complementary protection – no family or social links or support network – few skills to survive – decision under review remitted

[2006342](#) (Refugee) [2020] AATA 4165 (8 September 2019); R Smidt, Member

REFUGEE – protection visa – Burkina Faso – first protection application in 1997 refused – permanent visa grant on spousal relationship – cancellation of spousal visa due to criminal convictions – student activist – detention – mental health – returnee from west – credibility issues – decision under review affirmed

## Social Services

[Cominos and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3853 (1 October 2020); Senior Member B Pola

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

[Awur; Secretary, Department of Education, Skills and Employment and](#) (Social services second review) [2020] AATA 4091 (14 October 2020); Senior Member R Cameron

SOCIAL SECURITY – family tax benefit – parenting payment – adult legally responsible – in the adult’s care – making decisions concerning daily care and control of child – decision affirmed

SOCIAL SECURITY – child care benefit – adult legally responsible – in the adult’s care – making decisions concerning daily care and control of child – decision set aside and remitted

[Elskaf and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4027 (13 October 2020); Senior Member C Puplick AM

SOCIAL SECURITY – carer payment – whether deposits in bank account should be treated as Applicant’s ordinary income – overpayment – whether the Applicant owes a debt to the Commonwealth – whether there are any grounds to waive or write off the debt – decision under review affirmed

[Geach and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3851 (2 October 2020); S Evans, Member

SOCIAL SECURITY – disability support pension – depression – myocardial infarction – arthritis – conditions all fully diagnosed, treated and stabilised – zero impairment rating for depression and arthritis – issue of impairment rating for myocardial infarction – decision under review affirmed

[Mack; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 3802 (8 October 2020); Ms LM Gallagher, Member

SOCIAL SECURITY – disability support pension – New Zealand citizen – residency requirements – Agreement – whether New Zealand citizen qualified as resident under Social Security Act 1991 (Cth) – whether New Zealand citizen qualified as resident under Agreement – decision under review set aside

[Milos and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3852 (1 October 2020); Senior Member B Pola

SOCIAL SECURITY – Disability Support Pension – DSP – cancellation following review of qualification for indefinite portability – whether condition is fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables as at date of cancellation – decision under review affirmed

[Parker and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4084 (24 September 2020); Ms AE Burke AO, Member

SOCIAL SECURITY — oral decision – arrears for rental assistance – administrative error leading to underpayment – 13 week rule – decision under review varied

[Rechter and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 3984 (12 October 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – disability support pension – pension allowed upon internal review from a certain date – whether pension payable before that date – conditions including Menieres disease – whether fully treated and diagnosed – qualification period – medical appointment – prescription of already tried medication – self-reporting – whether severe functional impact – decision affirmed

[Tjandra and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4086 (11 September 2020); Senior Member MJ McGrowdie

SOCIAL SECURITY – sickness allowance – start date – incapacitated for work – definition of incapacitated – usual duties – decision under review affirmed

## **Taxation**

[Arjunan and Commissioner of Taxation](#) (Taxation) [2020] AATA 4024 (13 October 2020); Ms D Mitchell, Member

TAXATION – residency of tax payer – taxpayer worked overseas for 7 months – whether Australian resident according to the Ordinary Concepts Test – whether Australian resident according to the Domicile Test – whether Australian resident according to the 183-Day Test – decision under review affirmed

[Cox and Commissioner of Taxation](#) (Taxation) [2020] AATA 3857 (2 October 2020); Dr M Evans-Bonner, Senior Member

TAXATION – application for release from taxation liability – eligible and non-eligible taxation liabilities – Taxation Administration Act 1953 (Cth) – s 340-5 of Schedule 1 – Respondent conceded that Applicant taxpayer would suffer serious hardship if he were required to satisfy his taxation liabilities – meaning of phrase “serious hardship” – income/outgoing test – assets/liabilities test – other relevant factors in deciding whether to exercise discretion to grant release from taxation liabilities – Tribunal finds it is appropriate to exercise discretion to grant Applicant taxpayer release from eligible taxation liabilities – reviewable decision set aside and substituted

[San Remo Heights Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 4023 (9 October 2020); Senior Member RJ Olding

TAXATION – GOODS AND SERVICES TAX – where applicant subdivided a single parcel of land over an extended period – where applicant also carried on rental and grazing activities – whether sales of subdivided lots in the course or furtherance of an enterprise – where no evidence of purpose of applicant’s acquisition of the land – relevance of applicant being a company – decision affirmed

[The Northern Trust Company and Chief Executive Officer, Australian Transaction Reports and Analysis Centre](#) [2020] AATA 3989 (8 October 2020); Deputy President BW Rayment OAM QC

INDUSTRY CONTRIBUTION LEVY – whether grant of waiver of payment of levy appropriate – whether payment of levy to be paid would be inequitable – where levy based on back-capture of international fund transfer instruction reports in previous year – where applicant had not previously paid levy – where inequality or inequity built into the Minister’s Determination – where collection of levy based on risk is inappropriate – where impact of levy a cost of doing business – where evidence of hardship not provided – 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>MXDK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 3762</a>
<b>Parkes and Repatriation Commission</b>	<a href="#">[2020] AATA 3358</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Kura v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 5428</a>	<a href="#">[2020] FCA 1478</a>
<b>Mareiti v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2175</a>	<a href="#">[2020] FCA 1491</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Jokic</b>	<a href="#">[2020] AATA 279</a>	<a href="#">[2020] FCA 1434</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Koka</b>	<a href="#">[2019] AATA 5289</a>	<a href="#">[2020] FCA 1471</a>
<b>Nathanson v Minister for Home Affairs</b>	<a href="#">2019] AATA 642</a>	<a href="#">[2020] FCAFC 172</a> <a href="#">[2019] FCA 1709</a>
<b>Say v AAT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 694</a>	<a href="#">[2020] FCA 1489</a>
<b>VKTT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 649</a>	<a href="#">[2020] FCA 1437</a>
<b>XFKR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2017] AATA 2385</a>	<a href="#">[2020] FCAFC 167</a> <a href="#">[2020] FCA 323</a>





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