



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 27/2020

2 November 2020

The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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Enquiries regarding this publication may be directed to 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

[Romero and Romero](#) (Child support) [2020] AATA 3655 (16 July 2020); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income accepted – decision under review affirmed

[Keller and Child Support Registrar](#) (Child support) [2020] AATA 4293 (29 July 2020); S Brakespeare, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no merit in substantive application – decision under review affirmed

[Garcia and Garcia](#) (Child support) [2020] AATA 4288 (7 August 2020); J Thomson, 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 – no special circumstances exist to refuse to apply interim period – decision under review affirmed

[Stiglec and Stiglec](#) (Child support) [2020] AATA 4287 (19 August 2020); M Baulch, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – decision under review set aside and substituted

[Sherburn and Sherburn](#) (Child support) [2020] AATA 4294 (24 August 2020); R Ellis, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – overseas income – whether new overseas income could be determined for parent – decision under review affirmed

Citizenship

[Ali and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 4205 (21 October 2020); M O'Loughlin, Member

IMMIGRATION AND CITIZENSHIP – Application for citizenship refused – Insufficient evidence regarding identity of the applicant – whether Tribunal satisfied of identity of applicant – Decision under review affirmed

Bagherizadeh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 4219 (22 October 2020); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant has satisfied subsection 21(3)(d) – permanent or enduring physical or mental incapacity at the time of the citizenship application – depression – anxiety – PTSD – citizenship test – incapability to understand the nature of the application – incapability to demonstrate a basic knowledge of the English language – incapability to demonstrate an adequate knowledge of Australia and of the responsibilities and privileges of Australian citizenship – decision under review affirmed

Farah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 4315 (29 October 2020); Senior Member R Cameron

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – whether applicant has a permanent or enduring mental incapacity – depression – post-traumatic stress disorder – citizenship test – decision affirmed

FXYV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 4231 (21 October 2020); Senior Member B Pola

CITIZENSHIP – application for citizenship by conferral – whether the applicant meets the general residence requirement – whether the applicant meets the special residence requirements – application of ministerial discretions – decision under review affirmed

Gan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 4236 (23 October 2020); Dr L Bygrave, Member

CITIZENSHIP – DISMISSAL – application for Australian citizenship by conferral – where respondent seeks dismissal of application – no reasonable prospects of success – applicant does not meet general residence requirements – applicant overseas for 155 days preceding application for citizenship – COVID-19 lockdown – where applicant cannot leave Malaysia – applicant does not satisfy any Ministerial discretions – application dismissed

Gebrelul and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 4267 (28 October 2020); L M Gallagher, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied applicant was of good character – evidence that purported driver's licence was fake and fraudulently obtained – reviewable decision affirmed

Zod and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2018] AATA 5981 (11 May 2018); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant satisfied general residence requirement – unlawful non-citizen – whether administrative error – decision under review affirmed

Corporations

[Burnell and Australian Securities and Investments Commission](#) [2020] AATA 4186 (19 October 2020); Deputy President F D O'Loughlin QC and Professor A O'Connell, Senior Member

CORPORATIONS ACT – financial services – licensing – authorised representative – banning order – arranging insurance contracts without an Australian Financial Services Licence and while not an authorised representative of a Australian Financial Services Licence holder involvement in non-compliance with a financial services law – reason to believe that Applicant is likely to contravene or likely to become involved in a contravention of a financial services law – decision affirmed

Education and Research

[Quality Training & Development Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 4149 (14 October 2020); R West, Member

REGISTERED TRAINING ORGANISATION – review of decision to cancel registration under NVR Act and refuse registration under ESOS Act – effect of expiry of period of initial registration prior to decision – lack of utility in Tribunal decision – exercise of discretion under s.42B of the AAT Act – application dismissed

Migration

[Dearing and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 4262 (28 September 2020); Dr N A Manetta, Senior Member

Migration – mandatory visa cancellation – whether cancellation should be revoked – applicant convicted of serious criminal offences – trafficking offences – possession of firearms – primary considerations – protection of Australian community – nature and seriousness of the conduct – risk to Australian community – interests of minor children – expectations of the Australian community – other considerations – decision under review set aside and substituted

[Dunasemant and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 4239 (7 October 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category 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

[Leiataua and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 4327 (30 October 2020); Senior Member T Tavoularis

MIGRATION – Revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (temporary) visa – where the Applicant does not pass the character test – where there is a substantial criminal record – consideration of Ministerial Direction Number 79 – grievous bodily harm – interest of affected minor children – decision under review set aside and substituted

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

(Migration) [2020] AATA 4171 (16 October 2020); Deputy President Boyle

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

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

(Migration) [2020] AATA 4240 (11 September 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class WA Subclass 010 Bridging A Visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review affirmed

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

(Migration) [2020] AATA 4318 (29 October 2020); Senior Member A Nikolic AM CSC

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

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

(Migration) [2020] AATA 4266 (23 September 2020); Senior Member L Kirk

MIGRATION – non-revocation of mandatory cancellation of a visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – first notification letter posted to last known address of applicant – whether the applicant received the first notification letter – where first notification letter was returned to Department as ‘returned to sender’ – second notification letter – whether applicant received second notification letter by hand or email – applicant signed receipt of notification – whether applicant made representations within the prescribed 28 day time period – representations made outside of prescribed time – decision under review affirmed

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

(Migration) [2020] AATA 4255 (26 October 2020); R Reitano, Member

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

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

(Migration) [2020] AATA 4147 (16 October 2020); Senior Member A Poljak

MIGRATION – non-revocation of mandatory cancellation of Class SN Subclass 190 Skilled-Nominated visa – citizen of India – where visa mandatorily cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – domestic violence – whether there is another reason why the original decision should be revoked – Direction No. 79 – primary considerations – protection of the Australian community – expectations of the Australian community – other considerations – decision under review affirmed

Smith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 4184 (19 October 2020); Senior Member T Tavoularis

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

SNPS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 4183 (29 September 2020); Senior Member L Kirk

MIGRATION – visa cancellation – Class TY, Subclass 444 Special Category (Temporary) visa – substantial criminal record – aggravated robbery and inflict ABH-SI – drug and alcohol misuse – Direction No. 79 – primary considerations – extensive criminal history – moderate risk of reoffending – where Applicant has no children and limited evidence of how any minor children would be impacted by Applicant’s removal – expectations of the Australian community – other considerations – where Applicant’s ties to Australia are given limited weight – extent of impediments if returned – decision under review affirmed

Tsang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 4319 (29 October 2020); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 – mandatory visa cancellation – section 501(3A) – subclass 820 visa – Applicant failed character test – drug supply and related offences – sentenced to a term of imprisonment for 12 months or more – whether there is another reason why the cancellation should be revoked – Hong Kong – non-refoulement – remorse – rehabilitation – application of Direction No. 79 – weighing of primary and other considerations – safety of the Australian community – expectations of the Australian community – decision under review affirmed

TVTM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 4168 (9 October 2020); R West, Member

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

WQWS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2020] AATA 4254 (26 October 2020); Deputy President B W Rayment OAM QC

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – where offending relating to assault – Direction No. 79 considered – primary considerations – protection of the Australian community – where applicant is currently free from alcohol – where applicant assessed as Medium Low risk of reoffending – best interests of minor children – other considerations – whether international non-refoulement obligations exist – where applicant would be sent to Syria – where applicant is a Christian returnee – international non-refoulement obligations owed – humanitarian considerations – potential harm suffered if returned – decision set aside and substituted

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

(Migration) [2020] AATA 4185 (19 October 2020); Deputy President B W Rayment OAM QC

MIGRATION – refusal to grant Safe Haven Enterprise (Class XE) visa – whether applicant fails character test – whether there is a risk that the applicant will engage in criminal conduct in Australia – where applicant convicted of common assault on his wife while in immigration detention – whether discretion should be exercised – Direction No. 79 applied – applicant had not engaged in any further criminal conduct – where international non-refoulement obligations owed based on applicant’s HIV status – whether applicant may face other serious harm if returned to Myanmar based on other aspects – decision under review set aside and remitted

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

(Migration) [2020] AATA 4238 (23 October 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BS subclass 801 partner (Residence) 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 – domestic violence – risk of re-offending – decision under review affirmed

Sharma (Migration) [2020] AATA 4259 (2 October 2020); A M Williams, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – bogus document – first employment certificate not impugned by department as bogus – second employment certificate impugned as bogus – authenticity of issuer verified by tribunal – false and misleading information – time period of work experience incorrect – applicant’s claim of confusion unaccepted – impugned information holds no relevance to any of the criteria – PIC 4020(5)(b) not enlivened – decision under review remitted

Tim (Migration) [2020] AATA 4225 (8 October 2020); K Raif, Senior Member

MIGRATION – Contributory Parent (Migrant) (Class CA) visa – Subclass 143 (Contributory Parent) – balance of family test – adult child sponsor in Australia, one deceased child and two in home country – one of those two to third country, lost contact and died there – after learning of sibling’s death, review applicant notified lawyer, who did not notify department – death certificate provided to tribunal – that child alive at time of visa application – remaining adopted child included in balance of family test – time since application made – no discretion to recommend grant of visa – decision under review affirmed

1825299 (Migration) [2020] AATA 4234 (9 October 2020); K Millar, Senior Member

MIGRATION – cancellation – Refugee and Humanitarian (Class XB) visa – Subclass 202 (Global Special Humanitarian) – incorrect information in visa application – member of family unit – dependent child – relationship status – engaged to be married or married – married in a religious ceremony – 4 months’ pregnant – de facto relationship at time of application – ineligible for grant of visa – strong countervailing factors – Australia’s non-refoulement obligations – broader than eligibility for a protection visa – Convention against Torture – risk from Al-Shabaab – best interests of child – decision under review set aside

Huynh (Migration) [2020] AATA 4332 (13 October 2020); R Gagliardi, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – tourist stream – genuine temporary entrant – previous lengthy stay on student visas – poor study record, visa cancellation and applications for tribunal review and ministerial intervention – incentives to remain or return – family members, work, current finances and future earning potential – applicant’s compliant travel to other countries and parents’ to Australia – decision under review affirmed

[1836727](#) (Migration) [2020] AATA 4349 (16 October 2020); J Clarke, Member

MIGRATION – New Zealand Citizen (Family Relationship) (Temporary) (Class UP) visa – Subclass 461 (New Zealand Family Relationship (Temporary)) – application made more than 12 months after last substantive visa was held – consideration of request for referral to the Minister – strong compassionate circumstances – rights and benefits of Subclass 444 visa holders – unique or exceptional circumstances – unfair or unreasonable results – best interest of children – family unity – Ministerial Intervention requested – decision under review affirmed

[Ye](#) (Migration) [2020] AATA 4313 (16 October 2020); C Kannis, Member

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – genuine de facto relationship – financial, household and social aspects of relationship – living separately for periods for family reasons and COVID-19 travel restrictions – nature of commitment – plans for wedding – decision under review remitted

National Disability Insurance Scheme

[QXDY and National Disability Insurance Agency](#) [2020] AATA 4180 (19 October 2020); The Hon. J Pascoe AC CVO, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – whether condition has been conclusively diagnosed – whether supports relate to the participant's disability – whether supports could be harmful to the participant's condition – National Disability Insurance Scheme Rules – decision varied

Practice and Procedure

[Clavero and Australian Postal Corporation](#) (Compensation) [2020] AATA 4167 (19 October 2020); Deputy President J Sosso

PRACTICE AND PROCEDURE – application to stay decision of Australian Postal Corporation – whether a stay order would secure the effectiveness of the hearing and determination of the application for review – whether Applicant has prospects of success in substantive application – whether Applicant would suffer financial hardship if stay order refused or granted – whether making of a stay order would guarantee ongoing compensation payments – Applicant's request for a stay order refused

[Foryabee and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4317 (28 October 2020); A E Burke AO, Member

PRACTICE AND PROCEDURE – application for extension of time – delay of two years in lodging application – whether reasonable excuse for delay – where prejudice would be incurred by respondent and public by allowing extension of time – prospects of success – not reasonable in all the circumstances to allow extension of time

[Huchatz and Australian Capital Territory](#) (Compensation) [2020] AATA 4237 (22 October 2020); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Summons – objection to compliance with Summons – whether disclosing documents sought would be contrary to public interest or confidentiality – psychological test material – integrity of test material and test data – disclosure to be restricted to registered psychologists – Summons to be satisfied

[Unergy and Comptroller-General of Customs](#) [2020] AATA 4268 (27 October 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – jurisdiction – where demand for payment of interim dumping duties and interim countervailing duties – where no payment by Applicant – reviewable decisions under the Customs Act 1901 (Cth) – where no jurisdiction

Refugee

[1619377](#) (Refugee) [2020] AATA 4202 (7 August 2020); P Noonan, Member

REFUGEE – protection visa – Indonesia – political opinion – anti-corruption protests – particular social group – homosexuals – race – ethnic Chinese – religion – Buddhist – arrests – return visits to Indonesia – obtaining clearance to leave Indonesia – freedom of expression – decision under review affirmed

[2003458](#) (Refugee) [2020] AATA 4029 (7 August 2020); J Pennell, Senior Member

REFUGEE – protection visa – Thailand – particular social group – persons threatened for refusing to sell land as demanded – forced land sale – fear of killing – fear of physical assault – arson attack – corruption – state protection – decision under review affirmed

[1703515](#) (Refugee) [2020] AATA 4175 (10 August 2020); Dr C Huntly, Member

REFUGEE – protection visa – Japan – discrimination of foreigners – previous marriage to an African-born man – mixed-race children – delay in seeking protection – threshold for ‘significant harm’ – decision under review affirmed

[1935655](#) (Refugee) [2020] AATA 4277 (17 August 2020); J Pennell, Senior Member

REFUGEE – protection visa – Iran – Federal Court remittal – religion – conversion to Christianity in Australia – attendance and activities – husband simplistic understanding of Christianity – wife deep belief and commitment to the Christian faith – members of family unit – particular social group – former alcoholic and drug addict – desertion of military service – mental health and access to treatment – imputed political opinion – returned failed asylum seeker – decision under review remitted

[2011381](#) (Refugee) [2020] AATA 4188 (16 September 2020); S Baker, Member

REFUGEE – Protection visa – Iran – religion – Christian convert – conversion to Christianity was not genuine – ‘westernised’ lifestyle – particular social group – failed asylum seeker returning from a western country – applicant faced no interest from the authorities – decision under review affirmed

[1929841](#) (Refugee) [2020] AATA 4244 (7 October 2020); J Marquard, Member

REFUGEE – Protection visa – Vietnam – religion – Catholic – confiscation of the land – imputed political opinion – protests against the Formosa incident – student visa cancellation – last resort mechanism to remain in Australia – inconsistent evidence – credibility concerns – decision under review affirmed

[1705266](#) (Refugee) [2020] AATA 4275 (12 October 2020); L Symons, Member

REFUGEE – protection visa – China – religion – member of underground Christian church – detention, torture and fines – credibility – implausible, inconsistent and unconvincing evidence – previous travel to third country without applying for protection there – country information – decision under review affirmed

Social Services

[Aberdour; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 4182 (19 October 2020); D K Grigg, Member

SOCIAL SECURITY – Disability Support Pension – DSP – whether medical condition fully diagnosed, fully treated and fully stabilised – decision under review set aside

[Gainsford and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4181 (20 October 2020); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – disability support pension – cancellation – reviewable decision set aside and substituted

[George and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4316 (29 October 2020); Senior Member D Cremean

SOCIAL SECURITY – Disability support pension – several conditions including depression and anxiety – whether fully diagnosed, treated and stabilised – corroboration – whether severe impairment – decision under review set aside

[Hackett and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4263 (28 October 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – Age Pension – whether applicant meets the residence requirements – where applicant's only property and primary residence is overseas – limited accommodation in Australia – some family relationships in Australia – only superannuation fund and one bank account in Australia – frequent travel outside of Australia – decision under review affirmed

[Hurmoz and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4179 (20 October 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – eligibility – physical and psychological impairments – benign prostatic hyperplasia – emphysema – hypertension – alcohol dependence – mental health condition – whether impairments fully diagnosed, treated and stabilised – whether impairments attract 20 or more points – impairment tables – decision under review affirmed

[Jackson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4265 (20 October 2020); S Barton, Member

DISABILITY SUPPORT PENSION – DSP – Impairment Tables – applicant does not meet impairment rating requirement — decision under review affirmed

[Leerhoff and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4196 (20 October 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – cancellation of Newstart Allowance – Employment Pathway Plan – mutual obligation failure – reasonable excuse – whether Applicant gave prior notice of reasonable excuse – whether Newstart Allowance correctly cancelled – whether non-payment period correctly applied – Reviewable Decision affirmed

[Mack; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 4204 (8 October 2020); L M 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

[McKinnon and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4207 (20 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

[Milovanovic and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4166 (16 October 2020); The Hon. M Groom, Senior Member

SOCIAL SECURITY – compensation recovery provisions – applicants in receipt of compensation affected payments – applicants received compensation payment for arrears of compensation – Centrelink recovered substantial amount from compensation payment – special circumstances – financial situation – health – applicants incurred significant legal costs relative to compensation payment – portion of compensation payment that was used for legal costs not considered to be part of the amount received by the applicants – decisions set aside and remitted

[Noll and Secretary, Department of Agriculture, Water and the Environment](#) (Social services second review) [2020] AATA 4170 (19 October 2020); W Frost, Member

SOCIAL SECURITY – pensions, benefits and allowances – farm household allowance – where the Applicant is engaged in a sharefarming agreement – whether the applicant contributed significant part of his labour and capital to a farm enterprise – decision under review affirmed

[Thornycroft and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4264 (7 September 2020); A Maryniak QC, Member

SOCIAL SECURITY – recoverable carer payment – carer supplement debt – cessation of care – intervention order – no special reason to extend respite period

SOCIAL SECURITY – carer allowance debt – cessation of care – intervention order – no special reason to extend respite period – debt written off permanently – no capacity to repay

Taxation

[MWWD and Commissioner of Taxation](#) (Taxation) [2020] AATA 4169 (16 October 2020); Deputy President B J McCabe

TAXATION – employee or independent contractor – multi-factorial approach to characterisation – exercising control – exclusivity – who assumes the risk – decision under review set aside and substituted

[Purcell and Commissioner of Taxation](#) (Taxation) [2020] AATA 4235 (23 October 2020); R Reitano, Member

TAXATION – excess non concessional contributions to superannuation – spousal contributions to superannuation – associated earnings treated as assessable income – amount of associated earnings – whether calculation of associated earnings was correct – whether proxy rate is a penalty – no power vested in the Commissioner to remit amount calculated as associated earnings – objection decision affirmed – decision under review affirmed

[Richard Albarran, Brent Kijurina and Cameron Shaw as Joint Administrators of Cooper & Oxley Builders Pty Ltd as trustee for the Cooper & Oxley Builders Unit Trust and Commissioner of Taxation](#) (Taxation) [2020] AATA 4325 (30 October 2020); Senior Member R J Olding

TAXATION – GOODS AND SERVICES TAX – input tax credits – representatives of incapacitated entities – whether administrators entitled to input tax credits – where acquisitions made by an incapacitated entity but consideration provided by administrators – held administrators not entitled to input tax credits – decision affirmed

[Royal Wins Pty Ltd and Innovation and Science Australia](#) [2020] AATA 4320 (28 October 2020); Deputy President I R Molloy

INDUSTRY RESEARCH AND DEVELOPMENT – whether activities core or supporting research and development activities within the meaning of Division 355 of the Income Tax Assessment Act 1997 (Cth) – where Applicant's activities related to the integration of gaming algorithms to develop a gaming platform – whether activities displayed a systematic progression of work – whether outcomes could not have been known or determined in advance on the basis of current knowledge, information and experience – inadequate contemporaneous documentation – decision under review affirmed

Veterans' Affairs

[Hammal and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements)
[2020] AATA 4256 (26 October 2020); Senior Member J C Kelly

VETERANS' AFFAIRS – claim for compensation – spinal canal stenosis – whether the claim is an attempt to relitigate an earlier claim before the Tribunal – date of onset – whether the condition was contributed to, to a significant degree, by the Applicant's military service – 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
Hovhannisyanyan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3445
Ibrahim and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3822
Motuftoaki and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3719
Pearson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3527
Tapara and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3808

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
CKT20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 910	[2020] FCA 1546
Gadzikwa v Comcare	[2020] AATA 631	[2020] FCA 1560 [2020] FCA 1205
Markaj v Minister for Immigration and Border Protection	[2017] AATA 1516	[2020] FCA 1511
Minister for Home Affairs v Waraich	[2018] AATA 4524	[2020] FCA 1513
NWWJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1631	[2020] FCAFC 176



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