



AAT Bulletin

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

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

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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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

[MRLH and Child Support Registrar](#) (Child support second review) [2020] AATA 4727 (26 November 2020); Ms AE Burke AO, Member

CHILD SUPPORT – whether interim care period applies – where family court order regarding care of child in force – child refusing to participate in contact – whether reasonable action to ensure compliance with care arrangement was taken – whether special circumstances existed – commencement of an interim care period – decision under review affirmed

[RDQD and Child Support Registrar](#) (Child support second review) [2020] AATA 4655 (20 November 2020); The Hon. J Pascoe AC CVO, Deputy President

CHILD SUPPORT – percentage of care determinations – whether each parent had pattern of care for the children – relevant care period – whether the existing percentage of care determination must or should be revoked and a new determination be made – decision set aside and substituted

[Bhatti and Child Support Registrar](#) (Child support) [2020] AATA 4783 (24 September 2020); J Longo, Member

CHILD SUPPORT – refusal to grant an extension of time to object – refusal to credit non-agency payments - reasonable explanation for the delay in lodging the objection late – some prospects of objection succeeding and therefore there is arguable merit – the extension of time should be granted – decision under review set aside and substituted

[Pace and Pace](#) (Child support) [2020] AATA 4774 (2 October 2020); P Jensen, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

[Gagliardi and Gagliardi](#) (Child support) [2020] AATA 4391 (6 October 2020); K Buxton, Member

CHILD SUPPORT – departure determination – costs of education – manner expected by both parents – cost of maintaining the children are significantly affected – ground for departure exists – financial resources of both parents – decision under review affirmed

[Baba and O'Bear](#) (Child support) [2020] AATA 4782 (13 October 2020); S Letch, Member

CHILD SUPPORT – percentage of care – whether there were changes to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decisions under review set aside and substituted

CHILD SUPPORT – date of effect of the tribunal's decisions – late applications for review – whether there were special circumstances that prevented the applications for review being lodged in time – special circumstances do not exist – tribunal decides not to make a determination under subsection 95N(2)

[Gaba and Kaasa](#) (Child support) [2020] AATA 4773 (12 October 2020); K Buxton, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart – decision under review set aside and substituted

[Maag and Maag](#) (Child support) [2020] AATA 4779 (7 October 2020); S Cullimore, Member

CHILD SUPPORT – non-agency payment – whether school fees should be credited as prescribed payments – all conditions to credit are satisfied – whether there are special circumstances to refuse – special circumstances exist – prescribed payments refused – decision under review affirmed

Citizenship

[Ali and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2020] AATA 4646 (19 November 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – subsection 24(3) prohibition – whether the Tribunal is satisfied of the applicant's identity – three pillars of identity – biometrics – documents – life story – applicant submitted non-genuine Taskera – where applicant has not produced documentary evidence of his identity from either Pakistan or Afghanistan – credibility of applicant's claims – where Tribunal is not satisfied of applicant's identity – decision under review affirmed

[LHSM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2020] AATA 4654 (19 November 2020); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – Faili Kurd – applicant claims to be stateless – whether applicant citizen of Iraq – meaning of identity – application of Citizenship Policy – decision under review set aside

[Musleh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2020] AATA 4651 (19 November 2020); Senior Member C Puplick AM

CITIZENSHIP – Application for Australian citizenship – citizenship by conferral – discretion to waive or set aside the subsection 22(1) residency requirements under subsection 22(9) – Applicant's time spent in Australia – whether close and continuing association with Australia – consideration of Citizenship Policy indicia – reviewable decision set aside and remitted

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

(Citizenship) [2020] AATA 4653 (10 November 2020); Dr S Fenwick, Senior Member

CITIZENSHIP – refusal to approve Australian citizenship by conferral – whether the applicant is of good character – seriousness of offending – whether sufficient time has elapsed since offending – decision under review affirmed

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

(Citizenship) [2020] AATA 4696 (25 November 2020); Emeritus Professor PA 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 – three pillars of identity – documents – biometrics – life story – where the applicant has provided insufficient material to establish his identity – decision under review affirmed

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

(Citizenship) [2020] AATA 4722 (26 November 2020); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal – good character requirement – assault occasioning actual bodily harm – domestic violence – one-off act – insight and rehabilitation – reviewable decision affirmed

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

(Citizenship) [2020] AATA (26 November 2020); Deputy President J Sosso

CITIZENSHIP – application for conferral of Australian citizenship – whether Applicant’s identity satisfied under s 24 of the Australian Citizenship Act 2007 (Cth) – decision under review set aside and remitted – direction that Minister is to be satisfied of Applicant’s identity

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

(Citizenship) [2020] AATA 4668 (23 November 2020); Senior Member PJ Clauson AM

CITIZENSHIP – Australian Citizenship Test – Where Applicant has not passed the Australian Citizenship Test – Where Applicant has been given multiple attempts at test – Where Applicant does not have permanent or enduring physical or mental incapacity – decision affirmed

Compensation

DJVD and Comcare (Compensation) [2020] AATA 4614 (13 November 2020); Dr S Fenwick, Senior Member

COMPENSATION – determination to cease liability for compensation under Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether applicant continues to suffer the effects of the compensable injuries – injury affecting cervical spine – major depressive disorder – whether applicant’s physical symptoms a result of underlying degenerative change – whether applicant’s psychiatric condition continues to be contributed to, to a significant degree, by her employment – decision under review set aside and substituted

[Gough and Comcare](#) (Compensation) [2020] AATA 4669 (23 November 2020); Senior Member PJ Clauson AM

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – Compensation (Commonwealth Government Employees) Act 1971 – where applicant seeking compensation for death of parent – Asbestos – Malignant Mesothelioma – Pneumoconiosis – whether disease was contributed to by employment – whether employment caused death – whether employment was of a kind contemplated by regulations – whether employment is presumed to be contributing factor to death – where employee did not suffer from disease prescribed by regulations – decision affirmed

PRACTICE AND PROCEDURE – Safety, Rehabilitation and Compensation Act 1988 – whether legislation in force at time of injury is applicable – whether allowing claim to survive after delay would prejudice respondent – whether the decision by the Administrative Appeals Tribunal in 1983 prevents the applicant from litigating issues – issues not necessary to decide

[Jafreen and Comcare](#) (Compensation) [2020] AATA 4652 (19 November 2020); Senior Member JC Kelly

COMPENSATION – workers' compensation – Commonwealth employee – whether liability should be accepted under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – upper limb injury – whether pain and symptoms attributable to a physical condition – consideration of medical evidence – decisions under review affirmed

Customs

[Pegasus Supply Solutions Pty Ltd and Collector of Customs](#) [2020] AATA 4688 (24 November 2020); Mr PW Taylor SC, Senior Member

CUSTOMS AND EXCISE – customs duty – dutiable goods – where company held warehouse licence under Customs Act 1901 (Cth) – where Collector carried out stock count of all excise equivalent goods held at warehouse premises – where Collector issued request to account – where Applicant served with demand under s 35A(1) – whether Applicant has satisfactorily accounted for the goods in accordance with s 37 – decision under review set aside

Education and Research

[Thomson and Secretary, Department of Education, Skills and Employment](#) [2020] AATA 4672 (23 November 2020); Mr R Reitano, Member

HIGHER EDUCATION – application for re-credit of Student Learning Entitlement – outside application period – whether possible for application to be made in time – decision under review affirmed

Freedom of Information

[Plowman and Australian Securities and Investments Commission](#) (Freedom of information) [2020] AATA 4729 (24 November 2020); Deputy President BW Rayment OAM QC

FREEDOM OF INFORMATION – access to conditionally exempt documents – where documents in relation to complaint made against Applicant – where no adverse findings made against Applicant – whether adequate searches were made – where release of documents would have adverse impact in managing employees – whether disclosure is in the public interest – decision under review affirmed

Migration

[Agwaig and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 4674 (23 November 2020); Senior Member C Puplick AM

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – whether there is another reason for the mandatory cancellation to be revoked – ministerial Direction no. 79 – primary considerations – protection of the Australian community – the best interests of minor children – expectations of the Australian community – other considerations – international non-refoulement obligations – claims of harm and persecution – strength, nature and duration of ties – extent of impediments if removed – weighing of primary and other considerations – reviewable decision is set aside and substituted

[DVDP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 4671 (23 November 2020); Senior Member A Poljak

MIGRATION – non-revocation of mandatory cancellation of Return (Residence) (Class BB) Subclass 155 – Five Year Resident Return visa – citizen of Vietnam – where visa mandatorily cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – reckless wounding in company – affray – 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

[Edwards-Lee and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 4628 (18 November 2020); Ms M East, Member

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

[Filipovich and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 4697 (24 November 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

[GDXK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2020] AATA 4593 (16 November 2020); Emeritus Professor PA Fairall, Senior Member

MIGRATION – Migration Act 1958 – mandatory visa cancellation – section 501(3A) – application of Direction No. 79 – weighing of primary and other considerations – safety of the Australian community – expectations of the Australian community – decision under review set aside and substituted

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

(Migration) [2020] AATA 4670 (23 November 2020); Senior Member DJ Morris

MIGRATION – citizen of Sri Lanka – applicant held Class BC Subclass 100 Partner visa – visa mandatorily cancelled under s 501CA on basis applicant convicted of offence carrying sentence of 12 months imprisonment or more – applicant concedes unable to pass character test – consideration of whether another reason under Act to revoke mandatory cancellation of applicant’s visa – Ministerial Direction No. 79 – primary considerations – minor child in Australia but significant breaks in contact – other considerations – admissions of misleading statements to Department – decision under review affirmed

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

(Migration) [2020] AATA 4592 (6 November 2020); Deputy President Britten-Jones

MIGRATION – refusal to grant Partner visa – whether the applicant is of good character – substantial criminal record – whether to exercise discretion to refuse – the best interests of minor children in Australia – risk to the Australian community – crimes of a violent nature against women – drug offences – not fully rehabilitated – not of good character – considerations in Direction No. 79 favour exercising of discretion to refuse the applicant a visa – decision affirmed

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

(Migration) [2020] AATA 4656 (2 November 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 200 (Permanent) Refugee visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – non-refoulement – consideration of Ministerial Direction No. 79 – decision under review affirmed

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

(Migration) [2020] AATA 4594 (16 November 2020); Senior Member CJ Furnell

MIGRATION – Mandatory visa cancellation – citizen of Somalia – Class BC Subclass 100 Partner (Migrant) visa – failure to pass good character test – Section 501 of the Migration Act – Property related offending – offences involving violence – recklessly cause injury - whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – risk of recidivism in older offenders – international non-refoulement obligations considered – multiple medical conditions – extent of impediments if removed – decision affirmed

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

(Migration) [2020] AATA 4657 (10 August 2020); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa under section 501CA – whether mandatory cancellation should be revoked – citizen of New Zealand – Criminal Records (Clean Slate) Act 2004 (NZ) – Ministerial Direction 79 – primary considerations – other considerations – decision under review set aside and substituted

Rogers (Migration) [2020] AATA 4743 (2 September 2020); M Sripathy, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – sponsorship limitations – 5 years not lapsed since the earlier visa application – 5 years elapsed during review process – genuine and continuing relationship – decision under review remitted

[Lee](#) (Migration) [2020] AATA 4565 (28 October 2020); M Jackson, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – genuine temporary entrant – incentives to remain or return – immediate family in Australia, extended family and friends in home country – not working in Australia – civil unrest, coronavirus and economic conditions in home country – work, visa and study history – value of course to future business plans – cook studying leadership courses – credible evidence and arguments – decision under review remitted

[VIJENDER SINGH](#) (Migration) [2020] AATA 4794 (29 October 2020); B Cullen, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Hospitality, Retail and Service Managers – subject of an approved nomination – nomination withdrawn – compassionate circumstances – longstanding and systemic bullying in sponsor’s business – serious psychiatric injury arising out of employment – serious, ongoing and irreversible harm – unfair or unreasonable results – Ministerial Intervention requested – decision under review affirmed

[Joo](#) (Migration) [2020] AATA 4771 (9 November 2020); S Trotter, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Retail Manager (General) – request to adjourn hearing until judicial appeal finalised – statutory objective to provide fair, just, economical, informal, quick mechanism of review – applicants consented to review without attendance – decision under review affirmed

[TRIEU](#) (Migration) [2020] AATA 4716 (13 November 2020); N McGowan, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – application made more than 28 days after last substantive visa held – lengthy period as unlawful non-citizen – compelling reasons for not applying criteria – sponsor’s mental health and young child’s medical condition – applicant’s financial and emotional support – cost of travelling to home country together if criterion not waived – decision under review affirmed

Practice and Procedure

[Akile and Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs](#)

(Citizenship) AATA 4631 (18 November 2020); Brigadier A G Warner AM LVO (Retd), Member

PRACTICE AND PROCEDURE – applications for extensions of time – significant delay – awareness of appeal rights – unsatisfactory explanation for delay – limited prospects of success for substantive applications – alternative avenue of relief – prejudice – Tribunal not satisfied that reasonable in all the circumstances to grant extensions of time – applications for extensions of time refused

[Bruce and Comcare](#) (Compensation) [2020] AATA 4695 (23 November 2020); Deputy President BW Rayment OAM QC

PRACTICE AND PROCEDURE – compensation – application for dismissal under section 42A(2) of the Administrative Appeals Tribunal Act 1975 – where applicant failed to appear on multiple occasions – where applicant expressed intention to withdraw – where applicant failed to communicate with the Tribunal – application dismissed

[Care Education and Training Services Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 4699 (25 November 2020); Mr R Reitano, Member

PRACTICE AND PROCEDURE – STAY APPLICATION – cancellation of registration of a registered training organisation – where applicant failed to comply with “Standards” – reputational damage – where Tribunal considers interests of persons affected by the decision – prospects of success in application for review – stay refused

[Colquhoun and DOF Management Australia Pty Ltd](#) (Compensation) [2020] AATA 4629 (18 November 2020); Deputy President Boyle

PRACTICE AND PROCEDURE – interlocutory application – dismissal for lack of jurisdiction – decision not a “reviewable decision” – identifying the decision under review – compensation – reconsideration – claim to be taken to be disallowed – extension of time to request reconsideration – application dismissed

[Dall and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4630 (13 November 2020); Mr S Barton, Member

PRACTICE AND PROCEDURE – extension of time application – social security – Parenting Payment – failure to report income – Parenting Payment overpayment – length of delay – explanation for delay – prejudice to respondent – administrative error – solely attributable – knowingly – special circumstances – prospects for success – extension of time refused

[Daly and Australian Securities and Investments Commission](#) [2020] AATA 4589 (29 October 2020); Deputy President McCabe

PRACTICE AND PROCEDURE – interlocutory application – abeyance – Federal Court proceedings – the Court and Tribunal reaching inconsistent conclusions – privilege – forensic advantage – matter to proceed in usual course to hearing

[Marshall and National Disability Insurance Agency](#) [2020] AATA 4685 (2 November 2020); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – interlocutory application to release the Respondent from the implied undertaking in relation to confidentiality – objection to the request to release – whether special circumstances exist – where Applicant’s wife has similar proceedings before the Tribunal – where the documents were prepared for the purposes of litigation – where the documents contain sensitive and personal information – achieving the best interests of justice – request to be released from the implied undertaking in relation to confidentiality granted

[Progress Engineering Company Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 4726 (26 November 2020); Mr RL Hamilton SC, Senior Member

PRACTICE AND PROCEDURE – private ruling – whether a proposed lump sum compensation payment would be an exempt compensation payment for income tax purposes – reviewable objection decision – whether the Tribunal has jurisdiction – where period to which a private ruling relates has ended and the scheme has not been entered into – the Tribunal does not have jurisdiction to review the objection decision

[Swierczynski and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 4615 (18 November 2020); Senior Member DJ Morris

PRACTICE AND PROCEDURE – Application for review of decision to refuse Bridging E (Class WE) visa under s 501 of Migration Act – applicant has voluntarily departed Australia – category of visa requires a person to be within the Australian migration zone for grant of the visa – Tribunal cannot grant relief that Applicant is seeking – whether application is frivolous – whether application for review has no reasonable prospect of success – no possibility of decision of any practical benefit to applicant – application for review dismissed – written reasons for oral decision

MIGRATION – Refusal of Bridging E (Class WE) visa under s 501 of Migration Act – character grounds – risk to Australian community that Applicant would re-offend

Refugee

[1702188](#) (Refugee) [2020] AATA 4633 (8 September 2020); J Pennell, Senior Member

REFUGEE – protection visa – Pakistan – Federal Circuit Court remittal – religion – Shia Muslim – particular social group – membership of a human rights organisation – political opinion – human rights activity – support (including legal assistance) to women and children – imputed pro-Western views – past harm suffered – attacked and kidnapped by Lashkar-e-Jhangvi (LeJ) – credibility concerns – embellished or fabricated evidence – delay in seeking protection – voluntary return to Pakistan – mental health issues – access to mental health care – generalised violence – failed asylum seeker – decision under review affirmed

[2010168](#) (Refugee) [2020] AATA 4634 (16 September 2020); J Marquard, Member

REFUGEE – protection visa – Liberia – race – Krahn ethnicity – particular social group – returnees or former combatants – persons with mental illness – death of father – fear of revenge killings – physical injury – forced child soldier – civil war atrocities – separation from family – real chance – end of the civil war – decision under review affirmed

Social Services

[Boccaccio and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4606 (13 November 2020); Senior Member BJ Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – whether Applicant's conditions were fully diagnosed, treated and stabilised during the qualification period – whether Applicant's conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[Crematy and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4648 (19 November 2020); Ms 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 affirmed

[Delta and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4649 (3 July 2020); Senior Member PJ Clauson AM

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Disability Support Pension – Impairment Ratings – Functional Impairment – Whether impairment sufficient to rate as severe – Decision Affirmed

[Dittloff and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4666 (23 November 2020); Mr G Hallwood, Member

SOCIAL SECURITY – Disability support pension – Permanent impairment – Sufficient points on impairment tables – Continuing inability to work – Decision under review is affirmed

[Englezos and Secretary, Department of Social Services](#) (Social services second review) AATA 4650 (19 November 2020); Senior Member B Pola

SOCIAL SECURITY – carer payment – whether the Applicant was overpaid carer payments – whether overpayment constitutes a debt – whether all or part of the debt may be written off or waived – decision set aside and substituted

[Gosney and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4721 (26 November 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – Disability Support Pension (DSP) – unlimited portability – whether Applicant qualifies for unlimited portability of DSP – whether Applicant has a severe impairment of 20 points or more under a single impairment table – assessment of conditions and impairments – decision under review affirmed

[Hoefl and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4647 (19 November 2020); Deputy President IR Molloy

SOCIAL SECURITY – age pension – personal assets – trust – family companies – assets test – asset threshold – designated private companies – designated private trust – attribution of assets – source and control tests – whether 33.33% attribution applies – whether applicant is entitled to age pension based on assets and income – decision under review affirmed

[Hall and Secretary, Department of Education, Skills and Employment Services](#) (Social services second review) [2020] AATA 4665 (18 November 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – suspension and cancellation of Newstart Allowance – Employment Pathway Plan (Job Plan) – mutual obligation failure – reasonable excuse – whether Applicant had reasonable excuse for failing to sign Job Plan – whether Applicant advised of reconnection requirement – whether Applicant failed to meet reconnection requirement within the four week time-limit – whether Newstart Allowance correctly suspended and cancelled – Reviewable Decision affirmed

[Petruschenko and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4684 (24 November 2020); Mr W Frost, Member

SOCIAL SECURITY - Newstart Allowance – assets test - debt – failure to declare interest in real estate – whether debt should be written off or waived – financial hardship – special circumstances – can the value of assets be reduced - decision under review affirmed

[Storen and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4664 (23 November 2020); Senior Member PJ Clauson AM

SOCIAL SECURITY – Disability Support Pension – Social Security Act 1991 – whether condition is fully diagnosed, treated and stabilised – whether impairment is entitled to 20 points or more – where condition is not fully diagnosed – where there are multiple applications – determining which is reviewable application – where there is a preclusion period preventing application – decision affirmed

[Watiwat and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4683 (24 November 2020); Mr R Reitano, Member

SOCIAL SECURITY – Age Pension – rate of payment – whether applicant is a member of a couple – living separately and apart from the other person on a permanent or indefinite basis – financial aspects of relationship – nature of household – social aspects of relationship – sexual relationship – nature of commitment to each other – whether special reason to not treat applicant as a member of a couple – reviewable decision set aside and substituted

Taxation

[Gennai and Commissioner of Taxation](#) (Taxation) [2020] AATA 4667 (23 November 2020); Senior Member R Pintos-Lopez

TAXATION – OBJECTION DECISION – Employee Share Scheme – Notice of Amended Assessment objection – interests – shares – risk of forfeiture or loss – affirms the decision under review

[Very Important Business Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA (25 November 2020); Senior Member RJ Olding

TAXATION – GOODS AND SERVICES TAX (GST) – gold industry – creditable acquisitions – whether purported acquisitions of scrap gold included input taxed supplies of precious metal – whether applicant’s supplies included input taxed supplies – meaning of “regularly converts or refines” precious metal – burden of proving what assessments should have been not discharged – decision affirmed

Veterans' Affairs

[Rochford and Repatriation Commission](#) (Veterans’ entitlements) [2020] AATA 4725 (26 November 2020); Senior Member Katter

VETERANS’ AFFAIRS – claim for special rate – decision under review varied

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
Bebawy and Migration Agents Registration Authority	[2020] AATA 3987
BQHJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3734
DPGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3523
QFWW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4266
Savaiinaea and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3510

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ali v Minister for Home Affairs	[2019] AATA 417	[2020] FCAFC 201 [2020] FCA 538
Benrabah v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2018] AATA 457	[2020] HCASL 227 [2020] FCAFC 4 [2019] FCA 521
Kare Kare v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 498	[2020] FCA 1643
Prahauser and Secretary, Department of Social Services	[2020] AATA 105	[2020] FCA 1658



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