



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.

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Recent news

End of year arrangements

The AAT will be closed on the following days:

- Friday 25 December 2020
- Monday 28 December 2020
- Friday 1 January 2021

Our offices, except for Canberra, Hobart and Melbourne will be open from Tuesday 29 December to Thursday 31 December 2020.

If the AAT or the agency that made the original decision have provided a date by which an application or documents must be submitted, you should consider using our [online lodgement facilities](#) so that you don't miss your deadline.

If you intend to send documents by post, please be aware there may be delays in postal delivery during this time.

Contact the AAT on 1800 228 333 or visit www.aat.gov.au for more information.

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

[PTBM and Child Support Registrar](#) (Child support second review) [2020] AATA 4970 (9 December 2020); S Barton, Member

CHILD SUPPORT – child support assessment – determination of percentage of care – lack of corroborating evidence – decision affirmed

[YXVZ and Child Support Registrar](#) (Child support second review) [2020] AATA 4802 (27 November 2020); Mr S Webb, Member and Ms F Hewson, Member

CHILD SUPPORT – care percentage decision for each parent of a child during a period – objection lodged by one parent more than 28 days later – objection allowed – delayed lodgement not prevented by special circumstances – no discretion to vary date of effect imposed by statute – no application for AAT first review - application by other parent for AAT first review of care percentage decision – decision substituted with no change to date of effect – application for AAT second review – Tribunal has no jurisdiction in respect of special circumstances decision.

[Aaron and Child Support Registrar](#) (Child support) [2020] AATA 4921 (16 October 2020); S Brakespeare, 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

[Caba and Child Support Registrar](#) (Child support) [2020] AATA 4917 (6 October 2020); M Douglas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – late objection – date of effect of the Tribunal's decision - decision under review set aside and substituted

[Cada and D'Uva](#) (Child support) [2020] AATA 4926 (8 October 2020); R Ellis, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income - whether the estimated income is less than the amount likely to be the actual income - discretion to refuse should be exercised - decision under review set aside and substituted

[Cameron and Cowper](#) (Child support) [2020] AATA 4922 (21 October 2020); K Dordevic, Member

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

[Maat and Maas](#) (Child support) [2020] AATA 4923 (15 October 2020); C Breheny, 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 - decision under review set aside and substituted

Citizenship

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

(Citizenship) [2020] AATA 4817 (1 December 2020); Mrs J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – rejection – citizenship test – eligibility requirements for citizenship – whether applicant has permanent or enduring physical or mental incapacity – consideration of medical evidence – decision under review affirmed

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

(Citizenship) [2020] AATA 4958 (27 November 2020); D Mitchell, Member

CITIZENSHIP – Australian Citizenship Act 2007 (Cth) – citizenship by conferral – whether the discretions in section 22 apply - whether the Applicant meets the special residence requirements – section 22A – whether the Applicant was engaging in activities that are of benefit to Australia – section 22B – whether the Applicant was engaging in a particular kind of work requiring regular travel outside of Australia that are of benefit to Australia – requirements of IMMI 13/056 not met – decision under review affirmed

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

(Citizenship) [2020] AATA 4955 (27 November 2020); D Mitchell, Member

CITIZENSHIP – citizenship by conferral – person aged under 18 years old – discretion to approve or refuse to approve citizenship application – decision under review affirmed

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

(Citizenship) [2020] AATA 4968 (10 December 2020); Senior Member D J Morris

CITIZENSHIP – identity of applicant – threshold requirement not met — inconsistency in information provided to Department – inconsistency in evidence given at hearing compared with previous interviews and written submissions – National Identity Proofing Guidelines – desirability of consistency in application of policy – unsatisfactory explanation for inconsistencies in life story – reasonable satisfaction of identity not reached – decision under review affirmed

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

(Citizenship) [2020] AATA 4849 (2 December 2020); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – re-hearing following remittal from the Federal Court – whether Tribunal satisfied of Applicant's good character at the time of the Tribunal's decision – qualified security assessment from Australian Security Intelligence Organisation (ASIO) – non-disclosure that Applicant knew his father was on board a people smuggling vessel in first ASIO interview – Applicant requested second ASIO interview to voluntarily disclose information – Applicant only has one traffic conviction in 2013 – substantial contributions to community through employment and volunteer work over a 12 year period – reviewable decision set aside and remitted for reconsideration with a direction that the Applicant is of good character under s 21(2)(h) of the Australian Citizenship Act 2007 (Cth)

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

(Citizenship) [2020] AATA 4912 (3 December 2020); Brigadier A G Warner, AMLVO (Retd), Member
CITIZENSHIP – application for citizenship by conferral – national of Iran – eligibility – refusal of citizenship – statutory prohibition – Tribunal not satisfied of identity – decision under review affirmed

Compensation

Kingshott and Trident LNG Shipping Services (Compensation) [2020] AATA 4848 (1 December 2020); Deputy President Boyle

COMPENSATION – workers compensation – chronic obstructive pulmonary disease (COPD) – emphysema – environmental tobacco smoke – material contribution to or aggravation of ailment – inconsistent active smoking histories – decision affirmed

Rye and Comcare (Compensation) [2020] AATA 4963 (9 December 2020); Deputy President J W Constance

WORKERS' COMPENSATION – right anterior cruciate ligament tear – whether injury arose out of, or in the course of, the Applicant's employment – where Applicant participated in NAIDOC netball event – where Applicant encouraged by Department employees to participate in the competition – where the Department sought to exercise control of the conduct of its employees during the competition – where Department represented its employees who participated as representatives of the Department – where injury arose out of her employment with the Department – decision set aside and substituted

Zaveczyk and Comcare (Compensation) [2020] AATA 4960 (9 December 2020); Dr I Alexander, Senior Member

WORKERS' COMPENSATION – four claims in relation to conditions affecting the Applicant's right and left shoulder, and right elbow – bilateral rotator cuff disorder – whether the Applicant suffered an injury – whether the Applicant's employment contributed to, to a significant degree, or contributed to the aggravation of the Applicant's condition – decisions under review affirmed

Education and Research

[Australasian College of Education and Training Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 4806 (30 November 2020); K Parker, Member

VOCATIONAL EDUCATION AND TRAINING – cancellation of registered vocational education and training organisation (RTO) – refusal of application to change scope of registration – breach of conditions of registration under the National Vocational Education and Training Regulation Act 2011 (Cth) – non-compliance with Standards for Registered Training Organisations 2015 – instance of cheating during examination – inadequate supervision and other conduct of assessor which enabled student to cheat – inadequate assessment systems – assessment guides not adhered to when marking assessments – whether previous security course delivered over sufficient duration – RTO failed to identify student learning support needs and to provide support – RTO failed to ensure its executive officers and high managerial agents met “fit and proper person” requirements – executive officers and high managerial agents made false statements to ASQA and the Tribunal and failed to disclose close association with suspended RTO – current CEO previously found by Victorian Ombudsman to have assisted students at RMIT to cheat during two examinations in 2008 and 2009 – Victorian Ombudsman’s issued public report – lack of commitment by owner to fulfil current role of executive officer and high managerial agent – insufficient insight and contrition by former and current CEOs into past breaches of conditions of registration and non-compliance with Standards - demonstrated minimalist and reactive approach to compliance – Tribunal does not have confidence RTO will meet conditions of registration and comply with Standards in future – decisions under review affirmed

[Site Skills Group Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 4805 (30 November 2020); Deputy President R I Hanger AM QC

VOCATIONAL EDUCATION AND TRAINING - registered training organisation – decision under review to reject applicant’s application to renew its registration as an NVR registered training organisation – decision under review to reject the applicant’s application to change its scope of registration under the NVR Act – whether Applicant compliant with Standards for Registered Training Organisations (RTOs) 2015 – where continued non-compliance – fit and proper person - decisions under review affirmed

Freedom of Information

[Patrick and Secretary, Department of Prime Minister and Cabinet](#) (Freedom of information) [2020] AATA 4964 (9 December 2020); Deputy President Britten-Jones

FREEDOM OF INFORMATION – audit report from Auditor-General - exemptions claimed under ss 33(a)(ii) (damage to defence of the commonwealth), 47C (deliberative processes), 47D (effect on financial interests of the Commonwealth) and 47G(1)(a) (affect lawful business, commercial or financial affairs) of the Freedom of Information Act 1982 - majority of report publicly disclosed - given the extent of the disclosure and other publicly available information there are no grounds to maintain a claim for exemption from disclosure – the causative elements of ss 33, 47D and 47G(1)(a) are not satisfied – the disclosure of the audit report would not disclose deliberative matter under s 47C(1) - the document is not exempt under s 33 and is not conditionally exempt under ss 47C, 47D or 47G(1)(a) – the decision refusing access to part of the audit report is set aside

Migration

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

(Migration) [2020] AATA 4973 (9 December 2020); Mrs J C Kelly, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – substantial criminal record – application for revocation – protection of the Australian community – risk of reoffending – best interests of minor children in Australia affected by the decision – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if removed from Australia – decision set aside and substituted

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

(Migration) [2020] AATA 4956 (9 December 2020); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 – section 501(3A) – section 501CA – mandatory cancellation of Applicant's Class TY, Subclass 444 Special Category (Temporary) visa – Applicant is a citizen of New Zealand – failure of the character test – whether there is another reason to revoke the visa cancellation – application of Direction No. 79 – weighing of primary and other considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – denial of guilt – remorse – strength, nature and duration of ties – elderly frail parents – decision under review set aside

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

(Migration) [2020] AATA 4800 (27 November 2020); Mr S Evans, Member

MIGRATION – mandatory visa cancellation – failure to pass character test – whether there is another reason why the decision-maker should exercise its discretion to revoke the original visa cancellation decision – consideration of Direction No. 79 – protection of the Australian community – expectations of the Australian community – decision under review affirmed

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

(Migration) [2020] AATA 4961 (8 December 2020); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – 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 minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to New Zealand when Applicant has voluntarily returned – reviewable decision set aside and substituted

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

(Migration) [2020] AATA 4850 (2 December 2020); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – non-refoulement obligations – other considerations outweigh primary considerations - decision set aside

MIGRATION – jurisdiction – the Tribunal's power to revoke a decision under s 501CA(4) – whether the applicant made representations in response to the Minister's invitation within the period of 28 days prescribed by the Migration Regulations 1994

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

(Migration) [2020] AATA 4820 (30 November 2020); Senior Member B Pola

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

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

(Migration) [2020] AATA 4860 (3 December 2020); Dr L Bygrave, Member

MIGRATION – visa cancellation – Class BB (subclass) 155 Resident Return visa – substantial criminal record – where applicant has been imprisoned on multiple occasions – previous administrative warning – drug offences – violent offending – drug misuse – Direction No. 79 – primary considerations – medium risk of reoffending – rehabilitative course completed – expectations of the Australian community – other considerations – ties to Australia – limited impediments if returned – decision under review affirmed

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

(Migration) [2020] AATA 4967 (10 December 2020); Senior Member A Poljak

MIGRATION – non-revocation of mandatory cancellation of Class BF transitional (permanent) visa – citizen of Germany – where visa mandatorily cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – domestic violence – assault – contravene AVO – drug/alcohol addiction – mental health issues – whether there is another reason why the original decision should be revoked – Direction No. 79 – primary considerations – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – other considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – decision under review set aside and substituted

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

(Migration) [2020] AATA 4957 (4 December 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a 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 – drug addiction – drug related crime – decision under review affirmed

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

(Migration) [2020] AATA 4962 (1 December 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class UF Subclass 309 Partner (provisional) 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

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

(Migration) [2020] AATA 4863 (3 December 2020); Deputy President A G Melick AO SC

MIGRATION – refusal to revoke cancellation of Class TY Subclass 444 Special Category (temporary) visa – whether the Applicant passes the character test - whether there is another reason why the original decision should be revoked – protection of Australian community – nature and seriousness of conduct – risk to Australian community – risk of re-offending – best interests of minor children – expectations of Australian community – decision under review set aside

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

(Migration) [2020] AATA 4804 (30 November 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Vanuatu – Class BS Subclass 801 Partner Visa – failure to pass good character test – assault – indecent assault - whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

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

(Migration) [2020] AATA 4818 (30 November 2020); Ms 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

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

(Migration) [2020] AATA 4959 (7 December 2020); The Hon. M Groom, Senior Member

MIGRATION – visa mandatorily cancelled - serving sentence of imprisonment of more than 12 months – commercial quantity of border-controlled drug – heroin – citizen of Vietnam - Resident Return (Class BB) (Subclass 155) visa - whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

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

(Migration) [2020] AATA 4864 (25 November 2020); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – offence of stealing as a servant – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of 3-year-old son – expectations of the Australian community – practical effect of non-revocation of cancellation decision – valid protection visa application still on foot – non-refoulement – strength, nature and duration of ties to Australia – Applicant is a 40-year-old woman who arrived in Australia 10 years ago – extent of impediments if returned to Zambia – impact of COVID-19 pandemic – reviewable decision set aside and substituted

[Aiumpalad](#) (Migration) [2020] AATA 5037 (13 October 2020); J Bakas, Member

MIGRATION – cancellation – Subclass 457 (Temporary Work (Skilled)) visa – a Café or Restaurant Manager (ANZSCO code: 141111) – ceased work with employer – commenced with employer unrelated to sponsor – sponsor's sale of business – applicant unaware of immigration requirement to commence with new employer – attempts to regularise immigration status – new sponsor's nomination application for applicant – decision under review set aside

[Bandara](#) (Migration) [2020] AATA 4894 (7 August 2020); S R Jones, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – related position nomination refused and refusal affirmed on review – employed in occupation for at least two years before position nomination application made – application made in the evening of the last day of the two-year period – referred to department for ministerial consideration – decision under review affirmed

[NOORANI](#) (Migration) [2020] AATA 5000 (23 November 2020); A Grant, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – sponsored family stream – genuine temporary entrant – general security situation and extremist attacks – two siblings killed – previous compliant travel to another country – good job with limited leave entitlement – sole carer for mother – candid and truthful evidence – decision under review remitted

[PAYLESS IMPORT & EXPORT PTY LTD](#) (Migration) [2020] AATA 4901 (8 September 2020); D Kelly, Member

MIGRATION – nomination of a position – Temporary Residence Transition Nomination stream – position of Head Chef – top individual income tax rate – training commitments and obligations – recipient of the training must be an employee of the standard business sponsor – training expenditure in each year of the sponsorship – reasonable to disregard training obligations – decision under review affirmed

[Perez](#) (Migration) [2020] AATA 5041 (13 October 2020); M Cooke, Senior Member

MIGRATION – cancellation - Subclass 457 (Temporary Work (Skilled)) visa - Temporary Business Entry (Class UC) Temporary Work (Skilled) (Subclass 457) – failed to commence employment with sponsor – pregnancy – post-natal depression – position terminated with cleaning job offered – Developer Programmer (ANZSCO 261312) included in Medium and Long-term Strategic Skills List – Australian IT qualification – attempts to find work – application for student visa to regularise status – decision under review set aside

Practice and Procedure

[Assaf and Tax Practitioners Board](#) (Taxation) [2020] AATA 4965 (9 December 2020); Deputy President B W Rayment OAM QC

PRACTICE AND PROCEDURE – stay application – where matters in Scott and Australian Securities and Investments Commission [2009] AATA 798 considered – where tax liabilities may be reduced on appeal – whether in the public interest – where applicant will not take on new clients until determination of application – whether appointing another registered tax agent will assist – stay refused

[Assaf and Tax Practitioners Board](#) (Taxation) [2020] AATA 4972 (9 December 2020); Deputy President B W Rayment OAM QC

PRACTICE AND PROCEDURE – stay application – where matters in Scott and Australian Securities and Investments Commission [2009] AATA 798 considered – whether income tax liability assessment should be treated as conclusive – where income tax liability may be reduced pending other appeals – impact on applicant and other parties – whether in the public interest – where applicant will not take on new clients until determination of application – whether appointing another registered tax agent will assist – stay granted with conditions

[Delahunty and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 4857 (3 December 2020); Mrs J C Kelly, Senior Member

VETERANS' AFFAIRS – claim for war widow's pension – kind of death suffered by the veteran – whether the death was service related or war caused – preliminary decision

[Door and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 4966 (15 October 2020); Senior Member T Tavoularis

MIGRATION – Practice and Procedure – application for review of non-revocation decision under section 501CA(4) of the Migration Act 1958 (Cth) – interlocutory hearing – where application filed out of time – whether there is power to extend the time for the making of an application for review – where time period is absolute pursuant to s 500(6B) of the Migration Act 1958 (Cth) – application dismissed

[Haberecht and Australian Capital Territory](#) (Compensation) [2020] AATA 4819 (30 November 2020); Ms S Webb, Member

PRACTICE AND PROCEDURE – applications for review of reconsideration decisions dealing with compensation claims in respect of psychological injuries - applications listed for hearing – new application for review of a reconsideration decision dealing with compensation claims in respect of psychological and right shoulder injuries – application for adjournment and for new application to be joined – applicable principles – relevant considerations – General Practice Direction applied – application refused

[Laughlin and Secretary, Attorney-General's Department](#) [2020] AATA 4940 (4 December 2020); R West, Member

FAIR ENTITLEMENTS GUARANTEE – FEG assistance refused – appeal lodged out of time – application for extension of time under s.29(7) of the AAT Act – no reasonable prospect of success – application refused.

[Wiltz and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4971 (8 December 2020); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – extension of time – factors that are relevant when considering an extension of time – awareness of appeal rights and explanation for delay – length of delay – prejudice to the Respondent Secretary and public – Applicant does not have an arguable case – Tribunal not satisfied extension of time reasonable in all the circumstances – application for extension of time refused

Professions and Trades

[Cau and Victorian Building Authority](#) [2020] AATA 4851 (2 December 2020); L M Gallagher, Member

MUTUAL RECOGNITION – application of Mutual Recognition Act 1992 (Cth) – registration of building surveyor – application of mutual recognition principles – substantial equivalence of occupations – Applicant a registered building surveyor in Western Australia – refusal of registration in Victoria – whether activities of building surveyor substantially the same as those of a building surveyor under respective registrations – decision under review affirmed

Refugee

[1729148](#) (Refugee) [2019] AATA 6918 (25 November 2019); M Hawkins, Member

REFUGEE – protection visa – Iran – Federal Circuit Court remittal – imputed political opinion – opposition to Islamic leader – religion – conversion to Christianity – returned asylum seekers – divorce forced by wife’s family – fear of arrest – fear of killing – employment – destroying evidence of identity – decision under review set aside and substituted

[1709216](#) (Refugee) [2020] AATA 4798 (30 October 2020); M Moustafine, Member

REFUGEE – protection visa – China – religion – father’s involvement in an underground family church – son of a cult leader – credibility concerns – departed China legally on own passport – unique or exceptional circumstances – serious, ongoing and irreversible harm – medical conditions of Australian permanent resident father – integration into the Australian community – length of time in Australia – Ministerial Intervention requested – decision under review affirmed

[1621713](#) (Refugee) [2020] AATA 4975 (21 October 2020); D McCulloch, Member

REFUGEE – protection visa – China – religion – Christian – Local Church – family arrests – applicant organised church training sessions – banned cult groups list – fellow Local Church members arrested – involvement in Local Church in Australia – decision under review remitted

[1812188](#) (Refugee) [2020] AATA 4845 (2 September 2020); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – Federal Circuit Court remittal – religion – alleged apostasy – imputed political opinion – opposition to the government – artist – plans for exhibition venue – land development – fear of arrest – physical assault – education – exit procedures – decision under review remitted

[1930334](#) (Refugee) [2020] AATA 4847 (29 October 2020); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Iran – incorrect information in the visa application – nationality – stateless – race – Faili Kurd – religion – conversion to Christianity – character grounds – Iranian citizenship – deceived by people smuggler – fear of arrest – fear of killing – non-refoulement obligations – genuine committed relationship with an Australian citizenship – decision under review set aside

[2012886](#) (Refugee) [2020] AATA 5044 (30 October 2020); C Smolicz, Member

REFUGEE – protection visa – Liberia – imputed political opinion – grandfather’s connection to former president – citizenship and ethnicity – returnee after long residence in other countries – ability to subsist – threats from family of friend accidentally killed – humanitarian visa cancelled on character grounds – immigration detention – willingness to live in country where he spent time as refugee – country information – end of civil war and political change – decision under review affirmed

Social Services

[Chamma; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 4974 (10 December 2020); Senior Member C Puplick AM

SOCIAL SECURITY – Carer Payment – Parenting Payment – Family Tax Benefit – Child Care Rebate – Child Care Benefit – rate of payment – whether applicant was a member of a couple – legally married – financial aspects of relationship – nature of household – social aspects of relationship – sexual relationship – nature of commitment to each other – whether living separately and apart on a permanent or indefinite basis – whether there is a debt – whether debt should be recovered – waiver of debt in special circumstances – waiver of debt arising from sole administrative error – writing off debt – reviewable decision is affirmed

[Chey and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4859 (2 December 2020); Mr R West, Member

SOCIAL SECURITY – disability support pension – chronic pain syndrome – depression - anxiety – whether conditions fully treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[CJCY and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4939 (4 December 2020); Senior Member R Cameron

SOCIAL SECURITY – DSP - overpayment receiving single rate when partnered – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – special circumstances – back payment of rental assistance - rental assistance not payable for rent outside of Australia - failure to advise Centrelink of change of circumstances – decision affirmed

[Gounder; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 4909 (4 December 2020); Senior Member C Puplick AM

SOCIAL SECURITY – Special Benefit – long term available funds test – whether Respondent's expenditure was unavoidable and reasonable – whether lump sum compensation payment to Respondent's spouse should be taken into account – decision set aside

[Jefferis and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4861 (3 December 2020); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – chronic fatigue syndrome – where impairment is permanent – 10 points under Table 1 – 10 points under Table 7 – whether applicant has a continuing inability to work – UNSW Fatigue Clinic – where applicant has not completed a program of support – decision under review affirmed

[Mohammad and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4911 (2 December 2020); Ms A E Burke AO, Member

SOCIAL SECURITY – age pension – special circumstances when person not to be treated as a member of a couple – capacity to share resources – impecuniosity – inability of spouse to find employment - based upon practical considerations – decision set aside and remitted

[Nguyen and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4969 (10 December 2020); R West, Member

SOCIAL SECURITY – Jobseeker payments – whether Applicant a resident of Australia – decision affirmed

[Saleeba and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4862 (3 December 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – Impairment Table 4 – lower back and neck conditions – mental health conditions – numerous other medical conditions – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

[Stagbar and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4913 (25 November 2020); I Thompson, Member

SOCIAL SECURITY – disability support pension – whether medical conditions diagnosed, treated and stabilised during the qualification period - whether an impairment rating of 20 points or more existed under the Impairment Tables - decision under review set aside.

[Stanley and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4938 (2 December 2020); Senior Member B J 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

[Vasiliadis and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4954 (4 December 2020); R West, Member

SOCIAL SECURITY – disability support pension – osteoarthritis of bilateral knees and feet –posterior vitreous detachment – GORD - left frozen shoulder - haemorrhoidectomy - anxiety osteoarthritis of the hips – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Withell and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4910 (4 December 2020); Senior Member P J Clauson AM

SOCIAL SECURITY – Disability Support Pension – DSP – Qualification – Spinal Impairment – Lower Limb Impairment – Mental health impairment – Whether Impairments are fully treated, diagnosed and stabilised – whether impairments merit 20 points – whether program of support requirements are satisfied – decision affirmed

[Woolley and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 4799 (27 November 2020); Ms L Rieper, Member

SOCIAL SECURITY – carer allowance – rejection – qualification – medical – caring for child with disability – did child meet qualifying rating at time of application – no discretion – decision affirmed.

Taxation

[Kidd and Commissioner of Taxation](#) (Taxation) [2020] AATA 4801 (30 November 2020); Ms D Mitchell, Member

TAXATION – application for release from tax debt refused – whether taxpayer would suffer serious hardship if required to satisfy tax debts – whether household income should be taken into account – whether discretion to release debt in part or in full should be exercised – decision under review affirmed

Veterans' Affairs

[Pesch and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 4907 (4 December 2020); Deputy President Britten-Jones and R Ormston, Member

VETERANS' AFFAIRS – Veterans' entitlements – Operational service in Vietnam – the meaning of 'taken to have been allotted for duty' in section 5B(2)(c) of the Veterans' Entitlements Act 1986 – the effect of the dates in the written instrument signed by the Defence Minister and dated 23 December 1997 - Whether the veteran suffers from Generalised Anxiety Disorder – Whether the veteran suffers from Alcohol Use Disorder – 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
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No appeals lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Burns	[2020] AATA 671	[2020] FCAFC 220
Commissioner of Taxation v Douglas	[2020] AATA 494	[2020] FCAFC 220
Law v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1469	[2020] FCA 1726
Meyrick v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 168	[2020] FCAFC 209 [2020] FCA 677
MQGT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 874	[2020] FCAFC 215 [2020] FCA 520
Palu v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2581	[2020] FCA 1736



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