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

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

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AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

[Bai and Reddy](#) (Child support) [2019] AATA 5946 (10 December 2019); F Hewson, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – no ground for departure – decision under review affirmed

[Chan and Gerges](#) (Child support) [2019] AATA 5948 (9 December 2019); A Ducrou, 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 – decision under review set aside and substituted

[Haddad and Lester](#) (Child support) [2019] AATA 5941 (9 December 2019); S Cullimore, 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 – decision under review varied

[Madan and Madan](#) (Child support) [2019] AATA 5949 (2 December 2019); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – date of effect of an application for an administrative assessment – whether the application was lodged on an earlier date – the application was lodged online on an earlier date – decision under review set aside and substituted

[Younes and Younes](#) (Child support) [2019] AATA 5939 (11 December 2019); M Kennedy, Member

CHILD SUPPORT – departure determination – income, property and financial resources of parent – special needs of child – decision under review set aside and substituted

[MHVN and Child Support Registrar](#) (Child support second review) [2020] AATA 158 (12 February 2020); P Ranson, Member

CHILD SUPPORT – care arrangements – percentage of care – whether special circumstances apply – determining the length of the interim care period – decision under review affirmed

[RDQD and Child Support Registrar](#) (Child support second review) [2020] AATA 160 (12 February 2020); Senior Member J C Kelly

CHILD SUPPORT – percentage of care – shared parenting plan – meaning of 'pattern of care for the child' – whether each parent had pattern of care for the children – whether there was a change in the pattern of care – whether the existing percentage of care determination should be revoked and a new determination be made – decision set aside and substituted

Citizenship

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

(Citizenship) [2020] AATA 141 (11 February 2020); Dr N A Manetta, Senior Member

CITIZENSHIP – Meaning of permanent resident – meaning of permanent visa – where applicant holder of Special Category visa (subclass 444) visa that allowed him to stay in Australia indefinitely while he was a citizen of New Zealand – where applicant outside Australia on 26 February 2001 – decision under review affirmed

Compensation

[HGGJ and Comcare](#) (Compensation) [2020] AATA 136 (7 February 2020); K Parker, Member

WORKERS' COMPENSATION – review of “ceased effects” determination – whether present entitlement to incapacity payments and medical expenses exists under s 19 and s 16 of the Safety, Rehabilitation and Compensation Act 1988 – burden of persuasion rests with Comcare – whether change in entitling circumstances – conflicting medical evidence as to diagnosis of injury and whether effects of 2010 compensable injury had ceased – appropriateness of the Tribunal having regard to the Diagnostic and Statistical Manual of Mental Disorders 5th edition, American Psychiatric Association – whether continuing symptoms arose from pre-existing underlying disease caused by non-employment factors – history of abuse by peers during adolescence – history of abuse by mother – reliability of Applicant’s evidence – decision affirmed

PRACTICE AND PROCEDURE – Comcare lodged photocopied summonsed documents with the Tribunal under s 38AA of the Administrative Appeals Tribunal Act 1975 – objection raised by Applicant – whether Comcare had an “ulterior motive” for lodging those documents – whether Comcare compelled to lodge the documents under s 38AA – meaning of “obtains possession” in s 38AA – whether implied undertaking not to use documents for collateral purpose would still apply to documents once lodged under s 38AA – no objection raised by Applicant to summonses or authority given by Tribunal to inspect documents – no prescriptive civil procedure regime exists for admission of evidence in hearings of applications before the Tribunal – Tribunal not bound by rules of evidence – power of Tribunal to inform itself on any matter, in such manner, as it thinks appropriate – confined subset of summonsed documents tendered as evidence at the hearing – confidentiality and non-disclosure orders made under s 35 of the Administrative Appeals Tribunal Act 1975

PRACTICE AND PROCEDURE – Applicant sought to adduce new evidence at the hearing – application of s 66 of the Safety, Rehabilitation and Compensation Act 1988 – Tribunal granted leave to adduce the “new evidence” as evidence in this application

Migration

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

(Migration) [2020] AATA 176 (12 February 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 – strength, nature and duration of ties – extent of impediments if removed – other considerations outweigh the primary considerations – decision set aside

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

(Migration) [2020] AATA 174 (14 February 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 – reviewable decision set aside

Mahmoodshahi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 159 (12 February 2020); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – insurance fraud – (attempted) gained benefit by fraud – gained a benefit for another by fraud – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to United Kingdom – Tribunal finds that there is another reason why the decision to cancel the Applicant’s visa should be revoked – reviewable decision set aside and substituted

Navugavuga and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2020] AATA 155 (12 February 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class BS Subclass 801 (Partner) 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

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

(Migration) [2020] AATA 132 (7 February 2020); Senior Member D J Morris

MIGRATION – mandatory cancellation of Class BB Subclass 155 Resident Return (Permanent) visa – applicant is citizen of Vietnam – extensive history of offending – previous warning regarding immigration status – Direction No. 79 – primary considerations – other considerations – Direction No. 75 – time span and seriousness of offending – decision under review is affirmed

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

(Migration) [2020] AATA 161 (31 January 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 – decision under review affirmed

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

(Migration) [2020] AATA 142 (11 February 2020); Senior Member L Kirk

MIGRATION – Mandatory cancellation of Class UC subclass 457 Temporary Work (Skilled) visa – substantial criminal record – character test – whether there is any other reason why the visa cancellation decision should be revoked – Ministerial Direction No. 79 – primary considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – drink driving – alcohol fuelled offences – decision under review affirmed

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

(Migration) [2020] AATA 154 (11 February 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 – convictions for multiple violent offences – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

Mills (Migration) [2019] AATA 6207 (26 November 2019); M Ison, Senior Member

MIGRATION – cancellation – Skilled (Migrant) (Class VE) visa – Subclass 176 (Skilled – Sponsored) – Federal Circuit Court remittal – s 375A certificate not disclosed – potentially adverse information – obligation to afford procedural fairness – no response to s 359A invitation – not entitled to appear before the Tribunal – ground for cancellation – incorrect information in visa application – relationship to two migrating dependents – custody, access or guardianship rights – bogus document – birth certificates – consideration of discretion – no bearing on grant of visa – circumvention of Australia’s migration law – actively misled the Department – presence of biological children in Australia – parenting orders – best interests of the children – degree of hardship – decision under review affirmed

Singh (Migration) [2019] AATA 6134 (15 October 2019); K Chapman, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – work other than in approved occupation in business of sponsor – worked in different occupation and nominated for different visa class by another employer – established own business – sponsoring business owned by applicant’s wife – business and financial difficulties and changes of location – breakdown of marriage and wife’s return to home country – applicant’s operation of the business without formal authority – new owner’s illness and delay in opening relocated business – self-sponsorship as bona fide business or to achieve migration outcome – long residence on series of temporary visas – credibility – inconsistent evidence of applicant and new owner – discretion to cancel visa – factors for and against cancellation – decision under review affirmed

Ting (Migration) [2020] AATA 171 (9 January 2020); Dr J Harkess, Member

MIGRATION – Cancellation – Student (Temporary) (Class TU) visa – Subclass 500 visa – lack of enrolment and progress over a substantial period – applicant was not a genuine student – unsatisfactory progress in his studies – poor class attendance record – applicant failed to maintain enrolment in a Diploma-level course – breached condition 8202 – decision under review affirmed

Malara (Migration) [2019] AATA 5914 (20 December 2019); D Connolly, Member

MIGRATION – Skilled Independent (Permanent) – Subclass 189 Skilled Independent – skilled occupation test – PhD candidate – scholarship advertised – applicant held qualification/experience – achieved score of 75 – decision under review remitted

1815496 (Migration) [2019] AATA 6286 (23 December 2019); I Garnham, Member

MIGRATION – Visitor (Class FA) visa – subclass 600 (Visa) – Sponsored Family stream – visiting family members – genuine temporary stay criterion – genuine intention to stay temporarily – strong incentives to depart Australia – family and work commitment in home country – decision under review remitted

Practice and Procedure

[Hompot and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 135 (7 February 2020); R West, Member

PRACTICE AND PROCEDURE – application for extension of time for review – appeal from Social Services & Child Support Division – extent of the delay – reasons for the delay – prejudice to parties – public interest – application refused

Refugee

[1713991](#) (Refugee) [2019] AATA 6218 (19 July 2019); R Smidt, Member

REFUGEE – cancellation – protection visa – Iran – religion – Christian convert – incorrect information in visa application – claims contradicted by husband's evidence – feared being harmed or mistreated by the Iranian security authorities – returned voluntarily to Iran – claimed husband and brother would seek to harm her – inconsistent evidence – credibility issues – poor knowledge of Christianity – best interest of children – decision under review affirmed

[1824261](#) (Refugee) [2019] AATA 6285 (29 July 2019); S Roushan, Senior Member

REFUGEE – protection visa – Afghanistan – Federal Circuit Court Remittal – religion – Shi'a Muslim – race – Hazara – imputed political opinion – supporter of the West – particular social group – failed asylum seeker – credibility issues – previously given false information – family and tribal community essential in offering support – not reasonable for the applicant to relocate – decision under review remitted

[1729305](#) (Refugee) [2019] AATA 6331 (31 July 2019); A Younes, Senior Member

REFUGEE – protection visa – Sri Lanka – race – Tamil – imputed political opinion – Liberation Tigers of Tamil Eelam (LTTE) sympathiser – particular social group – Tamils who left Sri Lanka illegally – failed asylum seeker – Western returnee – assaulted by military – physical disability – mental health – psychological vulnerability – no involvement or association with LTTE – routine use of torture and coercion – risk of harm if detained by security services – decision under review remitted

[1621159](#) (Refugee) [2020] AATA 140 (15 January 2020); J Marquard, Member

REFUGEE – protection visa – Ghana – religion – Christian – Pentecostal Church – Jehovah's Witness – fear of relatives – fear of extreme Muslim organisations – no harm suffered in the past – country information – general religious tolerance and harmony between religious groups – delay in applying for protection – decision under review affirmed

[1616423](#) (Refugee) [2019] AATA 5297 (15 November 2019); D Barker, Member

REFUGEE – protection visa – China – farm and village land confiscated or sold for property developments – father's and friend's role in protests – father arrested and convicted – friend attempted to leave the country and was arrested and convicted – warrant issued for applicant – credibility – inconsistent evidence – documentation – parents' employment – circumstances of transfer of money to friend – delay in applying for protection – unlawful residence in Australia – decision under review affirmed

Social Services

[Aird and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 153 (12 February 2020); Senior Member B Pola

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 Qualification Period – Decision under review affirmed

[Jansen and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 134 (4 February 2020); I Fletcher, Member

SOCIAL SECURITY – disability support pension – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant’s conditions attract 20 points under the Impairment Tables – whether Applicant has severe impairment – whether Applicant has continuing inability to work – reviewable decision affirmed

[Katiforis and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 156 (12 February 2020); S Taglieri SC, Member

SOCIAL SECURITY – disability support pension – whether Applicant qualified for disability support pension at time of claim – whether Applicant’s conditions were fully diagnosed, treated and stabilised – whether Applicant had an impairment rating of 20 points or more under the impairment tables – whether impairments are severe – decision affirmed

[Perry and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 152 (10 February 2020); D Mitchell, Member

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

[Smith; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 157 (12 February 2020); Senior Member P J Clauson AM

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Disability Support Pension – DSP – decision of AAT1 to remit matter for reconsideration with direction that respondent met paragraphs 94(1)(a) (b) and (c) of the Act – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Relevant Period – where comorbid symptoms of impairment which is not fully treated or fully stabilised – where Impairment Rating cannot be assigned due to comorbid symptoms – decision under review set aside and substituted

[Zeibak and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 151 (12 February 2020); R West, Member

SOCIAL SECURITY – disability support pension – Cervical Myelopathy – Obstructive Sleep Apnoea – whether conditions fully treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under impairment tables – program of support not undertaken – whether applicant has a severe impairment – decision under review affirmed

Taxation

[Moltoni and Commissioner of Taxation](#) (Taxation) [2020] AATA 137 (10 February 2020); Deputy President G Humphries AO

TAXATION AND BANKRUPTCY – tax liabilities – decision under review to refuse to revoke departure prohibition order (DPO) – whether present proceedings lack utility due to the effect of the Bankruptcy Act 1966 – nature of powers under Part IVA of the Taxation Administration Act 1953 considered – whether DPO must be revoked – whether DPO should be revoked – decision under review affirmed

Trade and commerce

[Bray Brothers P/L ATF Bray Family Trust trading as Bray Management and Australian Trade and Investment Commission \(Austrade\)](#) [2020] AATA 143 (31 January 2020); Senior Member D R Davies

EXPORT MARKET DEVELOPMENT GRANT – whether applicant is eligible for a grant – whether applicant supplied eligible services – approved promotional purpose test – 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
MNLR and Minister for Home Affairs	[2020] AATA 63
Nedeljkovic and Secretary, Department of Social Services	[2019] AATA 5639
The Trustee for the Whitby Trust and Commissioner of Taxation	[2019] AATA 5637

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Benrabah v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2018] AATA 457	[2020] FCAFC 4 [2019] FCA 521
Fualau v Minister for Home Affairs	[2018] AATA 3373	[2019] FCA 1545 [2020] FCAFC 11
XFCS v Minister for Home Affairs	[2019] AATA 201	[2020] FCA 71



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