



# AAT Bulletin

**Issue No. 7/2020**

**24 February 2020**

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

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

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Child Support .....	3
Citizenship .....	3
Corporations .....	3
Migration.....	4
Practice and Procedure.....	5
Social Services .....	6
Taxation.....	6
Veterans' Affairs.....	7
<b>Appeals.....</b>	<b>8</b>
Appeals lodged .....	8
Appeals finalised.....	8

# 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

[JTQL and Child Support Registrar](#) (Child support second review) [2020] AATA 192 (18 February 2020); P Ranson, Member

CHILD SUPPORT – care arrangements – percentage of care – whether special circumstances apply – what amounts to reasonable action – length of interim care period – decision under review affirmed

## Citizenship

[Geele and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 253 (20 February 2020); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether satisfied of identity of applicant – whether the applicant is not of good character – whether the application for citizenship made by the applicant should be approved – decision under review set aside and remitted with directions

[Mensah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 278 (21 February 2020); Senior Member A Poljak

CITIZENSHIP – application for review of decision to revoke Applicant's Australian citizenship – where Applicant convicted of offences under Citizenship Act 2007 (Cth) and Migration Act 1958 (Cth) – whether contrary to public interest for Applicant to remain an Australian citizen – whether discretion not to revoke citizenship should be exercised – decision under review affirmed

[Siddons and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 177 (14 February 2020); I Fletcher, Member

CITIZENSHIP – good character – abide by law in Australia and other countries – criminal record – driving and motor vehicle offences – decision affirmed

## Corporations

[Gilbert and Australian Securities & Investments Commission](#) [2020] AATA 191 (18 February 2020); Deputy President I R Molloy

TAX AND COMMERCIAL – period of disqualification – purpose of disqualification - whether corporations are related – disqualification in the public interest – whether duties discharged in good faith – decision under review affirmed

## Migration

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

(Migration) [2020] AATA 280 (21 February 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – criminal history in New Zealand and Australia – sexual offending involving a child – violent crime against a woman – failure to pass good character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

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

(Migration) [2020] AATA 239 (20 February 2020); Deputy President B W Rayment OAM QC

MIGRATION – cancellation of visa on character grounds under s 501(3A) – crimes including theft, damage to property and assault – whether discretion to revoke mandatory cancellation of visa should be exercised – considerations under Direction No. 79 – protection and expectations of the Australian community – where offences were due to drugs and alcohol – where applicant has shown he has reflected and rehabilitated – where risk of reoffending is moderate – best interests of minor children in Australia – where applicant has close connection to children – where children impacted if mother leaves with applicant – whether there are other considerations – where applicant has strong ties to Australia – where applicant will face impediments if deported – where family impacted due to deportation – decision set aside and substituted

### [Gao and Migration Agents Registration Authority](#) (Migration) [2020] AATA 258 (21 February

2020); Senior Member M Griffin, QC

MIGRATION AGENTS REGISTRATION – cancellation of applicant's registration as a migration agent – alleged breaches of the Code of Conduct – whether Applicant was a fit and proper person to give immigration assistance – what sanction is appropriate - decision affirmed

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

(Migration) [2020] AATA 178 (11 February 2020); Deputy President S A Forgie

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke cancellation of revocation of cancellation of Class BA Subclass 200 Refugee visa – whether non-refoulement obligations owed – decision under review set aside

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

(Migration) [2020] AATA 279 (21 February 2020); Deputy President B W Rayment OAM QC

MIGRATION – cancellation of visa on character grounds under s 501(3A) – where discretion under Direction No. 79 cannot be exercised – where evidence before Tribunal inadequate to make proper considerations under Direction No. 79 – decision set aside and remitted

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

(Migration) [2020] AATA 256 (21 February 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory cancellation of visa – where applicant does not meet character test due to a substantial criminal record – where applicant committed numerous sexual offences – whether there is another reason why the mandatory cancellation should be revoked – consideration of Direction no. 79 – primary considerations – other considerations – decision set aside and substituted

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

(Migration) [2020] AATA 254 (20 February 2020); Mr S Evans, Member

MIGRATION – Mandatory visa cancellation – citizen of Turkey – Class BS Subclass 801 (Spouse) visa – failure to pass the character test due to substantial criminal record – whether discretion to revoke mandatory cancellation of visa should be exercised – Ministerial Direction No. 79 applied – primary considerations – other considerations – decision affirmed

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

(Migration) [2020] AATA 255 (20 February 2020); Senior Member B J Illingworth

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 – decision under review set aside

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

(Migration) [2020] AATA 237 (20 February 2020); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record - whether discretion to revoke mandatory cancellation should be exercised- no jurisdiction – decision set aside

**Practice and Procedure**

**Mitchell and Comcare** (Compensation) [2020] AATA 257 (4 February 2020); Senior Member D J Morris

PRACTICE AND PROCEDURE – workers’ compensation application – extensive procedural history – where applicant has several times applied for vacation of hearings – where tribunal has re-listed hearing several times – where applicant has not complied with directions of tribunal – where applicant’s general practitioner advises applicant not able to represent herself or participate in hearing in stated period – hearing again vacated – where further medical certificate sought by Tribunal – where applicant’s general practitioner advises applicant not able to participate in hearing for foreseeable future – power of the Tribunal to dismiss – principles of fairness in cases where an applicant is self-represented - Tribunal decides to dismiss application for failure to proceed – written reasons requested – Tribunal not required to provide written reasons for interlocutory decision – written reasons given to parties

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

(Migration) [2020] AATA 193 (17 February 2020); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – jurisdiction – Migration Act 1958 (Cth) – s 500(6B) – Migration Regulations 1994 (Cth) – decision of delegate of the Minister not to revoke mandatory cancellation of visa – application for review lodged out of time – Tribunal cannot extend time – Administrative Appeals Tribunal Act 1975 (Cth) – s 42A(4) – Tribunal satisfied no jurisdiction – application dismissed

[Talented Training Pty Ltd and Australian Skills Quality Authority](#) [2020] AATA 194 (14 January 2020); Senior Member Katter

PRACTICE AND PROCEDURE – application to stay decision – cancellation of registered training organisation registration – principles relevant to the granting of a stay – interest of persons affected by review - prospects of success – public interest – stay application granted

## **Social Services**

[Badcock and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 277 (21 February 2020); Ms S Taglieri SC, Member

SOCIAL SECURITY – age pension – cancellation – assets test – assets exceeding the cut off limit – transfer of assets – whether the Applicant should be assessed under the severe financial hardship provisions – whether severe financial hardship discretion applies – decision affirmed

[Henry and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 236 (29 January 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – age pension – lump sum compensation period – whether preclusion period applies – whether preclusion period correctly calculated – special circumstances – no special circumstances found – decision affirmed

[McDonagh and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 189 (18 February 2020); S Barton, Member

DISABILITY SUPPORT PENSION – DSP – impairment tables – applicant does not meet impairment rating requirement – program of support – decision under review affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 188 (18 February 2020); Emeritus Professor P A Fairall, Senior Member

Austudy – Student Start-up Loan – Bachelor of Business Studies – Charles Sturt University – online – semesters – trimesters – equivalent full-time student load – qualifying study – Austudy activity test - 2018 CSU Handbook – normal course duration – pace – statement of enrolment – enrolment pattern – full-time student - three quarters of the normal amount of full-time study – Administration Guidelines – Social Security Guide – decision set aside – decision remitted for reconsideration with direction

## **Taxation**

[Bourne and Commissioner of Taxation](#) (Taxation) [2020] AATA 190 (17 February 2020); D Mitchell, Member

TAXATION – whether default assessment issued by ATO excessive – taxpayer's burden to prove default assessment excessive – taxpayer's burden to prove what is correct amount of taxable income – whether administrative penalty correctly imposed – whether discretion should be exercised to remit the penalty – decision under review affirmed

## Veterans' Affairs

[CTFL and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 238 (19 February 2020); Deputy President A G Melick AO SC

VETERANS' AFFAIRS – claim for Defence-caused conditions – alcohol use disorder – whether the condition was Defence caused – standard of proof s120 of the Veterans' Entitlements Act 1986 – what was required as a part of the Applicant's duties – conditions related to personal life and not Defence force - decision under review affirmed

# Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

## Appeals lodged

---

CASE NAME	AAT REFERENCE
<b>Fairall and Comcare</b>	<a href="#">[2020] AATA 27</a>
<b>Sisalem and Secretary, Department of Social Services</b>	<a href="#">[2020] AATA 11</a>

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Nguyen v Minister for Home Affairs</b>	<a href="#">[2019] AATA 370</a>	<a href="#">[2020] FCA 127</a>

---





With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).