



AAT Bulletin

Issue No. 23/2020

7 September 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.

Contents

AAT Recent Decisions.....	3
Citizenship.....	3
Compensation.....	4
Corporations.....	4
Freedom of Information	5
Migration.....	5
Practice and Procedure.....	9
Refugee.....	10
Social Services.....	11
Taxation.....	14
Trade and Commerce	15
Veterans' Affairs	15
Appeals	16
Appeals lodged	16
Appeals finalised	16
Statements of Principles	17
Notification of Investigations relating to existing Statements of Principles	17
New Statements of Principles	17
Amended Statements of Principles.....	18
Statements of Principles to be revoked	19

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.

Citizenship

[**Adalat and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#)
(Citizenship) [2020] AATA 3360 (31 August 2020); Senior Member C Puplick AM

CITIZENSHIP – eligibility – where application for Australian citizenship by conferral is refused – failure to meet “identity” requirement – failure to meet “good character” requirement – where Applicant claims to be someone else – conflicting and inconsistent material in relation to the Applicant’s identity and family – whether Applicant is stateless – Applicant does not qualify as stateless under the Act as he was not born in Australia – decision under review affirmed

[**Kolesky and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#)
(Citizenship) [2020] AATA 3191 (28 August 2020); Ms D Mitchell, Member

CITIZENSHIP – citizenship by conferral – person aged under 18 years old – significant hardship or disadvantage – best interest of the child – discretion to approve or refuse to approve citizenship application – decision under review affirmed

[**KQSS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#)
(Citizenship) [2020] AATA 3309 (31 August 2020); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant has satisfied section 21(2)(h) – good character requirement – Citizenship Policy – meaning of ‘good character’ – enduring moral qualities – presence in Australia as an unlawful non-citizen – decision under review affirmed

[**Rabbani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#)
(Citizenship) [2020] AATA 3183 (27 August 2020); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant has satisfied paragraphs 21(2)(d), (e), (f) – successful completion of citizenship test requirement – Applicant failed to attend any appointments to sit and complete citizenship test – administrative instruments – right to sit and resit citizenship test – decision under review affirmed

Compensation

[**Ford and Comcare**](#) (Compensation) [2020] AATA 3388 (3 September 2020); Senior Member Katter

COMPENSATION – workplace injury – whether symptoms or incapacity that the Applicant continues to experience are sufficient to create an entitlement to benefits under ss 16 and 20 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether, on the balance of probabilities, the Applicant suffers incapacity to work – evidence obtained by covert surveillance – reviewable decision set aside

[**SFDG and Comcare**](#) (Compensation) [2020] AATA 3197 (27 August 2020); Ms D Mitchell, Member

COMPENSATION – claimed conditions of de Quervain's tenosynovitis/possible carpal tunnel – what is correct diagnosis of condition – whether condition is an injury (other than a disease) or disease – whether the Applicant's employment contributed, to a significant degree, to the onset of the Applicant's condition – where Respondent determined no liability for compensation pursuant to section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision under review affirmed

Corporations

[**Devine and Registrar of Personal Property Securities**](#) [2020] AATA 3126 (25 August 2020); Deputy President BJ McCabe

PERSONAL PROPERTY SECURITY – amendment notice under s 178 – whether the Registrar suspects on reasonable grounds that the amendment is not authorised – amendment not authorised – Tribunal's jurisdiction to offer relief – Tribunal bound by empowering legislation – decision set aside and substituted

[**McDermott and Australian Securities and Investments Commission**](#) [2020] AATA 3362 (27 August 2020); Deputy President SA Forgie

CORPORATIONS – application for review of decision to refuse Australian Financial Services Licence (AFSL) – whether no reason to believe that applicant is likely to contravene obligations in s 912A of the Corporations Act 2001 – onus of proof – meaning of likely – whether Statement of Agreed Facts can be relied upon to refuse AFSL – decision affirmed

[**Wynd and Australian Securities and Investments Commission**](#) [2020] AATA 3387 (4 September 2020); Deputy President FD O'Loughlin QC and Professor A O'Connell, Senior Member

CONSUMER CREDIT – banning orders under the National Consumer Credit Protection Act 2009 – contravention of the NCCP Act – being involved in a contravention – fit and proper person test – general obligations of licensees – efficiently, honestly and fairly – credit legislation – maximum personal interest rate under the National Credit Code – relevance of banning order under the Corporations Act 2001 – scope and term of banning order

Freedom of Information

[Francis and Sport Integrity Australia](#) (Freedom of information) [2020] AATA 3314 (27 August 2020); Ms DK Grigg, Member

FREEDOM OF INFORMATION – Confidentiality Order – Freedom of Information Act 1982 – Claim exempt documents containing material obtained in confidence (section 45, Freedom of Information Act) – Claim disclosure of document would disclose deliberative matter (section 47C, Freedom of Information Act) or would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency (section 47E(d), Freedom of Information Act) – Confidentiality Order Granted

Migration

[Alesana and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3312 (31 August 2020); Mr M Kennedy, Member

MIGRATION – Mandatory visa cancellation – Lack of qualification to hold visa before cancellation – visa possibly not in effect at time of purported cancellation - Request for revocation of cancellation – Character test – Substantial criminal record – Violent offences – Protection of the Australian community – Expectations of the Australian community – Best interests of minor children – Other considerations – Strong ties to Australia – Decision under review set aside and substituted

[Clegg and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3383 (3 September 2020); Mr R Reitano, Member

MIGRATION – 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 – Direction No. 79 – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties – impact on victims – extent of impediments if removed – Articles 12(4) and 17(1) International Covenant on Civil and Political Rights – decision under review set aside

[Dean and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3386 (10 August 2020); Dr NA Manetta, Senior Member

Mandatory cancellation of visa under s 501 of Migration Act 1958 – Other considerations outweigh primary considerations – Decision under review set aside and decision substituted that visa cancellation be revoked

[Donaldson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 3389 (4 September 2020); Ms R Bellamy, Member

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

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

(Migration) [2020] AATA 3306 (28 August 2020); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – serious offending against women – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – risk of reoffending - other considerations – non-refoulement obligations – risk of harm if returned – decision under review affirmed

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

(Migration) [2020] AATA 3117 (24 August 2020); Ms R Bellamy, Member

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

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

(Migration) [2020] AATA 3198 (27 August 2020); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Refugee and Humanitarian (Migrant) (Class BA) 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

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

(Migration) [2020] AATA 3130 (20 August 2020); Mr S Evans, Member

MIGRATION – mandatory visa cancellation – cancellation of Applicant's Class WC Subclass 030 Bridging Visa – Applicant is a citizen of Vietnam – failure of the character test – whether there is another reason to revoke the visa cancellation – Direction No. 79 – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – international non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review set aside

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

(Migration) [2020] AATA 3196 (27 August 2020); Mrs JC Kelly, Senior Member

MIGRATION – mandatory cancellation of visa – review not expedited – Applicant offshore – character test – substantial criminal record – primary considerations – other considerations – protection of the Australian community – risk of reoffending – best interests of minor children – expectations of the Australian community – strength nature and duration of ties – extent of impediments if removed – decision under review affirmed

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

(Migration) [2020] AATA 3356 (27 July 2020); Dr NA Manetta, Senior Member

Migration – failure of character test – primary considerations – protection of Australian community – best interests of minor children – expectations of Australian community – non refoulement obligations – Tribunal revokes mandatory cancellation of visa

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

(Migration) [2020] AATA 3308 (4 August 2020); Dr NA Manetta, Senior Member

Mandatory cancellation of visa – criminal offending – the expectations of the Australian community – best interests of minor children – protection of Australian community – a primary consideration – Decision under review affirmed

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

(Migration) [2020] AATA 3313 (26 August 2020); Senior Member K Millar

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 affirmed

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

(Migration) [2020] AATA 3125 (17 August 2020); Emeritus Professor PA Fairall, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – domestic violence assault and serious driving offences – offending after administrative warning – where low risk of reoffending – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to return – decision set aside and substituted

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

(Migration) [2020] AATA 3134 (26 August 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – where offending very serious – where there is risk of reoffending – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

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

(Migration) [2020] AATA 3382 (6 August 2020); Emeritus Professor PA Fairall, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – Sexual offence – indecency with girl over 16 – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – non-refoulement obligations – identification of home country – Sudan and South Sudan – strength, nature and duration of ties to Australia – decision set aside and substituted

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

(Migration) [2020] AATA 3115 (21 August 2020); Deputy President BW Rayment OAM QC

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – where offending involved assault – whether to exercise discretion under Direction No. 79 – primary considerations – protection of the Australian community – where applicant reoffended after applicant's visa was previously cancelled and revoked with warning – where applicant is no longer influenced by drugs – where applicant has showed signs of rehabilitation – where likelihood of reoffending is low to moderate – best interests of minor children – where children in the care of NSW FACS – where applicant has regular contact with children – other considerations – strength, nature and duration of ties – where applicant was adopted when young – where applicant's family is in Australia – extent of impediments if removed – where if applicant is deported may not receive same level of support – decision under review set aside and substituted

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

(Migration) [2020] AATA 3384 (3 September 2020); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – where offending very serious – where there is risk of reoffending – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

Kennedy (Migration) [2020] AATA 3286 (1 May 2020); N Goetz, Member

MIGRATION – cancellation – Subclass 010 (Bridging A) visa – risk to health and safety of Australian community – charged with criminal offences – not placed in detention but granted subsequent bridging visa grant due to application for review – tribunal's view of illogicality in department's process – decision under review set aside

Mokhtabad Amreie (Migration) [2020] AATA 3251 (6 May 2020); R Skaros, Senior Member

MIGRATION – Business Skills (Residence) (Class DF) Subclass 893 – residence requirement – Subclass 165 visa holder – not lived in state of residence for periods totalling at least 2 years in the 4 years immediately before application – qualification, employment, immigration history, investment in business in Australia, total periods of time in Australia – tribunal's support for ministerial intervention – decision under review affirmed

NEUPANE (Migration) [2020] AATA 1146 (23 January 2020); M McAdam, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 Higher Education Sector – enrolment in a registered Higher Education course – limited academic progress – applicant departed Australia – disruption caused by the Nepal earthquake – applicant changed to Vocational course – physical and mental health problems – visa period expired – decision under review set aside

Mr Gee Electronics Pty Ltd (Migration) [2020] AATA 3142 (20 May 2020); D Kelly, Member

MIGRATION – Employer Nomination – approval of nominated position – Direct Entry Nomination stream – Retail Manager – position cannot be filled locally – wording of job advertisement – ‘Asian language speaker preferred’ – limiting the field of potential applicants – decision under review affirmed

Zorilla Madariaga (Migration) [2020] AATA 3090 (11 June 2020); J Cipolla, Senior Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – internationally recognised record of exceptional and outstanding achievement in the profession of Computer Engineer – asset to the community – applicant developed radio podcast system – concept and technology now used by streaming services – promotion of Internet of Things (IoT) – Information Technologies Architect – innovative air pollution reduction technology for underground mines developed in Australia – IoT devices for agri-tech and water management – development of cyber security IT systems – mentoring engineering students – value of the applicant’s knowledge and the experience to his employer – credentialled eligible nominator – decision under review remitted

Practice and Procedure

Blazejczyk and Australian Securities and Investments Commission [2020] AATA 3199 (26 August 2020); Senior Member R Olding and Mr P Ranson, Member

PROFESSIONAL SERVICES – financial services – banning order – where applicant prohibited from provision of any financial services for five years – where applicant accepted banning and prohibition period but sought order limited to “personal advice” to “retail clients” – held Tribunal’s duty to make correct or preferable decision required consideration of both scope and period of prohibition – parties directed to make further written submissions on scope and period of banning order

Daly and Australian Securities and Investments Commission [2020] AATA 3202 (28 August 2020); Deputy President BJ McCabe

PRACTICE AND PROCEDURE – question of law – whether early ruling on legal issue appropriate – whether amendments to legislation apply retrospectively – consideration of Tribunals objectives – matter to proceed in usual course to hearing

Liang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2020] AATA 3357 (1 September 2020); Deputy President JW Constance

PRACTICE AND PROCEDURE – application for dismissal – application for citizenship by conferral – where application refused because the applicant had not sat the citizenship test – where notification of test appointments not received by the applicant – where policy following non-attendance at arranged appointments not followed – where Minister has advised the applicant will not be offered another opportunity to sit the citizenship test – where applicant may be offered another opportunity to sit the citizenship test – where Tribunal not satisfied that the application has no reasonable prospects of success – decision remitted for reconsideration

[**FDFF and National Disability Insurance Agency**](#) [2020] AATA 3385 (4 September 2020); Senior Member JC Kelly

PRACTICE AND PROCEDURE – jurisdiction issue – National Disability Insurance Scheme – statement of participant supports – mischaracterisation of request to review – internal review – right of review to the Tribunal – whether period of review limited

[**Liang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#) (Citizenship) [2020] AATA 3357 (1 September 2020); Deputy President JW Constance

PRACTICE AND PROCEDURE – application for dismissal – application for citizenship by conferral – where application refused because the applicant had not sat the citizenship test – where notification of test appointments not received by the applicant – where policy following non-attendance at arranged appointments not followed – where Minister has advised the applicant will not be offered another opportunity to sit the citizenship test – where applicant may be offered another opportunity to sit the citizenship test – where Tribunal not satisfied that the application has no reasonable prospects of success – decision remitted for reconsideration

[**Mahathevan and Tax Practitioners Board**](#) (Taxation) [2020] AATA 3381 (3 September 2020); Senior Member R Olding

PRACTICE AND PROCEDURE – STAY APPLICATION – termination of tax agent registration – where tax agent failed to comply with personal taxation and continuing professional education obligations – where allegations of fraudulent behaviour – prospects of success in application for review – stay granted subject to conditions

PRACTICE AND PROCEDURE – CONFIDENTIALITY ORDERS – where tax agent sought confidentiality orders pending determination of application for review – where tax agent largely admitted to failures to comply – confidentiality orders refused

[**RDQD and Child Support Registrar**](#) (Child support second review) [2020] AATA 3123 (24 August 2020); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of decision on care percentage determinations for child support – prospects of success – consequences of refusal – financial impacts – public interest – whether stay necessary to preserve the efficacy of the review proceedings – stay granted

Refugee

[**1700580**](#) (Refugee) [2020] AATA 3122 (14 January 2020); Dr C Huntly, Member

REFUGEE – protection visa – Libya – imputed political opinion – opposition to religious and political views enforced by militias – particular social group – politically prominent families – recipients of Gaddafi Scholarship – western educated – returnees from the west – fear of kidnapping – decision under review remitted for reconsideration

[**1817855**](#) (Refugee) [2020] AATA 3124 (11 April 2020); J Pennell, Senior Member

REFUGEE – protection visa – Afghanistan – Iran – Federal Court remittal – religion – Shia Muslim – race – Hazara – police harassment – land dispute – complementary protection – decision under review remitted for reconsideration

[**1707038**](#) (Refugee) [2020] AATA 3120 (12 June 2020); R Shanahan, Member

REFUGEE – protection visa – Pakistan – religion – Shia Muslim – particular social group – human rights activists – family attacked – fear of extremists – Lashkar e-Jhangvi – delay in applying for protection – credibility issues – decision under review affirmed

[**1804020**](#) (Refugee) [2020] AATA 2963 (30 June 2020); J Redfern, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Sri Lanka – application for protection – applicant claims to fear persecution for reasons of Tamil ethnicity – Christian perceived to be Muslim – imputed political opinion and links with the Liberation Tigers of Tamil Eelam – young Tamil male – failed asylum seeker – consideration of refugee criterion in s 36(2)(a) of the Migration Act 1958 – applicant found not to have a well-founded fear of persecution – consideration of complementary protection criteria in s 36(2)(aa) of the Migration Act 1958 – no substantial grounds for believing that as a necessary and foreseeable consequence of removal to Sri Lanka there is a real risk the applicant will suffer significant harm – applicant found to not be a person in respect of whom Australia has protection obligations under s 36 of the Migration Act 1958 (Cth) – decision under review affirmed

[**1720197**](#) (Refugee) [2020] AATA 3297 (10 August 2020); D Dragovic, Senior Member

REFUGEE – protection visa – Pakistan – fear of harm from Taliban – NGO medical support worker from same village as Taliban leader – expected to join or financially support – threats and extortion attempt – credibility – voluntary returns to home country on four occasions, totalling nearly a year – vague knowledge of medical procedures – dob-in letter claiming applicant provided false documents – country information about returnees – decision under review affirmed

Social Services

[**Brinkworth and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 3133 (25 August 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – family tax benefit (FTB) – schoolkids bonus (SKB) – late lodgement of tax return – whether the Applicant was overpaid FTB and SKB during the 2014/2015 income year – whether Applicant required to lodge an income tax return – tax loss – Applicant's assessable income below tax free threshold – whether timeframe for lodging income tax return can be extended – whether special circumstances prevented Applicant from lodging 2014/2015 tax return – whether overpayment a legally recoverable debt – whether recovery of all or part of the debt should be waived or written off – whether debt attributable to sole administrative error by the Commonwealth – reviewable decision affirmed

[**Chaker and Secretary, Department of Social Services**](#) (Social services second review) [2020] AATA 3128 (25 August 2020); Mr C Puplick AM, Senior Member

SOCIAL SECURITY – Newstart allowance – application for payment – eligibility – lump sum compensation preclusion period – length of preclusion period – whether special circumstances exist to reduce preclusion period – meaning of special circumstances – financial hardship – applicant made payments towards their mortgage – whether home modifications justified – decision under review set aside and remitted

Doherty and Secretary, Department of Social Services (Social services second review) [2020] AATA 3311 (31 August 2020); Dr D Cremeen, Senior Member

SOCIAL SECURITY – disability support pension – several conditions including Charcot neuropathy due to diabetes – whether fully treated and diagnosed – qualification period – medical appointments etc after this period – self-reporting – effect of respondent's concession – JCA report – severe functional impact – meaning of "assistance" – use of wheelchair or frame – DSP entitlement – decision set aside and substituted

Dauenhauer and Secretary, Department of Social Services (Social services second review) [2020] AATA 3359 (1 September 2020); Mr R West, Member

SOCIAL SECURITY – disability support pension – chronic back pain – monocular doubling of vision – chronic right shoulder pain – chronic left knee pain – whether conditions fully treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

Dodd and Secretary, Department of Social Services (Social services second review) [2020] AATA 3371 (2 September 2020); Mr G Hallwood, Member

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 – whether applicant had a continuing inability to work – decision under review remitted

Dubrovsky and Secretary, Department of Social Services (Social services second review) [2020] AATA 3372 (2 September 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

Hurst and Secretary, Department of Social Services (Social services second review) [2020] AATA 3132 (25 August 2020); Ms LM Gallagher, Member

SOCIAL SECURITY – disability support pension – whether applicant's conditions fully diagnosed, fully treated and fully stabilised – whether applicant has severe impairment – musculoskeletal conditions – whether applicant has continuing ability to work – whether applicant has completed program of support – decision under review affirmed

Jaskulski and Secretary, Department of Social Services (Social services second review) [2020] AATA 3129 (20 August 2020); Mr S Evans, Member

SOCIAL SECURITY – Newstart Allowance – whether the Applicant's overseas travel for medical treatment qualified as an allowable absence – portability assessment – s 1217 – whether the Applicant meets the requirements of eligible medical treatment – whether the medical evidence which was sought by the Applicant overseas available to him in Australia – Applicant contends that the medical treatment was not available to him in Australia as it was at a cost he could not afford – medical treatment available through Medicare – decision under review affirmed

Jeffery and Secretary, Department of Social Services (Social services second review) [2020] AATA 3193 (27 August 2020); Brigadier AG Warner, AM LVO (Retd), Member

SOCIAL SECURITY – disability support pension – whether Applicant's impairments were fully diagnosed, fully treated and fully stabilised at the qualification period – qualification period – whether Applicant's impairments attract 20 points under the Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

Juchau and Secretary, Department of Social Services (Social services second review) [2020] AATA 3116 (21 August 2020); Ms DK Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions permanent – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

Kanawati and Secretary, Department of Social Services (Social services second review) [2020] AATA 3135 (26 August 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – whether mental health condition permanent – decision under review affirmed

Kothe and Secretary, Department of Social Services (Social services second review) [2020] AATA 3195 (27 August 2020); Senior Member CJ Furnell

SOCIAL SECURITY – age pension – single rate of pension – whether member of a couple in the relevant period – whether living separately and apart under the one roof – whether special reason not to treat as a couple – failure to disclose income earned – whether debt should be written off or waived – decision remitted with direction

SOCIAL SECURITY – family tax benefit – whether member of a couple in the relevant period – decision set aside and substituted

Lee and Secretary, Department of Social Services (Social services second review) [2020] AATA 3361 (1 September 2020); Mr S Evans, Member

SOCIAL SECURITY – debt – newstart allowance – disability support pension – whether applicant a member of a couple during the relevant period – credibility of the applicant – where applicant found to be a member of a couple – where the applicant enjoyed the economies of shared living costs – where debts correctly calculated – where no write-off or waiver of debt – decision varied

Luby and Secretary, Department of Social Services (Social services second review) [2020] AATA 3315 (27 August 2020); Mr P Ranson, Member

SOCIAL SECURITY – Family Tax Benefit – FTB – care arrangements during the care period – percentage of care – determination of the care period – decision under review set aside

Sinclair and Secretary, Department of Social Services (Social services second review) [2020] AATA 3118 (24 August 2020); Mr W Frost, Member

SOCIAL SECURITY – pensions, benefits and allowances – age pension – eligibility for age pension – valuation of assets – whether the applicant owned assets valued above the maximum allowable limit – whether the land was valued correctly – decision under review affirmed

Veresses and Secretary, Department of Social Services (Social services second review) [2020] AATA 3310 (26 August 2020); The Hon. M Groom, Senior Member

SOCIAL SECURITY – disability support pension rejection – chronic regional pain syndrome – depression and anxiety – Impairment Tables – whether conditions fully diagnosed, treated and stabilised as at qualification period – reasonable treatment – depression and anxiety fully diagnosed, but not fully treated and stabilised – no severe impairment – decision affirmed

Zablotsky and Secretary, Department of Social Services (Social services second review) [2020] AATA 3131 (26 August 2020); Senior Member A Poljak

SOCIAL SECURITY – Disability Support Pension – rate of payment – whether applicant was a member of a couple – financial aspects of relationship – nature of commitment – social aspects of relationship – sexual relationship – nature of household – recoverable debt – whether debt can be written off – whether debt can be waived – sole administrative error – special circumstances – decision under review set aside and substituted

Taxation

Bell and Commissioner of Taxation (Taxation) [2020] AATA 3194 (28 August 2020); Deputy President FD O'Loughlin QC

TAXATION – tax deductions – motor vehicle expenses (heavy/bulky goods basis for determining employment related use, allowance basis for determining employment related use, inadequate record keeping) – home internet and utilities expenses and mobile telephone expenses – first aid course cost – decision set aside and allowed in part

Eley and Tax Practitioners Board (Taxation) [2020] AATA 3192 (27 August 2020); Deputy President Boyle

TAX AND COMMERCIAL – tax agent regulation – breach of Code – suspension of registration – order requiring tax agent to take action – scope of power to require tax agent to take action – objection to tax assessment – debt pending determination of objection – decision varied

The Beneficiary and Commissioner of Taxation (Taxation) [2020] AATA 3136 (26 August 2020); Senior Member R Olding and Senior Member B Pola

TAXATION – whether Applicant presently entitled to distribution of net income of trust – whether purported disclaimer of distribution effective – held distribution not disclaimed – decision affirmed

TAXATION – application for leave to extend grounds of objection – where application to extend grounds first made in closing reply submissions – application for leave partially refused

Trade and Commerce

[Food Matters International Pty Ltd \(formerly Permacology Productions Pty Ltd\) and Australian Trade and Investment Commission \(Austrade\)](#) [2020] AATA 3200 (27 August 2020); Dr P McDermott RFD, Deputy President

TRADE AND COMMERCE – Export Market Development Grants Act 1997 (Cth) – application for payment of export market development grant – whether eligible goods – whether Australia will derive a significant net benefit from the sale of certain goods manufactured overseas and sold overseas – decision under review affirmed

TRADE AND COMMERCE – Export Market Development Grants Act 1997 (Cth) – application for payment of export market development grant – whether eligible non-tourism service – whether Australian input in the service sufficient to ensure Australia will derive a significant net benefit from the supply of the service – decision under review remitted for reconsideration

TRADE AND COMMERCE – Export Market Development Grants Act 1997 (Cth) – year one application for payment of export market development grant – whether change in ownership of business under section 94 – whether particulars of previous owner to be treated as being those of the new owner – finding upheld

Veterans' Affairs

[Parkes and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 3358 (31 August 2020); Senior Member Katter

VETERANS' AFFAIRS – claim for defence-caused conditions – claim for disability pension – special rate – decision under review varied – extreme disablement adjustment

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
Barry and BIS Industries Limited	[2020] AATA 2651
Boys and Repatriation Commission	[2020] AATA 2116
Egan and Minister of Home Affairs	[2020] AATA 2632
Gilliland and Australian Securities and Investments Commission	[2020] AATA 2660
PDWL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 485
ZTFH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 910
Zyambo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2473

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
FDC19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 872	[2020] FCA 1231
Nguyen v Minister for Home Affairs	[2019] AATA 1301	[2020] FCA 1261
Tohi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 495	[2020] FCA 1223
VPKY v Minister for Home Affairs	[2019] AATA 352	[2020] FCA 1209 [2019] FCA 1767

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the *Veterans' Entitlements Act 1986* (VEA) and section 338(2) of the *Military Rehabilitation and Compensation Act 2004* (MRCA). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

Notification of Investigations relating to existing Statements of Principles

On 21 August 2020, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

Bacterial infection of a disc as an onset factor in intervertebral disc prolapse -
<https://www.legislation.gov.au/Details/C2020G00663>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

Intervertebral disc prolapse (Balance of Probabilities) – No. 44 of 2016
<https://www.legislation.gov.au/Details/F2020C00423>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **28 September 2020**:

Aplastic anaemia (Balance of Probabilities) - No. 59 of 2020
<https://www.legislation.gov.au/Details/F2020L01088>

Aplastic anaemia (Reasonable Hypothesis) - No. 58 of 2020
<https://www.legislation.gov.au/Details/F2020L01085>

Carotid artery disease (Balance of Probabilities) - No. 55 of 2020
<https://www.legislation.gov.au/Details/F2020L01100>

Carotid artery disease (Reasonable Hypothesis) - No. 54 of 2020
<https://www.legislation.gov.au/Details/F2020L01096>

Chloracne (Balance of Probabilities) - No. 63 of 2020
<https://www.legislation.gov.au/Details/F2020L01107>

Chloracne (Reasonable Hypothesis) - No. 62 of 2020
<https://www.legislation.gov.au/Details/F2020L01104>

Chronic pancreatitis (Balance of Probabilities) - No. 65 of 2020
<https://www.legislation.gov.au/Details/F2020L01105>

Chronic pancreatitis (Reasonable Hypothesis) - No. 64 of 2020
<https://www.legislation.gov.au/Details/F2020L01102>

Malignant neoplasm of bone and articular cartilage (Balance of Probabilities) - No. 67 of 2020
<https://www.legislation.gov.au/Details/F2020L01112>

Malignant neoplasm of bone and articular cartilage (Reasonable Hypothesis) - No. 66 of 2020
<https://www.legislation.gov.au/Details/F2020L01110>

Non-aneurysmal aortic atherosclerotic disease (Balance of Probabilities) - No. 53 of 2020
<https://www.legislation.gov.au/Details/F2020L01082>

Non-aneurysmal aortic atherosclerotic disease (Reasonable Hypothesis) - No. 52 of 2020
<https://www.legislation.gov.au/Details/F2020L01080>

Pure red cell aplasia (Balance of Probabilities) - No. 61 of 2020
<https://www.legislation.gov.au/Details/F2020L01084>

Pure red cell aplasia (Reasonable Hypothesis) - No. 60 of 2020
<https://www.legislation.gov.au/Details/F2020L01083>

Renal artery atherosclerotic disease (Balance of Probabilities) - No. 57 of 2020
<https://www.legislation.gov.au/Details/F2020L01095>

Renal artery atherosclerotic disease (Reasonable Hypothesis) - No. 56 of 2020
<https://www.legislation.gov.au/Details/F2020L01094>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from **28 September 2020**:

Trochanteric Bursitis and Gluteal Tendinopathy – No. 68 of 2020
<https://www.legislation.gov.au/Details/F2020L01115>

Trochanteric Bursitis and Gluteal Tendinopathy – No. 69 of 2020
<https://www.legislation.gov.au/Details/F2020L01116>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA will be revoked on **28 September 2020**:

Aplastic anaemia - No. 51 of 2012

<https://www.legislation.gov.au/Details/F2012L01793>

Aplastic anaemia - No. 50 of 2012

<https://www.legislation.gov.au/Details/F2012L01791>

Carotid arterial disease - No. 38 of 2012

<https://www.legislation.gov.au/Details/F2012L00941>

Carotid arterial disease - No. 37 of 2012

<https://www.legislation.gov.au/Details/F2012L00940>

Chloracne - No. 18 of 2012.

<https://www.legislation.gov.au/Details/F2012L00448>

Chloracne - No. 17 of 2012

<https://www.legislation.gov.au/Details/F2012L00447>

Chronic pancreatitis - No. 105 of 2011

<https://www.legislation.gov.au/Details/F2011L01737>

Chronic pancreatitis - No. 104 of 2011

<https://www.legislation.gov.au/Details/F2011L01735>

Malignant neoplasm of bone and articular cartilage - No. 107 of 2011

<https://www.legislation.gov.au/Details/F2011L01740>

Malignant neoplasm of bone and articular cartilage - No. 106 of 2011

<https://www.legislation.gov.au/Details/F2011L01742>

Non-aneurysmal aortic atherosclerotic disease - No. 16 of 2012

<https://www.legislation.gov.au/Details/F2012L00446>

Non-aneurysmal aortic atherosclerotic disease - No. 15 of 2012

<https://www.legislation.gov.au/Details/F2012L00445>

Renal artery atherosclerotic disease - No. 103 of 2011

<https://www.legislation.gov.au/Details/F2011L01731>

Renal artery atherosclerotic disease - No. 102 of 2011

<https://www.legislation.gov.au/Details/F2011L01739>

© Commonwealth of Australia 2020



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.

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](#).