



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 1/2022**

**10 January 2022**

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.

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>Recent news .....</b>	<b>3</b>
Changes to how you can apply for a review and submit documents to the General and Other Divisions .....	3
<b>AAT Recent Decisions .....</b>	<b>4</b>
Child Support.....	4
Citizenship.....	5
Compensation .....	6
Industrial Law .....	6
Migration.....	6
National Disability Insurance Scheme.....	9
Practice and Procedure.....	10
Professions and Trades .....	10
Refugee.....	11
Social Services.....	12
Superannuation .....	13
Taxation.....	14
<b>Appeals .....</b>	<b>15</b>
Appeals lodged.....	15
Appeals finalised .....	15
<b>Statements of Principles .....</b>	<b>16</b>
New Statements of Principles .....	16
Statements of Principles to be revoked.....	17

# Recent news

## Changes to how you can apply for a review and submit documents to the General and Other Divisions

From 31 January 2022, for the General and Other Divisions, you should use the AAT's [online services portal](#) to lodge applications and submit documents.

Emails will be monitored intermittently, so there may be delays in the processing of applications and documents received via email from this point.

Similar changes will be made to other types of cases in the future.

For more information, see the [AAT website](#).

# 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

[HVQM and Child Support Registrar](#) (Child support second review) [2021] AATA 4806 (23 December 2021); Dr M Evans-Bonner, Senior Member

CHILD SUPPORT – percentage of care decision – whether there was a change in care – dispute about percentage of care – Tribunal not satisfied on the evidence that there was a change in care – AAT1 decision set aside and substituted – practical effect of this decision is that the Objection Decision is upheld

[Leftwich and Wrinch](#) (Child support) [2021] AATA 4224 (13 October 2021); S Letch, Member

CHILD SUPPORT – election to end assessment – no capacity for other party to alter date of election – decision under review affirmed

[Mousley and Mousley](#) (Child support) [2021] AATA 4793 (28 October 2021); Senior Member R Ellis

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether estimate calculations correct – decision under review affirmed

[Sumner and Fawcett](#) (Child support) [2021] AATA 4801 (27 October 2021); H Moreland, 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 – whether repealed legislation should apply in relation to dates of revocation – date of effect of decision 87AA – no special circumstances – decision under review set aside and substituted

[Walle and Whibley](#) (Child support) [2021] AATA 4802 (26 October 2021); M Douglas, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – costs of special needs significantly affect the cost of maintaining the child – school fees – ground established – decision under review varied

[Windley and Ingpen](#) (Child support) [2021] AATA 4799 (9 November 2021); L Rieper, 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 – parenting plan not complied with – whether reasonable action taken – interim period applied – decision under review set aside and substituted

## **Citizenship**

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

(Citizenship) [2022] AATA 8 (6 January 2022), The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – whether the good character requirement under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) is satisfied – relevant law and policy considered – applicant’s background and criminal history considered – character references considered – decision under review affirmed

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

(Citizenship) [2021] AATA 4808 (23 December 2021); Deputy President J Sosso

CITIZENSHIP – review of a decision to refuse the applicant’s application for grant of Australian citizenship, by conferral, under s 24 of the Australian Citizenship Act 2007 (Cth) – whether applicant is a person of good character – decision under review set aside, and remitted to the Respondent with a direction that the Applicant satisfies s 21(2)(h)

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

(Citizenship) [2022] AATA 5 (6 January 2022); S Evans, Member

CITIZENSHIP – application for citizenship by conferral – whether the applicant satisfies the residence requirement under paragraph 21(2)(c) of the Australian Citizenship Act 2007 (Cth) (‘the Act’) – whether the applicant satisfies the general residence requirement under section 22 of the Act - whether the discretion under subsection 22(6) of the Act is enlivened – relevant law and policy considered – applicant’s circumstances considered – decision under review set aside and remitted

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

(Citizenship) [2022] AATA 10 (7 January 2022); S Evans, Member

CITIZENSHIP – application for citizenship by conferral – whether the applicant is of good character for the purposes of paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – relevant law and policy considered – relevant material considered – decision under review set aside and remitted

## Compensation

[McCracken and Comcare](#) (Compensation) [2021] AATA 4819 (24 December 2021); Senior Member L Kirk

WORKERS' COMPENSATION – whether the applicant suffered an ailment or an aggravation of an injury for the purposes of section 5A(1)(a) of the Safety, Rehabilitation and Compensation Act 1988 resulting in disease as defined by section 5B(1)(b) of the Act – whether Applicant's employment contributed, to a significant degree, the aggravation of the ailment such that she has a 'disease' under s 5B(1) of the SRC Act – decision under review affirmed

## Industrial Law

[Chung and Secretary, Attorney-General's Department](#) [2021] AATA 4804 (23 December 2021); Dr D Cremean, Senior Member

EMPLOYEE ENTITLEMENTS – claim for advance under Fair Entitlements Guarantee Act 2012 (Cth) – Applicant found to be entitled to advance – whether Applicant has redundancy pay entitlement – where employer failed to make payments into fund to provide for redundancy benefits – decision under review set aside – remitted to Respondent to determine amount of redundancy pay entitlement

## Migration

[GHSS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4811 (29 November 2021); R Bellamy, Member

MIGRATION – refusal of application for a Protection visa under section 501(1) – where the visa Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – where a "protection finding" has been made – consideration of Ministerial Direction No. 90 – decision under review affirmed

[GXKC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4825 (7 December 2021); Senior Member P.Q. Wood

MIGRATION – Visa refusal – citizen of Lebanon Bridging E (Class WE) Visa – substantial criminal record – failure to pass character test – whether discretion to refuse visa should be exercised – Ministerial Direction No. 90 applied – substantial criminal offending – protection of the Australian community – expectations of the Australian community – best interests of minor children – links to the Australian community – other relevant considerations – extent of impediments if removed – decision under review affirmed

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

(Migration) [2022] AATA 1 (3 January 2022); Senior Member B Pola

MIGRATION – Non-revocation of mandatory cancellation of Class TU Subclass 500 Student visa – where Applicant does not pass the character test – sentence of imprisonment exceeding twelve months – whether there is another reason to revoke the mandatory cancellation decision – consideration and application of Ministerial Direction No 90 – numerous domestic violence convictions, common assault, and drug related offending – decision under review affirmed

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

(Migration) [2021] AATA 4810 (20 December 2021); Deputy President Boyle

MIGRATION – s 501CA(4) of the Migration Act – decision not to revoke mandatory cancellation of visa – Applicant fails character test – Direction 90 considered – Applicant is a citizen of the Philippines – numerous breaches of family violence restraining orders – weighing the impact on victims – victim of offending supports revocation of cancellation – there is another reason to revoke the visa cancellation – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 4813 (23 December 2021); Senior Member T Tavoularis

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. 90 – remitted decision – decision under review affirmed

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

(Migration) [2021] AATA 4817 (22 December 2021); M O'Loughlin, Member

MIGRATION – Non-revocation of mandatory cancellation of a Special Category (Class TY) (Subclass 444) visa – where Applicant does not pass the character test – whether “another reason” to revoke visa cancellation – Best interests of minor children – Ministerial Direction 90 – Decision under review set aside and substituted

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

(Migration) [2021] AATA 4809 (9 December 2021); Deputy President Boyle

MIGRATION – s 501CA(4) of the Migration Act – decision not to revoke mandatory cancellation of visa – Applicant fails character test – Direction 90 considered – Applicant is a citizen of New Zealand – drug-related offending – considerations not relevant – considerations against revocation marginally outweigh considerations in favour of revocation – there is not “another reason” to revoke the visa cancellation – reviewable decision affirmed

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

(Migration) [2021] AATA 4815 (24 December 2021); R Reitano, Member

MIGRATION – mandatory cancellation of visa – Class BB Subclass 155 Five Year Resident visa – where visa was cancelled under s 501 because applicant did not pass the character test – substantial criminal record – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – strength, nature and duration of ties to Australia – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 4823 (31 December 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of minor children – expectations of the Australian community – extent of impediments if removed to the United Kingdom – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 66-year-old man who arrived in Australia as an infant and has never visited the United Kingdom – Applicant is a victim of child sexual abuse from when he was 8 years of age by Christian Brothers Priests at the Castledare Boys' Home and at the Clontarf Boys' Home – Applicant subsequently sexually abused as a child at the Riverbank Reformatory whilst a ward of the State of Western Australia – child sexual abuse considered as a separate other consideration – Applicant suffers from numerous significant health conditions – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted

**1920925** (Migration) [2021] AATA 4764 (20 August 2021); C Cody, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Tourist stream – genuine temporary entrant – review applicant's successful protection claims – parents' currently valid Visitor visas – COVID-19 pandemic and its effects in Iran – economic disparity – business and property in Iran – intention to comply with conditions of the visa – parents' past compliance with visa conditions – decision under review remitted

**2102645** (Migration) [2021] AATA 4778 (6 October 2021); P Vlahos, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner) – genuine and continuing relationship – validly married – financial, household and social aspects of relationship – long acquaintance while married to other spouses – divorce and death of spouses and establishment of relationship with brief visits, telephone calls and social media – limited joint life while in different countries – both parties employed and financially independent – nature of commitment – documentary and oral evidence and statements from family and friends – decision under review remitted



[Gonzalez Gonzalez](#) (Migration) [2021] AATA 4860 (16 September 2021); Senior Member A Younes

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – ground for cancellation – convicted of an offence – supply prohibited drug – consideration of discretion – compelling reason to stay – completion of studies – degree of hardship – circumstances giving rise to the non-compliance – serious offending conduct – decision under review affirmed

[Karki](#) (Migration) [2021] AATA 4773 (25 August 2021); T Quinn, Member

MIGRATION – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – genuine student – enrolment history – lengthy stay in Australia – multiple courses completed – applicant changed to vocational level course – cricket playing and coaching in Australia – maintaining ongoing residence in Australia – decision under review affirmed

[Patel](#) (Migration) [2021] AATA 4768 (7 December 2021); J Cripps Watts, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Tourist stream – genuine temporary entrant – no previous visa or travel by applicant, but compliant travel by other family members – school-aged children and extended family in home country – offer of payment of bond – decision under review remitted

## **National Disability Insurance Scheme**

[LWVR and National Disability Insurance Agency](#) [2021] AATA 4822 (24 November 2021); The Hon. Justice McEvoy, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – Reasonable and necessary supports – Specialist disability accommodation – Single or dual dwelling – Risk to applicant’s mental health – Value for money considerations – Respondent accepts that risk to applicant’s mental health so grave as to justify the additional costs in providing single specialist disability accommodation – Decision under review varied

[MMBX and National Disability Insurance Agency](#) [2022] AATA 13 (7 January 2022); Senior Member D O’Donovan

NATIONAL DISABILITY INSURANCE SCHEME – statement of participant supports – whether items which facilitate the applicant living independently within the applicant’s family home should be assessed individually or as a single ‘independent living’ support – whether a companion dog is a reasonable and necessary support - whether identified supports should be included in statement of participant supports – decision under review set aside

[PLPR and National Disability Insurance Agency](#) [2021] AATA 4824 (22 November 2021); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – consideration of sections 33 and 34 – whether requested supports are reasonable and necessary – whether supports represent value for money – Occupational Therapy is reasonable and necessary – decision set aside and remitted

[Ransom and National Disability Insurance Agency](#) [2021] AATA 4812 (23 December 2021); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – reasonable and necessary supports – applicant sought review of statement of participant supports for four fixed ceiling hoist tracks with lateral motor and the Sure Hands System – decision affirmed

## **Practice and Procedure**

[Liberal Democratic Party and Australian Electoral Commission](#) [2021] AATA 4884 (21 December 2021); Justice T Thawley, Deputy President

ADMINISTRATIVE LAW – review of decision of delegate of Australian Electoral Commission to uphold objection under s 134A of the Commonwealth Electoral Act 1918 (Cth) to continued use of the name ‘Liberal Democratic Party’ and the abbreviation ‘Liberal Democrats’ – urgent application for stay of decision of delegate of Australian Electoral Commission – where Administrative Appeals Tribunal does not have jurisdiction to entertain application for review of underlying decision – no power to grant stay – applications for review and for stay dismissed

[Setto and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4818 (24 December 2021); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – Migration – whether the Tribunal has jurisdiction to review a decision pursuant to s501(3A) of the Migration Act 1958 (Cth) – where Tribunal found it did not have jurisdiction to review decision – where application dismissed pursuant to s42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

## **Professions and Trades**

[Cerrah and Tax Practitioners Board](#) (Taxation) [2022] AATA 7 (6 January 2022); R Reitano, Member

TAX AGENT REGISTRATION – termination of registration as a tax agent – applicant prohibited from applying for registration for a period of five years – contravention of the Code of Professional Conduct – applicant failed to manage personal tax affairs – applicant failed to complete supervised training – whether action should be taken against the applicant – whether five year ban was appropriate – decision varied

## Refugee

[1619886](#) (Refugee) [2021] AATA 4885 (25 October 2021); N McGowan, Member

REFUGEE – Protection visa – Cambodia – application for protection to regularise immigration status – marriage to Australian citizen – family violence – Australian citizen child – health conditions of child – compassionate circumstances – Ministerial intervention – decision under review affirmed

[1706282](#) (Refugee) [2021] AATA 4886 (12 November 2021); T Flood, Member

REFUGEE – protection visa – Tonga – political opinion – Tongan Democratic Party supporter – no family support in Tonga – fear of killing – political violence – corruption – state protection – health care – delay in apply for protection – recommendation for Ministerial Intervention – decision under review affirmed

[1917564](#) (Refugee) [2021] AATA 4887 (18 October 2021); T Hamilton-Noy, Member

REFUGEE – protection visa – Venezuela – political opinion – Voluntad Popular – Primero Justicia (Justice First Party) – attack by colectivos – credibility assessment – delay in seeking protection – applicant's brother's failure to claim protection in Australia – particular social group – returnee to Venezuela – food and medical shortages – severe humanitarian emergency – COVID-19 pandemic – decision under review remitted

[1935215](#) (Refugee) [2021] AATA 4889 (9 November 2021); S Hoffman, Member

REFUGEE – protection visa – Kenya – Federal Circuit Court remittal – particular social group – homosexual man – race – mixed race family – unemployment – fear of detention – fear of physical assault – limited knowledge of the gay community in Australia – delay in applying for protection – impact of the COVID-19 pandemic – decision under review remitted

[2109426](#) (Refugee) [2021] AATA 4890 (23 November 2021); Senior Member J Lambie

REFUGEE – protection visa – Vietnam – imputed political opinion – former member of the Army of the Republic of Vietnam (ARVN) – opposition to the Communist government – attempted escape from Vietnam – detention – household registration – return visits to Vietnam – health care – illegal exit – criminal offenses in Australia – decision under review affirmed

## Social Services

[Begley and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 12 (7 January 2022); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – Youth Allowance – Newstart Allowance – date from which Applicant's Newstart Allowance is to be increased – Applicant ceased receiving income by way of trust distributions from a family trust which was included in the calculation of his rate – whether Applicant received notice of decision – whether and when the Applicant requested a review of the decision – Applicant entitled to payment at an increased rate – date of effect – application determined on the papers – Reviewable Decision affirmed

[Farrugia and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 11 (6 January 2022); P Ranson, Member

SOCIAL SERVICES – Family Tax Benefit – care percentage determinations – contested evidence – shared care – no parenting orders – decision set aside and substituted

[Hodgkinson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 9 (6 January 2022); M Griffin QC, Senior Member

SOCIAL SECURITY – disability support pension – whether the Applicant met eligibility requirement for disability support pension – whether the applicant's impairments attract 20 points or more on any one relevant Impairment Table – whether the applicant's impairments constitute a continuing inability to work – decision under review affirmed

[Mutlukaya and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4805 (23 December 2021); Senior Member C J Furnell

SOCIAL SECURITY – disability support pension – where applicant absent from Australia – disability support pension purportedly suspended or cancelled – whether applicant qualifies for unlimited portability of disability support pension – whether applicant is a 'severely impaired disability support pensioner' – whether applicant ceased to be Australian resident – whether former resident rule applied – disability support pension automatically cancelled at end of notice period – purported determinations to suspend and cancel disability support pension did not take effect – decision under review set aside and substituted

[Ofli and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2 (5 January 2022); K Parker, Member

SOCIAL SECURITY – parenting payment – failure to declare earnings – overpayments – whether debt properly raised – whether debt should be waived or written off – whether debt arose due to sole administrative error by the Commonwealth – whether "special circumstances" exist – debt fully repaid – Decision Under Review affirmed

[Paral and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 6 (6 January 2022); S Barton, Member

AGE PENSION – rate of pension – whether Applicant was a member of a couple – financial aspects of the relationship – nature of the household – social aspects of the relationship – nature of people’s commitment to each other – special reason – Tribunal satisfied that the Applicant is a member of a couple – Reviewable Decision affirmed

[Philip and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4803 (23 December 2021); D Mitchell, Member

SOCIAL SECURITY – Age Pension – rate of pension – whether Applicant was a member of a couple – decision under review affirmed

[Rados and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4807 (2 December 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – Applicant received compensation payment for work injury – compensation preclusion period applied – debts raised in respect of Carer Allowance and Newstart payments – whether special circumstances to reduce preclusion period – evidence does not support special circumstances – decision under review affirmed

[YMGF; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 4 (5 January 2022); L M Gallagher, Member

SOCIAL SECURITY – disability support pension – whether respondent’s conditions

fully diagnosed, fully treated and fully stabilised – whether respondent has severe impairment – mental health condition – attention deficit disorder – autism spectrum disorder – whether respondent has continuing ability to work – whether respondent has completed program of support – decision under review set aside and substituted

## **Superannuation**

[The Trustee For Virdis Family Trust t/a Rickard Heating Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 3 (5 January 2022); R Reitano, Member

Superannuation guarantee charge – whether the superannuation guarantee charge is owed – whether someone is an employee or contractor for the purposes of the Act – extended definition of employee and employer – whether someone works under a contract that is wholly or principally for the labour of the person – the ordinary meaning of employee and employer – undesirability of determining disputed matters without all the evidence – decision under review is affirmed

## Taxation

[Buzadzic and Commissioner of Taxation](#) (Taxation) [2021] AATA 4820 (24 December 2021); F D O'Loughlin QC, Deputy President and L Hespe SC, Senior Member

TAXATION – income tax – whether taxpayer discharged onus of proof – where taxpayer received unexplained deposits – unverifiable credit entries in loan accounts from associated entities – where taxpayer intermingled personal and business moneys – alleged discrepancies between opening and closing balances in loan accounts – absence of records – finding that accounts in name of one spouse belonged to the other spouse – Division 7A applied to unpaid loan balances – fraud or evasion – administrative penalties

[Decleah Investments Pty Ltd and anor as Trustee for the PRS Unit Trust and Commissioner of Taxation](#) (Taxation) [2021] AATA 4821 (24 December 2021); F D O'Loughlin QC, Deputy President

TAXATION – calculation of GST payable under margin scheme – valuation on an as is basis using hindsight information – approved valuation for the purposes of GST Act – taxation shortfall – administrative penalties

[DGSC and Commissioner of Taxation](#) (Taxation) [2021] AATA 4816 (24 December 2021); Senior Member R Olding

CORONAVIRUS ECONOMIC RESPONSE PACKAGE – JOBKEEPER SCHEME – where applicant gave nomination notice to employer – where applicant subsequently applied for Jobkeeper payments as a business participant – where applicant purported to withdraw the nomination notice given to the employer – whether notice could be withdrawn – whether notice could be set aside under non est factum doctrine – held notice could not be withdrawn or set aside – decision affirmed

[FFYS and Commissioner of Taxation](#) (Taxation) [2021] AATA 4844 (24 December 2021); Deputy President B J McCabe

ELIGIBILITY FOR JOBKEEPER PAYMENTS – whereas the applicant provides rooms for rent through the AirBnB platform – whether the applicant is carrying on a business in doing so – whether these activities constitute a supply of commercial residential premises to guests – applicant not carrying out a business – no such supply occurred – decision under review affirmed

[Yazdani and Commissioner of Taxation](#) (Taxation) [2021] AATA 4814 (23 December 2021); Senior Member L Kirk

TAXATION – whether applicant eligible for JobKeeper payment – whether applicant included an amount in his assessable income for the 2018-19 income year in relation to him carrying on a business – whether the Applicant made a taxable supply in a tax period that applied to him that started on or after 1 July 2018 and ended before 12 March 2020 - decision 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>Murden and Australian National University</b>	<a href="#">[2021] AATA 4560</a>

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Tran v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 1423</a>	<a href="#">[2021] FCA 1628</a> <a href="#">[2021] FCA 75</a>

---

# 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.

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **31 January 2022**:

**Gingivitis (Balance of Probabilities) - No. 18 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00011>

**Gingivitis (Reasonable Hypothesis) - No. 17 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00010>

**Goitre (Balance of Probabilities) - No. 10 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00005>

**Goitre (Reasonable Hypothesis) - No. 9 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00006>

**Graves disease (Balance of Probabilities) - No. 8 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00009>

**Graves disease (Reasonable Hypothesis) - No. 7 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00008>

**Hypothyroidism (Balance of Probabilities) - No. 4 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00014>



**Hypothyroidism (Reasonable Hypothesis) - No. 3 of 2022**

<https://www.legislation.gov.au/Details/F2022L00013>

**Malignant neoplasm of the colon and rectum (Reasonable Hypothesis) - No. 19 of 2022**

<https://www.legislation.gov.au/Details/F2022L00012>

**Malignant neoplasm of the colon and rectum (Balance of Probabilities) - No. 20 of 2022**

<https://www.legislation.gov.au/Details/F2022L00015>

**Narcolepsy (Balance of Probabilities) - No. 12 of 2022**

<https://www.legislation.gov.au/Details/F2022L00003>

**Narcolepsy (Reasonable Hypothesis) - No. 11 of 2022**

<https://www.legislation.gov.au/Details/F2022L00002>

## **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 **31 January 2022**:

**Gingivitis - No. 46 of 2013**

<https://www.legislation.gov.au/Details/F2013L01124>

**Gingivitis - No. 45 of 2013**

<https://www.legislation.gov.au/Details/F2013L01121>

**Goitre - No. 24 of 2013**

<https://www.legislation.gov.au/Details/F2013L00725>

**Goitre - No. 23 of 2013**

<https://www.legislation.gov.au/Details/F2013L00721>

**Graves' disease - No. 34 of 2013**

<https://www.legislation.gov.au/Details/F2013L00737>

**Graves' disease - No. 33 of 2013**

<https://www.legislation.gov.au/Details/F2013L00736>

**Hypothyroidism - No. 30 of 2013**

<https://www.legislation.gov.au/Details/F2013L00730>

**Hypothyroidism - No. 29 of 2013**

<https://www.legislation.gov.au/Details/F2013L00728>

**Malignant neoplasm of the colorectum - No. 37 of 2013**

<https://www.legislation.gov.au/Details/F2013L01134>

**Malignant neoplasm of the colorectum - No. 38 of 2013**

<https://www.legislation.gov.au/Details/F2013L01130>

Narcolepsy - No. 8 of 2014

<https://www.legislation.gov.au/Details/F2014L00025>

Narcolepsy - No. 7 of 2014

<https://www.legislation.gov.au/Details/F2014L00023>

© Commonwealth of Australia 2022



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](https://creativecommons.org/licenses/by/3.0/au/). 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](https://www.austlii.edu.au/au/other/dfat/page/aat.html).