



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

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

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

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# 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

[BYKM and Child Support Registrar](#) (Child support second review) [2022] AATA 70 (25 January 2022); D J Morris, Senior Member

CHILD SUPPORT – percentage of care of three children – where mother seeks review of decision of first-tier review of Tribunal – where first-tier decision set aside decision of objections officer of respondent – evidence of mother – evidence of father – where both mother and father contend first-tier decision affected by error – factual dispute about percentages of care by each parent in period that has passed – approach when assessing care for period already passed – assessment of actual care, not point in time care – quality of evidence – where father provided more care than in Court orders – decision under review set aside and new decision substituted

[PBVS and Child Support Registrar](#) (Child support second review) [2022] AATA 74 (20 January 2022); K Millar, Senior Member

CHILD SUPPORT – percentage of care – change in percentage of care – whether percentage of care changed – whether care arrangement is complied with – whether reasonable action taken to obtain care of the children – decision under review partly set aside

[WYZR and Child Support Registrar](#) (Child support second review) [2021] AATA 5085 (22 December 2021); The Hon. M Groom, Senior Member

CHILD SUPPORT – percentage of care – decisions under review affirmed

[XZWP and Child Support Registrar](#) (Child support second review) [2022] AATA 146 (3 February 2022); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – interim care determination – reasonable action – independent children's lawyer – enforcing Federal Court parenting orders – decision affirmed

[Mossey and Mossey](#) (Child support) [2021] AATA 4796 (4 November 2021); E Kidston, Member and S Trotter, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Lukis and Lukis](#) (Child support) [2021] AATA 4794 (28 October 2021); P Jensen, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – income of the child – decision to depart – decision under review set aside and substituted

[Worrell and Rowan](#) (Child support) [2021] AATA 4800 (22 October 2021); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – late application to extend the child support assessment beyond the child's eighteenth birthday – deemed not to be late application – in any event exceptional circumstances found – application should be accepted – decision under review set aside and substituted

[Luckinbill and Child Support Registrar](#) (Child support) [2021] AATA 4787 (1 November 2021); J Thomson, Member

CHILD SUPPORT – applications for extension of time to object – no satisfactory explanation for the lengthy delay – little merit – prejudice to the other parent due to delay – extensions of time refused – decisions 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

## **Citizenship**

[Abdi H A and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 85 (28 January 2022); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether Tribunal is satisfied of Applicant's identity and good character – insufficient evidence regarding identity of the Applicant – limited primary documentation – bogus documents – inconsistencies in Applicant's date of birth and the Applicant's family member's dates of birth – Reviewable Decision affirmed

**Al-Sabaawi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 144 (3 February 2022); S Evans, Member

CITIZENSHIP – application for citizenship by conferral – applicant claiming permanent or enduring physical or mental incapacity within the meaning of paragraph 21(3)(d) of the Australian Citizenship Act 2007 (Cth) – applicant’s medical and personal history considered – relevant law and policy considered – decision under review affirmed.

**HVHG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 87 (28 January 2022); C Puplick AM, Senior Member

CITIZENSHIP – refusal of a citizenship application – whether the applicant is of good character – make false document to obtain property – lengthy driving offences – whether enough time passed since offences – decision affirmed

**Lopez and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 143 (2 February 2022); J W Constance, Deputy President

CITIZENSHIP – application to resume citizenship – whether Australian citizenship was ceased to avoid suffering significant hardship or detriment – decision affirmed

**Rekhi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 69 (25 January 2022); R West, Member

CITIZENSHIP BY CONFERRAL – application for citizenship by conferral – refusal of citizenship – character test – past criminal conduct – enduring moral qualities – decision set aside and remitted

**Wang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 148 (3 February 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for citizenship by conferral – where applicant was approved for the grant of citizenship – applicant advised he has 12 months to make the pledge of commitment – applicant did not make pledge – discretion then enlivened to cancel approval – delegate of Minister cancels approval of citizenship – two initial grounds – failure to make pledge of commitment within 12 months – not satisfied applicant likely to reside or continue to reside in Australia or maintain close and continuing association with Australia – COVID-19 Pandemic supervening event – assessment of applicant’s circumstances – decision under review affirmed

**Weldemichael and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 83 (27 January 2022); B Pola, Senior Member

CITIZENSHIP – refusal of Australian citizenship by conferral – applicant had not passed Citizenship test – claimed medical condition – no substantial impairment – eligibility of persons aged under 18 – exercise of discretion to refuse citizenship approval of other minor applicants – Citizenship Policy – children under the age of eighteen – assessment of applicants in their own right – United Nations Convention on the Rights of the Child – best interests of the children – no significant hardship or disadvantage – reviewable decisions affirmed

## **Compensation**

**BZMK and Comcare** (Compensation) [2022] AATA 136 (2 February 2022); Dr S Fenwick, Senior Member

COMPENSATION – denial of liability for permanent impairment – determination to cease liability for medical expenses and incapacity payments – initial diagnosis of adjustment disorder – whether psychological condition of major depressive disorder was contributed to, to a significant degree, by employment – decisions affirmed

**Di Carlo and Linfox Australia (Operations) Pty Ltd** (Compensation) [2021] AATA 5086 (22 December 2021); The Hon. M Groom, Senior Member

COMPENSATION – entitlement to compensation – review of determination of entitlement to compensation relating to accepted work sustained injury – consideration of capacity during relevant period – consideration of injury – decision under review affirmed

**Fittock and Comcare** (Compensation) [2022] AATA 72 (21 January 2022); D Mitchell, Member

COMPENSATION – claim for aggravation of previously accepted condition – aggravation of adjustment disorder with mixed anxiety and depressive symptoms – medical evidence outlining no psychological condition – Mooi principles – decision under review affirmed

**Zdziarski and Telstra Corporation Limited** (Compensation) [2022] AATA 145 (3 February 2022); A Poljak, Senior Member

COMPENSATION – incapacity payments – normal weekly earnings (NWE) – inclusion of overtime – whether the applicant's NWE should be reduced in the relevant period – where comparable employees at the time were working less overtime than the applicant – reviewable decision set aside and remitted

## Education and Research

[Brooker and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 78 (25 January 2022); Dr L Bygrave, Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting – where applicant withdrew after financial census date – whether special circumstances apply – whether circumstances are beyond the applicant’s control – whether applicant’s circumstances made their full impact on or after the census date – whether the circumstances made it impracticable for the applicant to complete the requirements for the unit of study – decision affirmed

[Mills and Secretary, Department of Education](#) [2022] AATA 149 (27 January 2022); A E Burke AO, Member

HIGHER EDUCATION SUPPORT – debt – application for re-crediting or debt waiver – application for extension of time to reinstate matter – five years after Applicant withdrew her application - whether special circumstances existed – extension of time denied

## Migration

[Corbett and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 5087 (21 January 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – property damage – breach of Apprehended Violence Order – applicant resided in Australia from infancy – deprived upbringing – ward of state – intractable maternal relationship – family violence – links to Australian community – decision set aside and substituted

[Franklin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 77 (21 January 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special 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 – decision under review affirmed

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

(Migration) [2022] AATA 113 (31 January 2022); D J Morris, Senior Member

MIGRATION – application for partner visa – visa applicant is citizen of Lebanon – previous migration history – visa applicant refused visa on character grounds – basis of refusal was having regard to visa applicant’s past and present general conduct – sponsor seeks review of decision – consideration of two questions – first question is does visa applicant fail character test – consideration of general conduct of visa applicant – charges laid but complaints withdrawn – migration history – overall conduct of visa applicant – Annex A of ministerial direction – where Tribunal unable to reach positive decision that person is not of good character then the person passes character test – visa applicant passes character test – discretion therefore not enlivened to consider other parts of Direction – decision under review set aside with direction

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

(Migration) [2022] AATA 132 (5 January 2022); The Hon. M Groom, Senior Member

MIGRATION – refusal of visa on character grounds – citizen of Papua New Guinea – Bridging E (Class WE) visa – Applicant does not pass the character test – whether there is another reason the visa should not be refused on character grounds – consideration of primary and other considerations – Direction 90 – decision set aside and substituted

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

(Migration) [2022] AATA 76 (24 January 2022); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Absorbed Person 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 – decision under review set-aside – mandatory cancellation of the Applicant’s visa revoked

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

(Migration) [2022] AATA 119 (28 January 2022); S Boyle, Deputy President

MIGRATION – s 36(1C) of the Migration Act – refusal to grant a protection visa – Australia owes the Applicant protection obligations – Applicant concedes that he has been convicted by final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – drug-related offending – diagnosis of post-traumatic stress disorder – traits of borderline personality disorder – engagement with treatment – Applicant an unacceptable risk of reoffending – reviewable decision affirmed

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

(Migration) [2022] AATA 114 (24 January 2022); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Five Year Resident Return 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 – severe mental illness – decision under review set aside and via cancellation revoked



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

(Migration) [2022] AATA 134 (2 February 2022); J W Constance, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – non-refoulement obligations – prospect of indefinite detention – impediments to removal – decision set aside and substituted

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

(Migration) [2022] AATA 93 (28 January 2022); A Nikolic AM CSC, Senior Member

MIGRATION – visa refusal – citizen of Papua New Guinea – Partner (Temporary) (Class UK) visa – criminal offending 2013 to 2018 – substantial criminal record – failure to pass good character test – discretion to refuse visa – Direction No. 90 applied – reviewable decision affirmed

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

(Migration) [2022] AATA 139 (2 February 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Woman at Risk (Class BA) (Subclass 204) visa - where Applicant does not pass the character test – substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – where Applicant a citizen of Croatia – international non-refoulement obligations – decision under review affirmed

**Te Waiti and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 135 (2 February 2022); Brigadier A G Warner, AM LVO (Retd), 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 – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 37-year-old man who arrived in Australia as a three year old – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 5084 (24 December 2021); S Evans, Member

MIGRATION – cancellation of visa pursuant to section 501 of the Migration Act 1958 (Cth) ('the Act') – revocation of cancellation under section 501CA of the Act – mandatory cancellation – acquittal for primary offence – whether applicant passes the character test – whether there is another reason why applicant's visa cancellation should be revoked – relevant law and policy considered – relevant material considered – decision under review affirmed

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

(Migration) [2022] AATA 75 (21 January 2022); D O'Donovan, Senior 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 – Family violence – Criminal record – Ministerial Direction No 90 – Decision under review affirmed

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

(Migration) [2022] AATA 71 (24 January 2022); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – Class XB Subclass 202 Global Special Humanitarian visa – where visa was cancelled under s 501 because applicant did not pass the character test – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – special consideration – best interest of minor children in Australian – expectations of the Australian community – other considerations – international non-refoulment obligation – extent of impediments if removed – impact on victims – strength, nature and duration of ties to Australia – reviewable decision set aside and substituted

**EL HAJ** (Migration) [2021] AATA 5063 (17 December 2021); M Foster, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – parties divorced and remarried – shortcomings in the evidence submitted – limited money transfers – joint social activities – decision under review remitted

**Patten** (Migration) [2021] AATA 5056 (22 December 2021); H Claringbold, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – genuine intention to marry – genuine and continuing relationship – previous engagement ceremony/reception in Vietnam – money transfers – plans for shared household and family – evidence of social activities – regular communications – decision under review remitted

[Ohare](#) (Migration) [2022] AATA 104 (10 January 2022); C Kannis, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and ongoing relationship – shared household expenses and responsibilities – regular social activities – general support statements – plans to commence a family – de facto relationship for at least 12 months – compelling and compassionate circumstances – decision under review affirmed

[Song](#) (Migration) [2022] AATA 107 (11 January 2022); K Raif, Senior Member

MIGRATION – cancellation – Skilled Independent (Permanent) (Class SI) visa – Subclass 189 (Skilled – Independent) – incorrect answers and bogus documents given in visa application – secondary application as claimed de facto partner of primary applicant – bank statements, rental agreements and personal statements – forensic examination – discretion to cancel visa – application prepared by agent – applicant’s willing engagement in fraud instead of pursuing other options – current genuine relationship with permanent resident – partner’s mental health, family and financial responsibilities and applicant’s work, social ties and community activities – possibility of applying for partner visa – decision under review affirmed

[Wang](#) (Migration) [2021] AATA 47 (11 January 2021); K Raif, Senior Member

MIGRATION – cancellation – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – application for or grant of visa in contravention of Act or another law – holder of contributory parent visa limited to applying for certain visa classes – discretion to cancel visa – advised by department that she could apply for partner visa – visa granted in error – substantial delay in issuing notice of intention to consider cancellation – immediate family, permanent resident husband and citizen child in Australia – potential hardship to applicant and husband and best interests of child – decision under review set aside

## **National Disability Insurance Scheme**

[HKTR and National Disability Insurance Agency](#) [2022] AATA 150 (3 February 2022); Dr S Fenwick, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – various conditions including hearing loss – whether impairments result in substantially reduced functional capacity to undertake one or more specified activities – whether applicant meets early access requirements – access criteria not met – decision affirmed

[MKYV and National Disability Insurance Agency](#) [2022] AATA 115 (31 January 2022); K Buxton, Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether applicant meets disability requirement – obesity – chronic pain – depression – degenerative conditions – whether impairments are, or are likely to be, permanent – whether impairments substantially reduce functional capacity – whether applicant likely to require support under the National Disability Insurance Scheme for lifetime – decision under review set aside and substituted

## Practice and Procedure

[Australian Electoral Commission and Comcare](#) [2022] AATA 138 (2 February 2022); S Webb, Member

PRACTICE AND PROCEDURE – psychological injury – entitlement to compensation for incapacity for work during a period – application for review by employer – summons – production of psychological treatment records – objection to summons – relevant principles – right to privacy – therapist duty of care and risk of consequent harm – legitimate forensic purpose – apparent relevance – obligation to ensure each party is given a reasonable opportunity to present their case – summons not oppressive or speculative – obligation to comply – objection refused

[GMVX and National Disability Insurance Agency](#) [2022] AATA 80 (25 January 2022); K Parker, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – child participant – Applicant's mother suffers from borderline personality disorder and complex post-traumatic stress disorder – Applicant currently resides with father – application has been on foot for 19 months – Applicant's mother has been unable to identify requested supports – Applicant's request for summons – Applicant's request that Tribunal invite Australian Human Rights Commission (AHRC) to intervene in proceeding – Applicant's apparent request that Tribunal make declaration under s 28(5) of Administrative Appeals Tribunal Act 1975 (Cth) (AAT Act) – whether documents requested under proposed summons could reasonably be expected to shed light on the issues in the substantive proceeding – request for summons not granted – request to invite AHRC to intervene not granted – not open to Tribunal to make declaration under s 28(5) – order made under s 25(4A) of AAT Act determining scope of review – review limited to issues, and evidence relevant to, how NDIS funded supports are to be managed, whether transport funding is a "reasonable and necessary support" and if so, to determine the quantum – procedural directions made to timetable this application for a substantive hearing in March 2022 and in relation to other matters regarding the involvement of GMXV's primary carer/father in this proceeding

[Jackson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 112 (18 January 2022); Brigadier AG Warner, AM LVO (Retd), Member

PRACTICE AND PROCEDURE – reinstatement of application – application dismissed because Applicant failed to appear – whether application dismissed in error – justice of the circumstances – whether appropriate to reinstate the application – lack of any medical evidence of accessibility issues – reinstatement application refused

[JVWH and National Disability Insurance Agency](#) [2022] AATA 82 (25 January 2022); K Parker, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – Applicant suffers borderline personality disorder and complex post-traumatic stress disorder – litigant in person – Tribunal proceeding has been on foot for 19 months – Applicant has been unable to identify requested supports – Applicant’s request that the Tribunal invite the Australian Human Rights Commission (AHRC) to intervene in this proceeding not granted – whether s 11(1)(o) of the Australian Human Rights Commission Act 1986 (Cth) applies – application for review before Tribunal does not require determination of human rights issues – procedural directions made to timetable this application for substantive hearing and to establish an alternative process by which to identify supports in dispute

[Kerr and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 147 (3 February 2022); S Boyle, Deputy President

PRACTICE AND PROCEDURE – application to extend the time for the making of an application to the Tribunal for a review of a decision – AAT second review – AAT1 affirmed decision not to grant Applicant DSP – Hunter Valley considerations – Applicant a quadriplegic – delay of over two years in Applicant being informed of AAT1 decision – Tribunal accepts Applicant’s explanation for delay – reasonable in all the circumstances to extend time for the making of an application – application granted

## **Professions and Trades**

[Transcon Holding Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2022] AATA 94 (28 January 2022); The Hon. D Cowdroy AO QC, Deputy President

HEALTH AND AGED CARE – revocation of approval as an approved provider of aged care – whether the Applicant has experience in providing aged care or other relevant forms of care – whether the Applicant demonstrated understanding of its responsibilities as a provider of home care – whether the Applicant has systems in place to meet its responsibilities as a provider of home care – whether a disqualified person has acted as key personnel – whether the Applicant has sound financial management – decision under review affirmed

## Refugee

[2101456](#) (Refugee) [2021] AATA 5051 (8 October 2021); J Pennell, Senior Member

REFUGEE – protection visa – Ethiopia – Federal Court remittal – race – Oromo – political opinion – Oromo People’s Congress member – suspected member of the Oromo Liberation Front – particular social group – returned asylum seeker – arrests – torture – physical assault – employment – political activities in Australia – decision under review remitted

[1717022](#) (Refugee) [2021] AATA 5120 (22 October 2021); J Lindsay, Member

REFUGEE – protection visa – Pakistan – particular social group – men withdrawing from pre-arranged marriage – mixed caste relationship – Taliban attacks on military families – family land dispute – honour dispute – returnee from a Western country – fear of killing – state protection – decision under review affirmed

[2015059](#) (Refugee) [2021] AATA 5105 (27 October 2021); J Pennell, Senior Member

REFUGEE – protection visa – Iran – political opinion – Marxist – grandfather a member of communist party – Tudeh Party – religion – Deist – imputed as apostate from Islam – particular social group – returned failed asylum seeker – grandfather imprisoned – family monitored – father interrogated and subject to security sanctions – mental health and treatment – potentially required to undertake military service – credibility – voluntary returns – delay in applying for protection – Tudeh Party disbanded – grandfather deceased and no harm to parents – decision under review affirmed

[1710050](#) (Refugee) [2021] AATA 5090 (2 November 2021); R Shanahan, Member

REFUGEE – protection visa – Colombia – imputed political opinion – opposition to Revolutionary Armed Forces of Colombia (FARC) – refusal to join FARC – kidnapping – threatening messages – forced relocation – revenge attacks by paramilitary groups – fear of killing – delay in applying for protection – peace deal with the government – Mercosur Agreement – decision under review affirmed

[1830129](#) (Refugee) [2021] AATA 5066 (4 November 2021); J L Redfern PSM, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Myanmar – application for protection on the basis of the refugee and complementary protection criterion – previously granted a humanitarian visa on the basis father has profile as a dissident – claims to fear persecution for reasons of Christian religion and Hakha Chin ethnicity – failed asylum seeker – criminal deportee convicted of a serious crime – applicant found to be a refugee – decision under review remit with direction to assess the remaining criteria

[1910791](#) (Refugee) [2021] AATA 5110 (8 November 2021); J Pennell, Senior Member

REFUGEE – protection visa – Afghanistan – particular social group – person who will be harmed by members of wife’s family due to separation – cannot be described as an innate or immutable characteristic – person whose family member is wanted by the Taliban – brother’s position at the Office of National Security Council (ONSC) – decision under review remitted

[1621866](#) (Refugee) [2021] AATA 5073 (17 November 2021); B Darcy, Member

REFUGEE – protection visa – Rwanda – ethnicity – Tutsi born in Democratic Republic of the Congo gained Rwandan citizenship – targeted to be forcibly enlisted into army – detained and beaten – credibility – multiple trips to neighbouring countries and returns – implausible accounts of escaping from detention – departure on own passport – country information – political and social aspects of ethnicity – no recent serious incidents of ethnic violence – remote chance of serious harm – decision under review affirmed

[1819032](#) (Refugee) [2021] AATA 5082 (19 November 2021); B Cullen, Member

REFUGEE – protection visa – Sierra Leone – member of particular social group – homosexual man – mistreatment by family and attack by gang – imputed political opinion – father, supporter of a political party, missing and contact with only one sibling – credibility – social media shows contact with other siblings, relationship with woman, and child – late claim to be bisexual – decision under review affirmed

[2000613](#) (Refugee) [2021] AATA 5069 (16 December 2021); T Hamilton-Noy, Member

REFUGEE – protection visa – Papua New Guinea – political opinion – candidate in provincial election – post-election tribal violence – threats and relocation – relevantly consistent and credible claims and evidence – country information – tribal conflicts, election violence and effectiveness of police – risk of harm relates to all areas as effective protection measures not available – decision under review remitted

## **Social Services**

[DFRP and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 5080 (15 December 2021); R West, Member

CANCELLATION OF JOBSEEKER PAYMENTS – inheritance – financial asset exceeding the asset test – appeal lodged out of time – application for extension of time under s 29(7) of the AAT Act – no reasonable prospect of success – application refused

[Keskin and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 79 (21 January 2022); C Puplick AM, Senior Member

SOCIAL SECURITY – Disability Support Pension refused due to Compensation Preclusion Period – whether Compensation Preclusion Period was correctly calculated – whether all or part of the compensation payment should be disregarded for the purposes of the preclusion period calculation – whether special circumstances exist – decision set aside and remitted

[Langevin and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 86 (27 January 2022); P J Clauson AM, Senior Member

SOCIAL SECURITY – age pension – whether the decision to assess the Applicant’s age pension on the basis of gross overseas income was made correctly – whether any arrears can be paid to the Applicant – Decision under review affirmed

[Mutemaringa and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 73 (21 January 2022); M East, Member

SOCIAL SECURITY – parenting payment single – family tax benefit – portability period – whether portability period be extended – where applicant was absent from Australia for approximately two years and five months – serious illness – hospitalisation – mental health issues – portability period extended – decision under review set aside and substituted

[Raines and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 81 (27 January 2022); P J Clauson AM, Senior Member

SOCIAL SECURITY – Disability Support Pension – Whether medical conditions fully diagnosed, fully treated and fully stabilised – Whether 20 points or more under the Impairment Tables during the Relevant Period – Where points cannot be assigned under the Impairment Tables – Decision under review affirmed

## **Veterans' Affairs**

[Cox and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2022]  
AATA 88 (27 January 2022); J Sosso, Deputy President

VETERANS’ AFFAIRS – internal derangement of the knee – date of clinical onset – whether condition was a new injury – whether injury was aggravated out of or in the course of the Applicant’s defence service – 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>Balladraf and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4733</a>
<b>Fahy and Secretary, Department of Social Services</b>	<a href="#">[2021] AATA 3258</a>
<b>GHSS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4811</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

A number of new Statements of Principles commenced on 31 January 2022. Details were published in [Issue No. 1/2022](#) of the AAT Bulletin.

In addition to the Statements of Principles published in [Issue No. 1/2022](#), the AAT has been advised that the RMA has also made the following new Statements of Principles which **commenced** on **31 January 2022**:

**Aortic stenosis (Balance of Probabilities) - No. 14 of 2022**

<https://www.legislation.gov.au/Details/F2021L01911>

**Aortic stenosis (Reasonable Hypothesis) - No. 13 of 2022**

<https://www.legislation.gov.au/Details/F2021L01910>

**Colorectal adenoma (Balance of Probabilities) - No. 16 of 2022**

<https://www.legislation.gov.au/Details/F2021L01915>

**Colorectal adenoma (Reasonable Hypothesis) - No. 15 of 2022**

<https://www.legislation.gov.au/Details/F2021L01914>

Hashimoto thyroiditis (Balance of Probabilities) - No. 2 of 2022

<https://www.legislation.gov.au/Details/F2021L01908>

Hashimoto thyroiditis (Reasonable Hypothesis) - No. 1 of 2022

<https://www.legislation.gov.au/Details/F2021L01907>

Hyperthyroidism and thyrotoxicosis (Balance of Probabilities) - No. 6 of 2022

<https://www.legislation.gov.au/Details/F2021L01913>

Hyperthyroidism and thyrotoxicosis (Reasonable Hypothesis) - No. 5 of 2022

<https://www.legislation.gov.au/Details/F2021L01912>

## Statements of Principles to be revoked

A number of Statements of Principles were repealed on 31 January 2022. Details of the relevant Statements of Principles were published in [Issue No. 1/2022](#) of the AAT Bulletin.

In addition to the Statements of Principles published in [Issue No. 1/2022](#), the AAT has been advised that the following Statements of Principles determined by the RMA were also **repealed** on **31 January 2022**:

**Aortic stenosis - No. 22 of 2013**

<https://www.legislation.gov.au/Details/F2013L00719>

**Aortic stenosis - No. 21 of 2013**

<https://www.legislation.gov.au/Details/F2013L00718>

**Colorectal adenoma - No. 35 of 2013**

<https://www.legislation.gov.au/Details/F2013L01138>

**Colorectal adenoma - No. 36 of 2013**

<https://www.legislation.gov.au/Details/F2013L01141>

**Hashimoto's thyroiditis - No. 32 of 2013**

<https://www.legislation.gov.au/Details/F2013L00731>

**Hashimoto's thyroiditis - No. 31 of 2013**

<https://www.legislation.gov.au/Details/F2013L00732>

**Hyperthyroidism and thyrotoxicosis - No. 27 of 2013**

<https://www.legislation.gov.au/Details/F2013L00723>

**Hyperthyroidism and thyrotoxicosis - No. 28 of 2013**

<https://www.legislation.gov.au/Details/F2013L00724>

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