



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

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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

[BMXB and Child Support Registrar](#) (Child support second review) [2022] AATA 375 (04 March 2022); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – Federal Court parenting orders two-year care period – actual care of the children – decision set aside and substituted

[Aleshire and O'Connell](#) (Child support) [2021] AATA 5180 (10 December 2021); J Prentice, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – pre-existing percentage of care determinations should not be revoked - date of effect of objection - special circumstances did not exist - date of effect of the tribunal's decision – special circumstances exist - tribunal decides to make a determination under subsection 95N(2) - decision under review set aside and substituted

[Roper and Finnis](#) (Child support) [2021] AATA 5190 (7 December 2021); K Dordevic, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – earning capacity of the liable parent – a ground for departure established – decision to depart - decision under review set aside and substituted

[Brickey and Haseltine](#) (Child support) [2021] AATA 5191 (7 December 2021); M Douglas, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable income of the liable parent was correctly applied – adjusted taxable income should be used rather than modified figure - decision under review set aside and the matters sent back for reconsideration with directions

[Laster and Wroblewski](#) (Child support) [2021] AATA 5203 (14 December 2021); R Ellis, Senior Member

CHILD SUPPORT – prescribed non-agency payment – whether payment for orthodontic treatment should be credited – condition for crediting as prescribed payment satisfied under [s71C](#) – decision under review set aside and substituted

[MacTavish and Weatherwax](#) (Child support) [2021] AATA 5211 (21 December 2021); R Ellis, Senior Member

CHILD SUPPORT – percentage of care – date of effect provisions – special circumstances exist – discretion should be exercised – decision under review set aside and substituted

## **Citizenship**

[Afzali and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 382 (28 February 2022); D. J. Morris, Senior Member

CITIZENSHIP – where the applicant applies for citizenship by conferral – where the minor son of the applicant included in application – where applicant attempts citizenship test on several occasions – where applicant does not successfully complete citizenship test - where delegate of minister refuses application – where delegate of minister separately refuses application made by minor son – where applicant seeks review of decision to refuse his citizenship application – applicant not in category of persons exempt from having to successfully complete citizenship test – decision under review affirmed – written reasons provided

[Lawal and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 380 (7 February 2022); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – where the Applicant does not meet the general residence requirement – whether the discretion under subsection 22(6) of the Australian Citizenship Act 2007 (Cth) can be exercised – whether the Tribunal is satisfied that the Applicant will suffer significant hardship or disadvantage – decision under review affirmed

[Lee and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 424 (2 March 2022); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – whether the applicant is of good character for the purposes of paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – multiple traffic offences – relevant law and policy considered – relevant material considered – decision set aside and remitted

[WWSV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 5296 (16 November 2021); L M Gallagher, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied applicant was of good character – wilfully omitting criminal history – reviewable decision affirmed

## Compensation

[Snook and Comcare](#) (Compensation) [2022] AATA 449 (14 March 2022); S Boyle, Deputy President

COMPENSATION – SRC Act s 14 – determination denied liability to pay compensation – claim for “depression / anxiety / work related stress” – whether applicant suffered a psychological injury – whether condition contributed to, to significant degree, by applicant’s employment with AFP (SRC Act s 5B) – whether liability excluded pursuant to SRC Act s 5A(1) – reasonable administrative action taken in a reasonable manner – respondent admits applicant suffered adjustment disorder which later developed into a major depressive episode – respondent admits condition significantly contributed to by applicant’s employment with AFP – applicant’s psychological condition was the result of reasonable administrative action taken in a reasonable manner under the circumstances – reviewable decision affirmed

## Education and Research

[Lushchayev and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 374 (4 March 2022); B. Pola, Senior Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-credit – special circumstances – studying overseas; temporary accommodation; psychological stress – whether applicant’s circumstances were beyond his control – whether applicant’s circumstances made their full impact on or after the census date – no special circumstances – decision under review affirmed

[Slavnic and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 450 (16 February 2022); A Maryniak QC, Member

HIGHER EDUCATION SUPPORT – FEE HELP – debt – application for re-crediting of HEPP-FEE balance – consideration of whether VET provider engaged in inappropriate conduct – decision not to recredit affirmed

## Freedom of Information

[BKXP and Department of Foreign Affairs and Trade](#) (Freedom of Information) [2022] AATA 423 (2 March 2022); B W Rayment OAM QC, Deputy President

FREEDOM OF INFORMATION – country information assessments prepared by the Department of Foreign Affairs – access to draft version of reports – access to source and commentary documents – public interest considerations – substantial adverse effect considerations – documents affecting national security, defence or international relations, reviewable decision affirmed

[LHTT and Department of Foreign Affairs and Trade](#) (Freedom of Information) [2022] AATA 429 (2 March 2022); B W Rayment OAM QC, Deputy President

FREEDOM OF INFORMATION – country information assessments prepared by the Department of Foreign Affairs – access to draft version of reports – access to source and commentary documents – public interest considerations – decision affirmed

[LMKY and Indigenous Business Australia](#) (Freedom of Information) [2022] AATA 428 (28 January 2022); D O'Donovan, Senior Member

FREEDOM OF INFORMATION – legal professional privilege – s 42 – legal invoices – file notes – whether decision to withhold disclosure of invoices and file notes appropriate in circumstances – decisions under review varied

## Migration

[GQXN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 441 (15 March 2022); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of visa – special category (subclass 444) temporary visa – where visa cancelled because Applicant did not pass the character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community from criminal or other serious conduct – family violence – best interests of minor children in Australia – expectations of Australian community – other considerations – extent of impediments if removed – links to the Australian community – decision under review affirmed

[GYNQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 443 (15 March 2022); T Tavoularis, Senior Member

MIGRATION – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – whether Applicant engages s 36(2C)(b) of the Migration Act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review affirmed

[JHZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 367 (4 March 2022); T Tavoularis, Senior Member

MIGRATION – Remittal – Non-revocation of mandatory cancellation of a Resident Return (Class BB) (Subclass 155) 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 – consideration of Australia's international non-refoulement obligations – decision under review affirmed

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

(Migration) [2022] AATA 404 (3 February 2022); P.Q. Wood, Senior Member

MIGRATION – Mandatory cancellation of visa – non-revocation of mandatory visa cancellation – Class BB Subclass 155 Five Year Return visa – whether applicant passes character test – failure to pass character test – past criminal conduct – risk would engage in criminal conduct – where Applicant made representations Theodore Tavoularis seeking revocation of visa cancellation – where delegate not satisfied of another reason to revoke visa cancellation – where Applicant seeks review by Tribunal – contents of Direction 90 – substantial criminal offending – best interests of minor children – history of domestic violence – protection of the Australian community – expectations of the Australian community – Applicant’s substance abuse – links to the Australian community – other relevant considerations – extent of impediments if removed – decision under review affirmed

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

(Migration) [2022] AATA 430 (14 March 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include drug and weapons offences – 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 the Applicant’s minor daughters – difficulties in assessing best interests of children due to uncertain future events and uncertainty about who may be able to care for them – expectations of the Australian community – extent of impediments if removed to New Zealand – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 38-year-old man who began living in Australia in 2012 – there is not another reason to revoke the Cancellation Decision – Reviewable Decision affirmed

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

(Migration) [2022] AATA 442 (15 March 2022); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Vietnam – Class WE Subclass 050 Bridging (General) Visa – failure to pass good character test – cultivate cannabis – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision set aside

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

(Migration) [2022] AATA 378 (4 March 2022); J W Constance, Deputy President

MIGRATION – protection visa – refusal to grant protection visa – section 36(1C)(b) of the Migration Act 1958 (Cth) – applicant convicted by a final judgment of a particularly serious crime – sexual intercourse with a child – whether the applicant is a danger to the Australian community – decision under review affirmed

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

(Migration) [2022] AATA 379 (8 February 2022); L Kirk, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – Direction 90 – primary considerations – protection of Australian community – best interests of minor children – expectations of Australian community – other considerations – impediments if removed from Australia – links to Australian community – decision set aside and substituted

**2120028** (Migration) [2022] AATA 384 (19 January 2022); J Silva, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – primary criteria – application for a substantive visa – stated intention of seeking a Medical Treatment visa after the grant of the bridging visa – purpose, utility and scope of cl.050.212(3)(b) – whether circumventing legislative intent of s.195 – absence of a clear restriction – abide by conditions imposed – no work requirement – migration history – personal and family circumstances – applicant’s future intention – security bond – decision under review affirmed

**Ly** (Migration) [2022] AATA 409 (17 February 2022); R Matheson, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – sponsorship requirements – time limit prior to sponsorship – sponsor is a Contributory Parent visa holder – parties re-married in Australia – 5 years elapsed since visa grant – decision under review remitted

**Alexandre Dos Santos Bernardo** (Migration) [2022] AATA 390 (18 February 2022); J Silva, Member

MIGRATION – cancellation – Bridging B (Class WB) visa – Subclass 020 (Bridging B) – incorrect answers given in previous visa applications – previous visa, entry and overstay and other name known by not declared – ‘visited any countries’ understood to mean ‘other than Australia’ – three-year exclusion now passed – Portuguese name formats, with two given names and both parents’ surnames – variety of formats in common use – non-compliance regarding visa conceded – no satisfaction of non-compliance regarding name – application for partner visa in progress – relationship ceased and claim of family violence – Bridging A visa held in association with that application – legal consequences of cancellation of current visa – anonymous allegation not relevant to decision – decision under review affirmed

**Sandhu** (Migration) [2022] AATA 418 (1 March 2022); T Quinn, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – genuine temporary entrant – academic progression – failed English course and never started masters – application made just before previous visa expired – completion of certificate courses in different subject area and enrolment in diploma while holding bridging visa – no similar course available in home country – detailed business plan submitted – family and community ties in home country and no strong community ties in Australia – no return to home country – COVID-19 prevalence and restrictions – closely balanced factors – decision made without hearing necessary – decision under review remitted



## National Disability Insurance Scheme

[Barrett and National Disability Insurance Agency](#) [2022] AATA 445 (15 March 2022); J C Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of supports in plan – whether the requested design category of Specialist Disability Accommodation is reasonable and necessary pursuant to s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – decision varied

[GBPR and National Disability Insurance Agency](#) [2022] AATA 451 (16 March 2022); S Evans, Member

NATIONAL DISABILITY INSURANCE SCHEME – applicant seeking funding for general anaesthetic to be used for dental care – whether general anaesthetic can be funded by the National Disability Insurance Scheme – whether general anaesthetic is a reasonable and necessary support to be included in the applicant’s statement of participant supports – decision under review affirmed

[QZCD and National Disability Insurance Agency](#) [2022] AATA 458 (17 March 2022); K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – child participant – parental responsibility – father seeking recognition as child representative – NDIA acknowledges father has parental responsibility but has not “enabled” him to do things the child is required or permitted to do under the National Disability Insurance Scheme Act (NDIS Act) – NDIA granted exclusive access to the mother of the NDIA’s myplace portal for the child – whether NDIA, by its conduct, has made a decision not to make a determination that the Father has parental responsibility for the child under s 75(3) of the NDIS Act – whether the NDIA, by its conduct, has made a decision under s 74(1)(b) of the NDIS Act to make a determination that it is appropriate that the mother, and not the father, has the right to do the things the child is required or permitted to do under the NDIS Act – Tribunal concludes that no reviewable decision made by the NDIA under Items 17 or 19 of s 99 of the NDIS Act and no internal review decision of a reviewable decision made under s 100 of the NDIS Act – Tribunal does not have jurisdiction in relation to this application for review

## Passports

[WHHK and Minister for Foreign Affairs](#) [2022] AATA 446 (14 March 2022); J Sosso, Deputy President

PASSPORT – Review of the Minister’s decision to cancel Applicant’s passport pursuant to s 14 of the Australian Passports Act 2005 – Where there is evidence the Applicant committed child sex offences – Passport needed for employment purposes – Risk of harm to overseas children – Decision under review affirmed

## Practice and Procedure

[Bolton and Australian Securities and Investments Commission](#) [2021] AATA 5293 (22 October 2021); The Hon. Matthew Groom, Senior Member

PRACTICE AND PROCEDURE – reinstatement application – matter dismissed for failure to proceed with the application within a reasonable time – whether the application has been dismissed “in error” – consideration of applicant’s representatives’ conduct – whether application should be reinstated – application reinstated

[Chalker and Registrar of the Australian Business Register](#) [2021] AATA 5291 (11 November 2021); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – whether decision that is subject of the application is reviewable – whether applicant has standing to bring an application on behalf of a company that has been de-registered – did the registrar give proper notice – the applicant does not have standing – application dismissed

[Darvishi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 5295 (12 July 2021); R. West, Member

APPLICATION FOR CITIZENSHIP – 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

[FYMS and Commissioner of Taxation](#) (Taxation) [2022] AATA 456 (14 March 2022); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – whether the Tribunal can direct the respondent to produce the identified documents pursuant to s 37(2) of the AAT Act – whether the Tribunal can agree to a request from the applicant to issue a summons to the respondent requiring production of the documents in question pursuant to s 40A(1)(b) of the AAT Act – the application for orders directed to the respondent is refused

[GPFH and National Disability Insurance Agency](#) [2022] AATA 447 (10 March 2022); P Smith, Member

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where the applicant and his representative failed to appear at three scheduled events – reasonable steps taken by the Tribunal to contact the applicant and his representative – oral reasons – application dismissed

[Green and Civil Aviation Safety Authority](#) [2022] AATA 373 (7 March 2022); A Poljak, Senior Member

PRACTICE AND PROCEDURE – application for a stay order – decision to suspend private pilot licence – whether it is desirable to grant a stay – where the safety of air navigation is the most important consideration – application refused

[Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 448 (16 March 2022); S Boyle, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – Migration Act s 500(6B) – Migration Regulations reg 2.55 – decision of delegate of Minister not to revoke mandatory cancellation of visa – whether Applicant served with non-revocation decision – meaning of Migration Act s 494D considered – where Form 956 identified migration agent as assisting with “all immigration matters” – migration agent engaged with non-revocation process – service of a notice of decision under s 501G(1) can be given to an authorised recipient appointed under Migration Act s 494D – application for review lodged out of time – Tribunal cannot extend time – decision not reviewable by Tribunal (AAT Act s 42A(4)) – application dismissed

[Rutherford and Inspector-General in Bankruptcy](#) [2022] AATA 403 (08 March 2022); R Reitano, Member

TAXATION AND COMMERCIAL – bankruptcy – income contributions – decision not to review income contribution assessment – jurisdiction – can AAT make an assessment on review of decision under section 139ZA of Bankruptcy Act – application refused

[Snow and Secretary, Department of Social Services](#) [2022] AATA 366 (18 January 2022); Dr N A Manetta, Senior Member

PRACTICE AND PROCEDURE – recusal application – apprehended bias – application by applicant for recusal of Member assigned to hear application – previous application by applicant to recuse the Senior Member refused – whether reasonable bystander would infer the Member may not decide issues between the parties impartially – application for recusal made after preliminary reasons circulated – reaching particular conclusion in decision whether right or wrong and supporting conclusion with reasons does not support a submission of apparent bias – other grounds of application considered – application for recusal refused

[Trustee for B & J Chung Trust and Commissioner of Taxation](#) [2022] AATA 383 (3 February 2022); BJ McCabe, Deputy President

PRACTICE AND PROCEDURE – question of jurisdiction – administrative penalties – question as to applicant’s standing – matter to be heard on the papers – deregistered company – no jurisdiction – application dismissed

## Refugee

[1828237](#) (Refugee) [2021] AATA 5273 (15 November 2021); N Lamont, Member

REFUGEE – protection visa – Afghanistan – identity concerns – race – Hazara – religion – Muslim Shia – decision under review remitted

[1711401](#) (Refugee) [2021] AATA 5268 (19 November 2021); S Burford, Member

REFUGEE – Protection Visa – Ethiopia – race – Wolayta and Konso ethnic background– inter-ethnic marriage to a Sidama – imputed political opinion – an opposition party member – an educated and influential woman – father’s All Ethiopia Unity Party (AEUP) membership – cumulative adverse profile – state protection not available – decision under review remitted

[1804030](#) (Refugee) [2021] AATA 5322 (6 December 2021); S Norman, Member

REFUGEE – protection visa – Iraq – religion – Assyrian Christian – political opinion – Christian women’s rights activist – particular social group – member of Assyrian Christian family – failed asylum seeker – educated independent Christian women – threats of harm by telephone – victim of assault and failed kidnap attempt – credibility issues – decision under review affirmed

[1711185](#) (Refugee) [2022] AATA 426 (11 January 2022); S Baker, Member

REFUGEE – protection visa – Czech Republic – Jewish ancestry – race – children were not the subject of a primary decision – vague statements and speculation without any evident basis – a single-mother – membership of a particular social group – prejudiced comments do not amount to serious or significant harm – decision under review affirmed

[1816538](#) (Refugee) [2022] AATA 408 (7 February 2022); J Meyer, Member

REFUGEE – protection visa – Turkey – political opinion – supporter/member of main opposition party – organisational and protest activities – threats and attacks, harassment by police and disownment by family – fear of harm from government and police, including arbitrary arrest and recall for military service – credibility – inconsistent claims and minimal evidence – country information – decision under review affirmed

[1716897](#) (Refugee) [2022] AATA 475 (1 February 2022); A Grant, Member

REFUGEE – protection visa – Malaysia – religion – conversion to Christianity – particular social group – mixed religious marriage – changing religion on identity card – marriage registration in Malaysia – custody of the child – fear of detention – officially illegitimate child – financial and physical punishments – charges of proselytising – decision under review remitted

[1909723](#) (Refugee) [2022] AATA 466 (7 February 2022); R Skaros, Member

REFUGEE – protection visa – Iran – religion – convert from Islam to Christianity – family not strictly religious – husband's family strictly religious and connected to authorities – first arrived with husband, converted in Australia, divorced in home country and returned to Australia alone – church membership and activities in Australia – marriage to Australian citizen and pregnancy – harassment of immediate family by some extended family members and authorities – credibility – inconsistent or contrived claims and evidence, and questionable initial motives – regular church activities over time suggest genuine conversion – letters of support – country information – not reasonable to relocate or modify behaviour – decision under review remitted

## **Social Services**

[Al Hassnawy and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 438 (15 March 2022); Dr L Bygrave, 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 qualification period – decision under review affirmed

[Agnew and Secretary, Department of Social Services](#) (Social services second review) [2021]  
AATA 5316 (19 November 2021); P J Clauson AM, Senior Member

SOCIAL SECURITY – Age Pension – lodgement of claim – where Applicant provided documents to substantiate claim – where unexplained cancellation of claim – where Applicant denied cancelling the claim – decision affirmed.

[Drake and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 376 (4 March 2022); Mr R Reitano, Member

SOCIAL SECURITY – cancellation of Newstart Allowance – failure to regularly report income protection payments – debt raised – whether debt must be waived due to sole administrative error – whether special circumstances exist – decision under review affirmed

[Jeffress and Secretary, Department of Social Services](#) (Social services second review) [2021]  
AATA 5318 (24 November 2021); P Ranson, Member

SOCIAL SECURITY – age pension – assets test – income test - assets revaluations – bulk revaluation – exceptional economic circumstances – COVID-19 pandemic – shares value – decision affirmed

[Khan and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 381 (8 March 2022); Mr S Evans, Member

FAMILY ASSISTANCE AND SOCIAL SECURITY – parenting payment – whether the applicant is eligible to be paid arrears – decision to cancel in error – appeal not lodged within 13 weeks – decision under review affirmed.

[Koya and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 439 (15 March 2022); C J Furnell, Senior Member

SOCIAL SECURITY – application for Disability Support Pension refused – chronic lower back pain with radiculopathy – whether Applicant's condition attracted an impairment rating of at least 20 points – whether condition was fully diagnosed, treated and stabilised in the qualification period – condition not fully treated and stabilised in qualification period – unable to assign an impairment rating – decision under review affirmed

[Mangino and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 377 (4 March 2022); B. Pola, Senior Member

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

[Martin; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 406 (7 March 2022); R Reitano, Member

SOCIAL SECURITY – Austudy – Newstart – Overpayment of Austudy – Overpayment of Newstart – Whether payments classified as income – Whether exception to income character applies – Debt due to Commonwealth – Whether overpayment attributable to sole administrative error – Whether debt should be waived for unusual circumstances – Decision set aside and remitted

[McLaughlin and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 440 (15 March 2022); P Ranson, 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

[Snow and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 365 (3 March 2022); Dr N A Manetta, Senior Member

SOCIAL SECURITY – age pension – whether applicant should be paid arrears – where applicant has interest in private trust – extinguishment of private trust by operation of law unbeknownst to applicant – limits on Tribunal’s jurisdiction to order payment of arrears – discussion of s 126 of the Social Security (Administration) Act 1999 (Cth) – AAT1 decision under review set aside and substituted

[XVYL and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 5294 (24 November 2021); Dr J Henderson, Member

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

## Taxation

[Kais Jewellery \(Syd\) Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 425 (11 March 2022); R J Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – whether applicant entitled to input tax credits on purported acquisitions of scrap gold – where neither purported supplier paid GST on purported supplies – where no evidence of how suppliers sourced scrap gold - whether acquisitions made – weight to be given to statement provided by witness who died before hearing – applicant’s burden of proof not discharged – decision affirmed

TAXATION – INCOME TAX - whether large cash withdrawals from company bank account income of director or consideration for acquisitions of scrap gold paid in cash – applicant’s burden of proof not discharged – decision affirmed

TAXATION – ADMINISTRATIVE PENALTY – where taxpayer sought to discharge burden of proving penalty assessments excessive only by proving there were no primary tax shortfalls – where taxpayer failed to prove primary tax assessments are excessive – where taxpayer made no submission that base penalty was otherwise incorrect or should be remitted – decision affirmed

[Tiani and Commissioner of Taxation](#) (Taxation) [2022] AATA 416 (8 March 2022); B J McCabe, Deputy President

ELIGIBILITY FOR JOBKEEPER PAYMENTS – whereas the applicant made an application for Jobkeeper payments – whether the applicant was eligible to receive Jobkeeper payments in her own right as an eligible business participant who conducted her own business – whether an individual qualifies as an eligible business participant – applicant was ineligible for Jobkeeper payments because she had previously given a Jobkeeper nomination notice with another entity – decision under review affirmed

[Water West Pty Limited and Commissioner of Taxation](#) (Taxation) [2022] AATA 427 (8 March 2022); B J McCabe, Deputy President

ELIGIBILITY FOR JOBKEEPER PAYMENTS – whereas the applicant made an application for Jobkeeper payments – whether the applicant was a small business entity – whether the applicant’s aggregate turnover for the previous year of income exceeded \$10 million – whether the aggregate turnover of the related companies exceeded \$10 million for the previous year of income – applicant was ineligible for Jobkeeper payments because the applicant’s aggregate turnover for the previous income year far exceeded \$10 million – 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>Franklin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 77</a>
<b>Kamal and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 959</a>
<b>King and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4391</a>
<b>MQHN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 119</a>
<b>QHRY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 93</a>
<b>TPTN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 262</a>
<b>Transcon Holding Pty Ltd and Aged Care Quality and Safety Commissioner</b>	<a href="#">[2022] AATA 94</a>
<b>Wilde and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 75</a>
<b>YYZQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4647</a>
<b>Zdziarski and Telstra Corporation Limited</b>	<a href="#">[2022] AATA 145</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ali v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 5232</a>	<a href="#">[2022] FCA 174</a>
<b>Campbell v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1879</a>	<a href="#">[2022] FCA 228</a>

<b>De Tarle v Comcare</b>	<a href="#">[2021] AATA 94</a>	<a href="#">[2022] FCA 175</a>
<b>Guttridge v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 2099</a>	<a href="#">[2022] FCA 229</a>
<b>Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 4592</a>	<a href="#">[2022] FCAFC 26</a> <a href="#">[2021] FCA 1134</a>
<b>Lee v Secretary, Department of Social Services</b>	<a href="#">[2021] AATA 3574</a>	<a href="#">[2022] FCA 217</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Darnia-Wilson</b>	<a href="#">[2021] AATA 3019</a>	<a href="#">[2022] FCAFC 28</a>
<b>Murphy v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3635</a>	<a href="#">[2022] FCA 160</a>
<b>Nahi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 209</a>	<a href="#">[2021] FCA 1169</a> <a href="#">[2022] FCAFC 29</a>
<b>Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 2055</a>	<a href="#">[2022] FCA 214</a>
<b>XSLJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 939</a>	<a href="#">[2022] FCAFC 34</a> <a href="#">[2021] FCA 1138</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.

## Notification of Investigations relating to existing Statements of Principles

On 11 March 2022, the AAT was advised that the RMA intends to carry out an [investigation](#) under subsection 196B(7A) of the VEA in respect of the following:

- **Coronavirus disease 2019 (COVID-19) vaccines as a factor in Guillain-Barre syndrome**

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

**Guillain-Barre syndrome (Reasonable Hypothesis) – No. 23 of 2018**

<https://www.legislation.gov.au/Details/F2021C00456>

**Guillain-Barre syndrome (Balance of Probabilities) – No. 24 of 2018**

<https://www.legislation.gov.au/Details/F2021C00457>

The AAT has also been informed that the Specialist Medical Review Council has been asked under s 196Y of the VEA to review some of the contents of the following Statements of Principles:

**Malignant neoplasm of the breast – No. 96 of 2014**

<https://www.legislation.gov.au/Details/F2018C00670>

**Malignant neoplasm of the breast – No. 97 of 2014**

<https://www.legislation.gov.au/Details/F2018C00671>

The Specialist Medical Review Council has given notice under s 196ZB of the VEA that it intends to carry out a review under s196W of the VEA of all the information available to the RMA when it determined, amended or last amended the Statements of Principles in respect of **taking combined hormonal contraceptives** as a factor in **malignant neoplasm of the breast**.

The Notification can be accessed via the following link:

<https://www.legislation.gov.au/Details/C2022G00180>

## **New Statements of Principles**

In addition to the Statements of Principles notified in [AAT Bulletin 5/2022](#), the AAT has been advised that the RMA has also made the following new Statements of Principles. These commence on 4 April 2022:

**Heart block (Balance of Probabilities) - No. 24 of 2022**

<https://www.legislation.gov.au/Details/F2022L00277>

**Heart block (Reasonable Hypothesis) - No. 23 of 2022**

<https://www.legislation.gov.au/Details/F2022L00276>

**Periodontal abscess (Balance of Probabilities) - No. 26 of 2022**

<https://www.legislation.gov.au/Details/F2022L00280>

**Periodontal abscess (Reasonable Hypothesis) - No. 25 of 2022**

<https://www.legislation.gov.au/Details/F2022L00279>

**Periodontitis (Balance of Probabilities) - No. 28 of 2022**

<https://www.legislation.gov.au/Details/F2022L00262>

**Periodontitis (Reasonable Hypothesis) - No. 27 of 2022**

<https://www.legislation.gov.au/Details/F2022L00260>

## Statements of Principles to be revoked

In addition to the Statements of Principles notified in [AAT Bulletin 5/2022](#), the AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on 4 April 2022:

### Heart block - No. 2 of 2014

<https://www.legislation.gov.au/Details/F2014L00005>

### Heart block - No. 1 of 2014

<https://www.legislation.gov.au/Details/F2014L00007>

### Periodontal abscess - No. 50 of 2013

<https://www.legislation.gov.au/Details/F2013L01131>

### Periodontal abscess - No. 49 of 2013

<https://www.legislation.gov.au/Details/F2013L01125>

### Periodontitis - No. 48 of 2013

<https://www.legislation.gov.au/Details/F2013L01122>

### Periodontitis - No. 47 of 2013

<https://www.legislation.gov.au/Details/F2013L01128>

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