



# AAT Bulletin

**Issue No. 10/2021**

**17 May 2021**

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

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

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

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

# Contents

<b>AAT Recent Decisions.....</b>	<b>3</b>
Child Support.....	3
Citizenship.....	4
Compensation.....	5
Conflict of Laws.....	5
Education and Research.....	5
Freedom of Information.....	6
Migration.....	6
Practice and Procedure.....	9
Professions and Trades.....	10
Refugee.....	11
Social Services.....	12
Taxation.....	13
<b>Appeals .....</b>	<b>14</b>
Appeals lodged .....	14
Appeals finalised.....	14
<b>Statements of Principles .....</b>	<b>15</b>
Notification of Investigations relating to existing Statements of Principles .....	15
Amended Statements of Principles.....	19

# AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

## Child Support

[Brannick and Mott](#) (Child support) [2021] AATA 1269 (23 February 2021); C Breheny, Member

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

[Cruddas and Child Support Registrar](#) (Child support) [2021] AATA 997 (1 March 2021); A Schiwy, Member

CHILD SUPPORT – application for extension of time – applicant did not rest on rights - no merit - extension of time refused – decision affirmed

[Mignogna and Arliss](#) (Child support) [2021] AATA 1264 (9 March 2021); M Douglas, 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 – date of effect – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review affirmed

[Scrubbs and Scrubb](#) (Child support) [2021] AATA 1290 (2 March 2021); R Ellis, Senior Member

CHILD SUPPORT – non-agency payments – no mutual intent – whether payments direct to parent entitled to receive child support were prescribed payments – payments could not be credited due to care level of children – decision under review affirmed

[Zamorano and Zamorano](#) (Child support) [2021] AATA 1295 (1 March 2021); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – whether it is appropriate to consider daytime care – appropriate to consider daytime care – existing percentage of care determinations revoked and new determinations made – decision under review affirmed

## **Citizenship**

**[Carlson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1099 (30 April 2021); Mr A George, Member

CITIZENSHIP – applicant’s application for citizenship by conferral refused – whether applicant satisfies residency requirements under section 21(2)(c) – consideration under subsections 22, 22A, 22B, and 23 – applicant outside Australia for greater than 12 months prior to application for citizenship – decision under review affirmed

**[Kahzadi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1137 (4 May 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – Faili Kurd – meaning of identity – application of Citizenship Procedural Instructions – decision under review affirmed

**[Mohammadi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1179 (7 May 2021); Senior Member DJ Morris

CITIZENSHIP – citizenship by conferral – whether applicant of good character – inaccurate advice about composition of family – factors to take into account – obligation to provide information that is complete, truthful and correct – satisfaction must be contemporary assessment, not when application lodged – opportunities to correct inaccurate information not taken – person may subsequently satisfy good character provision – decision under review is affirmed

**[Reynolds and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1146 (5 May 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – does not have an intention to reside, or maintain a close and continuing association with Australia – application of Citizenship Procedural Instructions – applicant under 18 at the time of application – close and continuing association with Australia – best interest of the child assessments – decision under review set aside and matter remitted

**[Rezai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1145 (5 May 2021); Ms M East, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant’s identity and good character – no independent identification documents provided to the Tribunal – Applicant failed to corroborate life story – Tribunal unable to be reasonably satisfied as to the identity of the Applicant – reviewable decision affirmed

**[Saeedavi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1107 (30 April 2021); Senior Member R Cameron

CITIZENSHIP – identity of applicant – insufficient documentary evidence – inconsistencies in life story – Tribunal not satisfied as to the identity of the applicant – decision under review affirmed

## **ZQVZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2021] AATA 1105 (30 April 2021); Dr L Bygrave, Member

CITIZENSHIP – by descent – parent who is an Australian citizen at the time of birth – whether the parent has been present in Australia for a total period of at least 2 years at any time before the application was made – decision affirmed

## **Compensation**

**Gibson and Comcare** (Compensation) [2021] AATA 1183 (7 May 2021); Deputy President BW Rayment OAM QC

WORKERS' COMPENSATION – anxiety and depression – whether applicant suffered an injury or disease – whether injury or disease suffered in the relevant period – where date of index injury assessed retrospectively – where expert medical evidence conflicting – where disease in the relevant period found – whether disease arose out of or in the course of employment – whether employment contributed to disease to a significant degree – whether disease suffered as a result of reasonable administrative action taken in a reasonable manner – reviewable decision set aside and remitted – cost order

## **Conflict of Laws**

**Cross and Business Licencing Authority** [2021] AATA 1101 (3 May 2021); Deputy President BW Rayment OAM QC

MUTUAL RECOGNITION - where applicant holds a real estate agent licence in NSW –where applicant sought and was granted registration as a real estate agent in SA and VIC under the Mutual Recognition Act 1992 (Cth) – where SA licence subsequently cancelled – where VIC licence subsequently cancelled – where applicant sought and was refused reinstatement under the Mutual Recognition Act 1992 (Cth) in VIC – whether licence cancellation in SA void – whether decision of the Respondent a reviewable decision – whether reinstatement the correct and preferable decision - where Tribunal found licence cancellation not void – where reinstatement found to be the correct and preferable decision – decision set aside and substituted

## **Education and Research**

### **Australian Intelligence Training Academy Pty Ltd and Australian Skills Quality Authority**

[2021] AATA 1108 (30 April 2021); Ms K Parker, Member

VOCATIONAL EDUCATION AND TRAINING – cancellation of registered vocational education and training organisation (RTO) – breach of conditions of registration under the National Vocational Education and Training Regulation Act 2011 (Cth) – non-compliance with Standards for Registered Training Organisations 2015 (Standards) – whether now superseded Certificate II-level security course delivered over sufficient duration – whether financial viability risk assessment requirements met – whether data provision requirements met – whether Applicant demonstrated commitment and capability to deliver quality VET – whether Tribunal can be confident that Applicant will meet statutory RTO requirements, conditions of registration and comply with Standards in future – Tribunal considers it is appropriate in the circumstances that the Applicant's registration be cancelled – decision under review affirmed

## Freedom of Information

[Cambridge; Chief Executive Officer, Services Australia and](#) (Freedom of information) [2021] AATA 1142 (5 May 2021); Deputy President S Boyle

FREEDOM OF INFORMATION – whether practical refusal reason exists – majority of documents that are the subject of the request already provided under administrative access arrangements – processing the FOI request would substantially divert resources of Services Australia from its other operations – diversion of resources for 88.5 hours to provide documents that have already been provided is unreasonable – reviewable decision set aside and substituted

## Migration

[Ahmed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1185 (7 May 2021); Mr R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of a minor child – expectations of the Australian community – non-refoulement obligations – other considerations – decision affirmed

[BQNZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1186 (27 April 2021); Ms R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class AZ Subclass 866 (Protection) 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 – repeated domestic violence offending – rape of child victim – mental illness – consideration of Australia’s international non-refoulement obligations where receiving country is Iraq – likelihood of prolonged or indeterminate detention – decision under review affirmed

[Kumar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1180 (4 May 2021); Senior Member J Rau SC

MIGRATION – refusal of application for Bridging E (Class WE) visa under section 501(1) – where Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – best interests of minor children – decision under review affirmed and a new decision is substituted in its place

[LQFH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1141 (4 May 2021); Senior Member M Griffin QC

VISA CANCELLATION – refusal to revoke visa cancellation – whether the applicant passes the character test – substantial criminal record – whether there is another reason to revoke the cancellation – protection of the Australian community – best interests of minor children – other considerations – co-operation with police – harm to the applicant if removed – decision under review is affirmed

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

(Migration) [2021] AATA 1224 (14 April 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. 79 – decision under review affirmed

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

(Migration) [2021] AATA 1143 (5 May 2021); Senior Member DJ Morris

MIGRATION – applicant is a citizen of the Republic of Albania – applicant held Class BS Subclass 801 Partner visa – visa cancelled under s 501(3A) of Migration Act – applicant invited to make representations as to whether mandatory cancellation of visa should be revoked – representations made – delegate decided not to revoke mandatory cancellation of visa – delegate applied Ministerial Direction No. 79 – new Ministerial Direction now in place – no accrued rights – Ministerial Direction No. 90 applied – primary considerations – protection of the Australian community from criminal or other serious conduct – whether the conduct constituted family violence – the best interests of minor children in Australia – expectations of the Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – impact on victims – links to the Australian community including strength, nature and duration of ties to Australia and impact on Australian business interests – additional claim relating to diligence of legal representation during submissions on sentencing not relevant to Tribunal’s task - weighing of considerations in Ministerial Direction cumulatively in this particular case – decision under review set aside and new decision substituted

**Pinto Amante and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2021] AATA 1181 (7 May 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community from criminal or other serious conduct – nature of harm – intentionally damage property by fire – domestic violence – breach of apprehended violence order – risk of future re-offending – family violence – best interests of minor children – other considerations – decision under review affirmed

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

(Migration) [2021] AATA 1138 (23 April 2021); Mr R Maguire, Member

MIGRATION – non-revocation of mandatory cancellation – Class BF Transitional (Permanent) Visa (Code 808) – where the Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation – consideration of Ministerial Direction No 90 – decision under review affirmed

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

(Migration) [2021] AATA 1228 (11 May 2021); Mr S Evans, Member

MIGRATION – review of decision not to revoke mandatory cancellation of Applicant’s visa – provisions of the Migration Act 1958 (Cth) considered, particularly sections 501 and 501CA – Direction no. 90 considered – applicant’s background and other characteristics/factors considered – decision under review affirmed



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

(Migration) [2021] AATA 1252 (13 May 2021); The Hon. Dennis Cowdroy AO QC, 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 – family violence committed by the non-citizen – best interests of minor child – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

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

(Migration) [2021] AATA 1208 (11 May 2021); Deputy President Boyle

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – Applicant fails the character test – two-day rule (ss 500(6H) and 500(6J) of the Migration Act) – whether there is ‘another reason’ to revoke the mandatory cancellation – Direction 90 considered – Applicant sentenced to three years imprisonment for stealing as a servant – statutory construction of Direction 90 para 8.1.1(1)(b)(ii) – doctrine of ejusdem generis applied – corporate employer provider was not a vulnerable person for the purposes of Direction 90 para 8.1.1(1)(b)(ii) – risk of reoffending very low – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 1259 (9 April 2021); Member M Kennedy and Senior Member J Rau SC

MIGRATION – refusal to grant a visa – s 501 character test applied – foreign conviction – Tribunal may not go behind fact of conviction or essential facts leading to conviction - s 501(10) ‘pardons etc’ – conviction otherwise nullified – expungement – s 501(6)(e) sexually based offence involving a child – court in foreign country convicted and found charge proved – discretion to refuse visa – considerations in Direction 79 Part B – nature and seriousness of conduct – considering sentence imposed by court – whether offence of a violent nature – remote risk of conduct being repeated – minor child resident in Australia long term – decision under review set aside

**1901804** (Migration) [2021] AATA 1053 (25 March 2021); D Crawshay, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – sponsor’s capacity to understand sponsorship obligations – mental health – carer visa assessment certificate and medical reports – diagnosis and current condition – sponsor’s mostly clear oral evidence to tribunal – decision under review remitted

**1915811** (Migration) [2021] AATA 1057 (18 February 2021); M McAdam, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – satisfied as to the applicant’s identity – previous application for refugee status – close relative in Australia – Forensic Facial Image Examination – Afghan naming practices – fear of persecution – included in another application without his knowledge – unlawfully obtained passport – identity documents – power to cancel the visa does not arise – decision under review set aside



[Kumar](#) (Migration) [2021] AATA 986 (1 April 2021); K Malyon, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – standard business sponsor stream – subject of approved position nomination – first related nomination application refused and no application for review made – second application refused and application for review withdrawn – visa subclass repealed and company’s sponsorship expired – wife holds separate visa but applicant unable to travel to lodge application as secondary applicant offshore – regulatory changes in response to COVID-19 travel restrictions – residence, study and work history – unique and exceptional circumstances – referred for ministerial consideration – decision under review affirmed

[Nguyen](#) (Migration) [2021] AATA 1086 (9 April 2021); J Lambie, Senior Member

MIGRATION – Partner (Provisional) (Class UF) – Subclass 309 (Partner (Provisional)) – Federal Circuit Court remittal – genuine spousal relationship – validly married in home country – financial, household and social aspects of relationship – informal financial arrangements between family and friends – possibly rehearsed evidence and staged photos – no mention of family connection before meeting (previously married to siblings) – nature of commitment – age gap and review applicant’s health and finances – visa applicant’s comparatively higher status and finances – geographical separation and visits – review applicant’s evasive evidence of contact with former spouse – weighing reasonable suspicion of contrived marriage and objective evidence – decision under review remitted

[Shah](#) (Migration) [2021] AATA 1079 (15 March 2021); J Owen, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – primary applicant wife provided bogus documents and incorrect information in previous visa application – study and work experience – verification checks – credibility – attempts to establish genuineness of study, work and documents – institution since deregistered, employer is associated with wife’s family – vague evidence – wife’s other, genuine qualification not listed in application – husband’s qualifications and work experience also found to be non-genuine – discretion to cancel visa – wife genuinely qualified in another subject area and working professionally in Australia – long residence and integration into community – children’s education and future plans – best interests of children – country information – status of young, educated, Westernised women in home country – decision under review set aside

## **Practice and Procedure**

[Al-Huda Pty Limited and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 1147 (4 May 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – request for adjournment of hearing – where new evidence discovered before hearing – application for adjournment granted

[Blundell and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1258 (10 May 2021); Senior Member D O’Donovan

PRACTICE AND PROCEDURE – dismissal under section 42A(5) of the Administrative Appeals Tribunal Act 1975 – applicant failed to comply with direction to notify Tribunal of intention to proceed – applicant’s representative indicated that she did not want to communicate with the Tribunal about the matter – whether discretion should be exercised to dismiss application – application dismissed

[Cook and National Disability Insurance Agency](#) [2021] AATA 1111 (4 May 2021); Deputy President JW Constance

PRACTICE AND PROCEDURE – implied undertaking – where release is for the purpose of assessing the Applicant’s entitlements under the NDIS Act – where documents produced under compulsion – nature of Tribunal’s discretion to release a party from the implied undertaking – circumstances of the case – nature of the National Disability Insurance Scheme – where ongoing relationship between the parties – where documents would otherwise be available – interests of good public administration for decision makers to have available material before it when making reviewable decisions – where Applicant consented to use of information by the Agency – release from the implied undertaking granted

[D'Ambrosio and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1109 (3 May 2021); Deputy President B Rayment OAM QC

PRACTICE AND PROCEDURE – whether personal representative of deceased applicant is a party to the proceedings – where application made by personal representative of the applicant – where death of applicant occurred before decision delivered – where decision appealed by personal representative of the applicant – where legal personal representative may be joined by application under s 30 Administrative Appeals Act (Cth) – where Tribunal finds personal representative of deceased applicant is not a party to the proceedings

[LHYD and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1227 (12 May 2021); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – application for reinstatement of withdrawn application – Applicant mistakenly believed he could apply for reinstatement after receiving advice – whether application dismissed in error – withdrawn application to seek review of a decision of the AAT1 which affirmed a decision of an Authorised Review Officer to reject the Applicant’s claim for Newstart Allowance – withdrawal possibly based on incorrect advice or advice misunderstood but no error – application for reinstatement refused

[Newell and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1102 (28 April 2021); Senior Member BJ Illingworth

PRACTICE AND PROCEDURE – Application for extension of time – Application for waiver of Austudy debt – Consideration of principles which apply to extensions of time – Extent of delay – Whether there is a persuasive explanation for the delay – Whether Applicant rested on his rights – Whether there is merit in substantive application – Extension of time refused

## **Professions and Trades**

[Akram and Commissioner of Police \(NSW\)](#) [2021] AATA 1209 (11 May 2021); Dr L Bygrave, Member

EXTENSION OF TIME APPLICATION – review application lodged outside 28-day limit – interlocutory hearing held – provisions of the Administrative Appeals Tribunal Act 1975 (Cth) considered – provisions of the Mutual Recognition Act 1992 (Cth) considered – provisions of the Security Industry Act 2003 (ACT) considered – provisions of the Security Industry Act 1997 (NSW) considered – reasons for delay considered – prejudice to the respondent and general public considered – merits of substantive application considered – application for extension of time refused

[Beckett and Tax Practitioners Board](#) [2021] AATA 1234 (30 April 2021); Deputy President IR Molloy

TAX AGENT REGISTRATION – Tax Practitioners Board – tax agent registration – whether applicant is a fit and proper person – applicant convicted of offences involving fraud and dishonesty – decision affirmed

## Refugee

[1608858](#) (Refugee) [2021] AATA 1211 (27 January 2021); Dr C Huntly, Member

REFUGEE – protection visa – Myanmar – imputed political opinion – participation in pro-democracy movements – second applicant’s mother granted protection in third country – straightforward and credible evidence – one covert return to home country – country information – complementary protection – higher profile and risk of harm as married couple – decision under review remitted

[1617982](#) (Refugee) [2021] AATA 1016 (25 March 2021); L Nicholls, Senior Member

REFUGEE – protection visa – Fiji – seasonal worker program – claimed exploitation from registered employer – mislead Fijian authorities by not claiming occupation as teacher – fear of reprisal – fines – detention and torture – decision under review affirmed

[1700623](#) (Refugee) [2021] AATA 918 (26 March 2021); M Foster, Member

REFUGEE – protection visa – India – particular social group – love marriages – mixed race relationship – applicant married an Australian citizen – disowned by family – honour killing – Australian citizen child – genuine spousal relationship – applicant now divorced from partner that was subject of protection claims – decision under review affirmed

[1711373](#) (Refugee) [2021] AATA 1052 (23 March 2021); L Symons, Member

REFUGEE – protection visa – Pakistan – particular social group – Pakistani male who has entered into an inter caste relationship – love relationship – married against the wishes of their respective families – Pakistani male facing honour killing – credibility concerns – inconsistencies in evidence – delay in arriving in Australia after granted a Student visa – delay in seeking protection – decision under review affirmed

[1712070](#) (Refugee) [2021] AATA 1041 (22 March 2021); B Darcy, Member

REFUGEE – protection visa – Papua New Guinea – particular social group – single women – separated women subjected to an unresolved bride price – race – tribal groups – gender based violence – abduction – fear of killing – bride price – discriminatory denial of state protection – internal relocation – decision under review remitted

[1715202](#) (Refugee) [2021] AATA 837 (26 March 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Pakistan – imputed political opinion – opposition to the Taliban – religion – Shia – race – Turi tribe – particular social group – HIV/AIDS sufferer – killing of the family members – bombings – sectarian violence – perceived as homosexual – internal relocation – access to HIV/AIDS treatment – decision under review remitted

[1906335](#) (Refugee) [2021] AATA 755 (21 March 2021); C Packer, Member

REFUGEE – protection visa – Ethiopia – political opinion – opposition party membership and activity in home country and Australia – detention and abuse – family members’ military service, political beliefs, memberships and activities – first husband killed, second husband disappeared after capture by separatist group – other party members, friends and daughter arrested and interrogated after applicant’s departure – ethnicity – member of a particular social group – elderly, widowed woman – physical and mental health – credible evidence – country information – ongoing ethnic, political and military conflict – decision under review remitted

[2010192](#) (Refugee) [2021] AATA 1044 (29 March 2021); J Marquard, Member

REFUGEE – protection visa – Lebanon – Federal Circuit Court remittal – extensive criminal records – part of a Sunni militia group – fears harm from the Salafis and Shi’a/Allawis – converted to Christianity – admitting to false claims – sexual orientation – homosexual man – had difficulty in acknowledging and revealing sexual orientation – effective protection not available – decision under review remitted

## **Social Services**

[Boland and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1132 (4 May 2021); Mr S Evans, Member

AGE PENSION – AAT second review – determining the Applicant’s Australian Working Life Residence (AWLR) for the purposes of calculating rate of Age Pension – provisions of the Social Security (Administration) Act 1999 (Cth) considered – provisions of the Social Security Act 1991 (Cth) considered – nature of accommodation used in Australia considered – nature and extent of family relationships in Australia considered – nature and extent of employment, business or financial ties with Australia considered – nature and extent of assets located in Australia considered – frequency and duration of travel outside of Australia considered – other factors considered – decision under review set aside and remitted with directions

[Cooke and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1095 (30 April 2021); Senior Member L Kirk

SOCIAL SECURITY – pensions, benefits and allowances – disability support pension – whether applicant’s mental health conditions were fully diagnosed, treated and stabilised during qualification period – whether applicant’s impairments attracted a total rating of 20 points under the Impairment Tables – where applicant’s diagnosis was not made by psychiatrist or appropriately qualified medical practitioner with evidence from a clinical psychologist – decision under review affirmed

[Deniz and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1098 (29 April 2021); Mr R West, Member

SOCIAL SECURITY – disability support pension – substance abuse – methamphetamine - mental health condition – anxiety, depression and post-traumatic stress disorder (PTSD) – diabetes – spinal condition – Hepatitis C – elevated cholesterol – liver damage – shoulder pain – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Giansiracusa and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1097 (30 April 2021); Mr R West, Member

SOCIAL SECURITY – carer payment – rent assistance – payment of arrears – s.109 Social Security (Administration) Act 1999 – decision affirmed

[Heydenrych and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1100 (9 April 2021); Mr S Evans, Member

NEUSTART ALLOWANCE and JOBSSEEKER PAYMENT – AAT second review – applicant’s claim for Newstart Allowance and Jobseeker Payment rejected as he was not in Australia at the time of applying – decision under review affirmed by oral decision – written reasons given after hearing

[Ling and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1096 (29 April 2021); Mr I Thompson, Member

SOCIAL SECURITY – disability support pension – whether applicant’s medical conditions were fully diagnosed, fully treated and fully stabilised during the assessment period – decision under review affirmed

[Milovanovic and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1134 (4 May 2021); Dr I Alexander, Senior Member

SOCIAL SECURITY – Disability Support Pension – whether the applicant’s impairment was 20 points or more under the Impairment Tables – whether the applicant had a continuing inability to work – unreliable and untested evidence – unable to decide the question of fact – Tribunal must decide whether applicant was not qualified for the payment of DSP at date of cancellation – Tribunal not persuaded on the facts – decision set aside and substituted

[Rouse and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1144 (4 May 2021); Senior Member B Pola

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

## **Taxation**

[Dessent and Commissioner of Taxation](#) (Taxation) [2021] AATA 1206 (11 May 2021); Mr R Reitano, Member

TAXATION – where applicant received insurance payment – whether insurance payment is treated as assessable recoupment under s 20-20 of the Income Tax Assessment Act 1997 (Cth) – decision under review affirmed

[Spencer and Commissioner of Taxation](#) (Taxation) [2021] AATA 1106 (3 May 2021); L Rieper, Member

TAXATION AND REVENUE – income tax – deductions – employee – work-related travel expenses – running costs – internet and telephone expenses – objection decision relating to income tax set aside and substituted

# 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>Davis and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 774</a>
<b>FHM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 760</a>
<b>Hawk and Linfox Armaguard Pty Limited</b>	<a href="#">[2021] AATA 800</a>
<b>Onassys and Comcare</b>	<a href="#">[2021] AATA 829</a>
<b>Spano and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 855</a>
<b>Walters and Comcare</b>	<a href="#">[2021] AATA 14</a>
<b>Watiwat and Secretary, Department of Social Services</b>	<a href="#">[2020] AATA 4683</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>None finalised</b>		

# 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 **4 May 2021**, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

**the definition of 'pack-year of tobacco products' and the definition of 'pack-year' (as the case may be)**

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

**ankylosing spondylitis (Reasonable Hypothesis) - No. 39 of 2021**

<https://www.legislation.gov.au/Details/F2021L00364>

**ankylosing spondylitis (Balance of Probabilities) - No. 40 of 2021**

<https://www.legislation.gov.au/Details/F2021L00362>

**anosmia (Reasonable Hypothesis) - No. 19 of 2021**

<https://www.legislation.gov.au/Details/F2021L00004>

**anosmia (Balance of Probabilities) - No. 20 of 2021**

<https://www.legislation.gov.au/Details/F2021L00005>

**aortic aneurysm and aortic wall disorders (Reasonable Hypothesis) - No. 21 of 2021**

<https://www.legislation.gov.au/Details/F2021L00011>



aortic aneurysm and aortic wall disorders (Balance of Probabilities) - No. 22 of 2021  
<https://www.legislation.gov.au/Details/F2021L00012>

asthma (Reasonable Hypothesis) - No. 31 of 2021  
<https://www.legislation.gov.au/Details/F2021L00211>

asthma (Balance of Probabilities) - No. 32 of 2021  
<https://www.legislation.gov.au/Details/F2021L00220>

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

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

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

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

deep vein thrombosis (Reasonable Hypothesis) - No. 35 of 2021  
<https://www.legislation.gov.au/Details/F2021L00223>

deep vein thrombosis (Balance of Probabilities) - No. 36 of 2021  
<https://www.legislation.gov.au/Details/F2021L00224>

diabetes mellitus (Reasonable Hypothesis) - No. 48 of 2020  
<https://www.legislation.gov.au/Details/F2020L00823>

diabetes mellitus (Balance of Probabilities) - No. 49 of 2020  
<https://www.legislation.gov.au/Details/F2020L00822>

giant cell arteritis (Reasonable Hypothesis) - No. 11 of 2021  
<https://www.legislation.gov.au/Details/F2021L00008>

giant cell arteritis (Balance of Probabilities) - No. 12 of 2021  
<https://www.legislation.gov.au/Details/F2021L00010>

inflammatory bowel disease (Reasonable Hypothesis) - No. 90 of 2020  
<https://www.legislation.gov.au/Details/F2020L01388>

inflammatory bowel disease (Balance of Probabilities) - No. 91 of 2020  
<https://www.legislation.gov.au/Details/F2020L01389>

malignant neoplasm of the cervix (Reasonable Hypothesis) - No. 80 of 2020  
<https://www.legislation.gov.au/Details/F2020L01381>

malignant neoplasm of the cervix (Balance of Probabilities) - No. 81 of 2020  
<https://www.legislation.gov.au/Details/F2020L01383>

malignant neoplasm of the kidney (Reasonable Hypothesis) - No. 41 of 2021  
<https://www.legislation.gov.au/Details/F2021L00358>

malignant neoplasm of the kidney (Balance of Probabilities) - No. 42 of 2021  
<https://www.legislation.gov.au/Details/F2021L00359>

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

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

peripheral artery disease (Reasonable Hypothesis) - No. 70 of 2020  
<https://www.legislation.gov.au/Details/F2020L01374>

peripheral artery disease (Balance of Probabilities) - No. 71 of 2020  
<https://www.legislation.gov.au/Details/F2020L01375>

psoriasis (Reasonable Hypothesis) - No. 13 of 2021  
<https://www.legislation.gov.au/Details/F2021L00013>

psoriasis (Balance of Probabilities) - No. 14 of 2021  
<https://www.legislation.gov.au/Details/F2021L00015>

pulmonary thromboembolism (Reasonable Hypothesis) - No. 37 of 2021  
<https://www.legislation.gov.au/Details/F2021L00213>

pulmonary thromboembolism (Balance of Probabilities) - No. 38 of 2021  
<https://www.legislation.gov.au/Details/F2021L00214>

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

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

retinal vascular occlusion (Reasonable Hypothesis) - No. 50 of 2020  
<https://www.legislation.gov.au/Details/F2020L00825>

**retinal vascular occlusion (Balance of Probabilities) - No. 51 of 2020**

<https://www.legislation.gov.au/Details/F2020L00831>

**tinnitus (Reasonable Hypothesis) - No. 84 of 2020**

<https://www.legislation.gov.au/Details/F2020L01385>

**tinnitus (Balance of Probabilities) - No. 85 of 2020**

<https://www.legislation.gov.au/Details/F2020L01386>

The AAT was also advised that the RMA intends to carry out investigations under subsection 196B(7) of the VEA in respect of the content of the following Statement of Principles Instruments:

**allergic rhinitis - No. 22 of 2014**

<https://www.legislation.gov.au/Details/F2014L00306>

**allergic rhinitis - No. 23 of 2014**

<https://www.legislation.gov.au/Details/F2014L00300>

**narcolepsy - No. 8 of 2014**

<https://www.legislation.gov.au/Details/F2017C00836>

**narcolepsy - No. 7 of 2014**

<https://www.legislation.gov.au/Details/F2017C00835>

**periodic limb movement disorder - No. 27 of 2014**

<https://www.legislation.gov.au/Details/F2014L00314>

**periodic limb movement disorder - No. 26 of 2014**

<https://www.legislation.gov.au/Details/F2014L00313>

**restless legs syndrome - No. 21 of 2014**

<https://www.legislation.gov.au/Details/F2014L00308>

**restless legs syndrome - No. 20 of 2014**

<https://www.legislation.gov.au/Details/F2014L00307>

**somatic symptom disorder – No. 24 of 2014**

<https://www.legislation.gov.au/Details/F2014L00304>

**somatic symptom disorder - No. 25 of 2014**

<https://www.legislation.gov.au/Details/F2014L00299>

## **Amended Statements of Principles**

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from **24 May 2021**:

**Cerebrovascular accident - No. 53 of 2021**

<https://www.legislation.gov.au/Details/F2021L00495>

**Cerebrovascular accident - No. 54 of 2021**

<https://www.legislation.gov.au/Details/F2021L00496>

**Guillain-Barre syndrome (Balance of Probabilities) - No. 58 of 2021**

<https://www.legislation.gov.au/Details/F2021L00484>

**Guillain-Barre syndrome (Reasonable Hypothesis) - No. 57 of 2021**

<https://www.legislation.gov.au/Details/F2021L00483>

**ischaemic heart disease (Balance of Probabilities) - No. 56 of 2021**

<https://www.legislation.gov.au/Details/F2021L00492>

**ischaemic heart disease (Reasonable Hypothesis) - No. 55 of 2021**

<https://www.legislation.gov.au/Details/F2021L00490>



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

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

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

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

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