



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

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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.

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# Recent developments

## 2021 AAT User Feedback Survey

Our annual survey has commenced, with most parties and representatives who had a review finalised between 1 December 2020 and 31 March 2021 invited via email or SMS to have their say. If you received an email or SMS, we strongly encourage you to complete the survey. By doing so you can help us identify where the AAT can make improvements to the way we operate and the services we provide.

If you receive a link on behalf of someone else, please forward it to them as soon as possible.

Thank you for your assistance. For more information visit our website, [www.aat.gov.au](http://www.aat.gov.au).

# 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

[JWKX and Child Support Registrar](#) (Child support second review) [2021] AATA 1463 (25 May 2021); Senior Member C Puplick AM

CHILD SUPPORT – percentage of care – appropriate percentage of care between applicant and other party for an appropriate care period – decision under review affirmed

[WLRB and Child Support Registrar](#) (Child support second review) [2021] AATA 1512 (27 May 2021); Dr Cremean, Senior Member

CHILD SUPPORT – percentage of care – pattern of care – decision set aside

[VTMM and Child Support Registrar](#) (Child support second review) [2021] AATA 1405 (20 May 2021); Senior Member PJ Clauson AM

CHILD SUPPORT – percentage of care – where Tribunal could not be satisfied of change in care – where change in care not substantiated – where witness evidence did not disclose basis for witness knowledge – decision affirmed

[Ottley and Ottley](#) (Child support) [2021] AATA 1283 (23 February 2021); P Jensen, 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 varied – date of effect – whether there were special circumstances that prevented the application for review being lodged in time – no special circumstances exist

[Aldous and Aldous](#) (Child support) [2021] AATA 1297 (2 March 2021); P Jensen, 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 – care percentage decisions under review varied – date of effect – whether there were special circumstances that prevented the objection being lodged in time – date of effect decisions under review affirmed – whether there were special circumstances that prevented the application for review being lodged in time – special circumstances existed – care percentage decisions applied from earlier date

[Prindville and Modesitt](#) (Child support) [2021] AATA 1286 (3 March 2021); T Bubutievski, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – no ground for departure established – decision under review affirmed

## **Citizenship**

**[Benbrika and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1341 (14 May 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – does not have a permanent or enduring physical or mental incapacity – application of Citizenship Procedural Instructions – suffers from Major Depressive Disorder – not permanent or enduring – functionally illiterate – incapacity not a direct cause – decision under review affirmed

**[Binamu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1362 (4 May 2021); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – good character requirement – affray – stalking – intimidation and damage to property – plea of guilty – good behaviour bond – denial of guilt – traffic offences – decision set aside and remitted

**[Chalou and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1514 (27 May 2021); Deputy President Boyle

CITIZENSHIP – refusal of a delegate of the Minister to grant the Applicant's application for conferral of Australian citizenship – delegate not satisfied of the Applicant's identity – delegate found that the Applicant was not of good character – Applicant is a citizen of South Sudan who arrived in Australia as a 14-year-old – limited primary documentation – Tribunal not satisfied of the Applicant's identity – prohibition under s 24(3) of the Citizenship Act applies – reviewable decision affirmed

**[Fu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1363 (18 May 2021); Senior Member A Poljak

CITIZENSHIP – application for citizenship by conferral – applicant aged under 18 – discretion to refuse application – did not live with responsible parent who was an Australian citizen at the time of application – Citizenship Policy – Citizenship Procedural Instructions – best interests of the child – ties to Australia – views of the child – decision under review set aside and substituted

**[Norris \(Junior\) and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1399 (17 May 2021); Senior Member K Millar

Application for Australian citizenship by descent – Applicant's mother born in Papua prior to Papua New Guinea Independence Day – whether Applicant's mother was an Australian citizen at time of Applicant's birth – whether Applicant's mother had a right to permanent residence in Australia – grant of right to of permanent residence by the Minister for Immigration – whether right to permanent residence renounced – matter remitted for reconsideration in accordance with the finding that the Applicant has a parent who was an Australia citizen at the time of her birth

**[Reskalla and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**  
(Citizenship) [2021] AATA 1456 (24 May 2021); Deputy President J Sosso

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – character test – criminal history – failure to disclose past offending in citizenship application – change in life circumstances – decision under review affirmed

## Compensation

[Palmer and Comcare](#) (Compensation) [2021] AATA 1435 (11 May 2021); Emeritus Professor PA Fairall, Senior Member

COMPENSATION – Dispute concerning calculation of Normal Weekly Earnings (NWE) – whether Applicant's NWE is to be calculated based on pre-injury earnings or whether subsequent increase in earnings and hours should be taken into account – whether Applicant's transfer to another work location with higher pay was a "promotion" for the purposes of s 8(7) of the SRC Act – Reviewable decision affirmed

## Education and Research

[Australian Centre for Advanced Studies Inc. and Australian Skills Quality Authority](#) [2021] AATA 1400 (20 May 2021); Dr M Evans-Bonner, Senior Member

VOCATIONAL EDUCATION AND TRAINING – registered training organisations – rejection of renewal of registration – whether non-compliance with Standards for Registered Training Organisations – whether failure to exercise meaningful control – most courses delivered through third party providers – whether Applicant had adequate oversight over the delivery of courses – Applicant found to be compliant with Standards – recommendations made to improve ASQA's audit processes – decision under review set aside and remitted to ASQA

## Freedom of Information

[Urquhart; Chief Executive Officer, Services Australia and](#) (Freedom of information) [2021] AATA 1407 (19 May 2021); Ms DK Grigg, Member

FREEDOM OF INFORMATION – whether practical refusal reason exists in accordance with section 24(1) of the Freedom of Information Act 1982 (Cth) – whether request consultation process engaged in pursuant to section 24AB of the Freedom of Information Act 1982 (Cth) – decision under review set aside

## Industrial Law

[Volodin and Secretary, Attorney-General's Department](#) [2021] AATA 1434 (19 May 2021); Ms DK Grigg, Member

FAIR ENTITLEMENTS GUARANTEE – whether applicant was an "employee" or independent contractor at the relevant time – relevant indicia of employee relationship – relevance of intention of parties – "sham" contracts – decision under review set aside

## Migration

[BCDC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1424 (14 April 2021); Ms R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 200 – Refugee 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 – domestic violence and other alcohol related offending – consideration of Australia's international non-refoulement obligations – decision under review affirmed

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

(Migration) [2021] AATA 1462 (27 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. 90 – decision under review affirmed

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

(Migration) [2021] AATA 1485 (26 May 2021); Senior Member A Nikolic AM CSC

MIGRATION – mandatory visa cancellation – citizen of the United Kingdom – Class BF Transnational (Permanent) visa – failure to pass good character test – substantial criminal record – alcohol and drug abuse issues – family violence – violent crimes – drug and dishonesty offences – conditional liberty offences – whether another reason to revoke the mandatory cancellation – Ministerial Direction no. 90 applied – decision affirmed

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

(Migration) [2021] AATA 1370 (19 May 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – Applicant is a doctor who was convicted of a sexual offence against a patient – sexual penetration without consent – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – the Tribunal did not find the Applicant to be an honest witness and the Tribunal has significant doubts as to his purported remorse and acceptance of responsibility – expectations of the Australian community – extent of impediments if removed – strength, nature and duration of ties to Australia – impact on Australian business interests – Applicant is a 51 year old man who arrived in Australia in 2013 – extent of impediments if returned to Sri Lanka – reviewable decision affirmed

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

(Migration) [2021] AATA 1487 (20 May 2021); Deputy President Boyle

MIGRATION – decision of a delegate of the Minister not to revoke mandatory cancellation of visa – Applicant fails the character test – whether there is ‘another reason’ to revoke the mandatory cancellation – Direction 90 applied – Applicant sentenced to terms of 22 months and six months imprisonment and declared a drug trafficker – evidence as to when Applicant was notified of decision in accordance with s 501G(1) of the Migration Act unclear – whether the Applicant had an authorised recipient for the purposes of s 494D(1) of the Migration Act – role of the Tribunal to scrutinise administrative procedures and make recommendations to promote ‘good government’ – moderate to medium risk of the Applicant engaging in further serious or criminal conduct – limited links to the Australian community – reviewable decision affirmed

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

(Migration) [2021] AATA 1513 (27 May 2021); Senior Member DJ Morris

MIGRATION – refusal of protection visa – section 36(1C) of Migration Act – applicant is entitled to citizenship of the Republic of South Sudan – extensive criminal record – has applicant been convicted by a final judgment of a particularly serious crime – what is a ‘particularly serious crime’ – if so, is applicant a danger to the Australian community – what is meant by ‘danger’ to the community – consideration of relevant factors – seriousness and nature of offending – mitigating or aggravating circumstances – the period of offending – risk of re-offending – Tribunal should look at all criminal conduct – belief about danger to community must be contemporary – period since last offending – comprehensive plan in place if applicant released – abstinence from alcohol – tribunal satisfied applicant not a danger to the community – decision under review set aside with direction

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

(Migration) [2021] AATA 1492 (26 May 2021); Ms S Burford, Member

MIGRATION – decision of delegate of Respondent not to revoke mandatory cancellation of visa – character test – substantial criminal record – fraud offences and drug offences – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties to Australia – non-refoulement obligations not found – best interests of minor children in Malaysia – Applicant is a 49-year-old man who arrived in Australia as a twenty-two-year-old – extent of impediments if returned to Iraq – reviewable decision affirmed

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

(Migration) [2021] AATA 1398 (14 April 2021); Ms R Bellamy, Member

MIGRATION – decision on remittal - Non-revocation of mandatory cancellation of a Class BS Subclass 801 (Spouse) 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 set aside

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

(Migration) [2021] AATA 1365 (18 May 2021); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Special Category Subclass 444 (Temporary) Visa – failure to pass good character test – extensive criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision affirmed

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

(Migration) [2021] AATA 1343 (17 May 2021); Mrs JC Kelly, Senior Member

MIGRATION – cancellation of Applicant’s Class TY, Subclass 444 Special Category (Temporary) visa – citizen of New Zealand – failure to pass character test – whether there is another reason to revoke the visa cancellation – Direction No. 90 – protection of the Australian community – family violence committed by the non-citizen – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties – extent of impediment if removed – decision under review set aside



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

(Migration) [2021] AATA 1486 (26 May 2021); Senior Member DJ Morris

MIGRATION – applicant entitled to citizenship of South Sudan – where applicant’s visa cancelled owing to substantial criminal record – where applicant seeks revocation of visa cancellation by delegate of Minister – where delegate affirms cancellation decision – where applicant seeks review by Tribunal – where Tribunal obliged to consider ministerial Direction No. 90 – primary considerations – protection of the Australian community – conduct of applicant constitutes family violence – best interests of minor children in Australia where children exposed to family violence – expectations of the Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – impact on victims – links to the Australian community – conclusion that discretion available is not enlivened – decision under review is affirmed

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

(Migration) [2021] AATA 1488 (25 May 2021); Senior Member B Pola

MIGRATION – Non-revocation of mandatory cancellation of a Class BS subclass 801 (Spouse) – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration and application of Ministerial Direction No. 90 – decision under review affirmed

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

(Migration) [2021] AATA 1494 (26 May 2021); Deputy President Britten-Jones

MIGRATION – refusal to grant visa on character grounds – whether discretion to refuse to grant a visa should be exercised – applicant committed serious offences overseas – use of false passport and history of misleading immigration authorities – applicant married whilst in detention – primary considerations of protection and expectations of the Australian community weigh in favour of refusal – primary consideration of the best interests of minor children weighs in favour of granting a visa – non-refoulement obligations not owed – extent of impediments if removed are minimal – links to Australian community because of strong ties to wife and family weighs in favour of granting a visa – weighing up all considerations – decision under review affirmed

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

(Migration) [2021] AATA 1368 (18 May 2021); The Honourable Senior Member J Rau

MIGRATION – mandatory cancellation of Class BF Transitional (Permanent) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – decision under review affirmed

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

(Migration) [2021] AATA 1409 (19 May 2021); Mr M Kennedy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 200 Refugee visa – where Applicant does not pass the character test – serious criminal record – whether “another reason” to revoke visa cancellation – validity of Ministerial Direction 90 – non refoulement obligations found – protection obligations found – tests enunciated in the Act (Migration Act 1958) – protection of the Australian community – expectations of the community – whether general principle that primary considerations should outweigh other considerations inapplicable to instant case – Migration Amendment (Clarifying International Obligations for Removal) Bill 2021 – Decision under review affirmed

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

(Migration) [2021] AATA 1515 (27 May 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – refusal to grant a protection visa – Applicant has been convicted by a final judgment of a particularly serious crime – jurisdiction of the Tribunal to consider whether Applicant unlawfully detained – whether the Tribunal can take into account the considerations relevant to a visa cancellation under s 501 of the Migration Act 1958 (Cth) – Tribunal’s role to conduct a de novo review on the merits – whether Applicant is a danger to the Australian community – seriousness and nature of the crimes committed – length of sentences imposed – whether any mitigating or aggravating circumstances – extent of the criminal history – nature of the prior crimes – risk of reoffending and recidivism and the likelihood of relapsing into crime – the criminal record as a whole – prospects of rehabilitation – Applicant found to be a danger to the community – decision under review affirmed

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

(Migration) [2021] AATA 1437 (24 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 - common assault - risk of re-offending – family violence – best interests of minor children – expectations of the Australian community – other considerations – decision under review set aside and substituted

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

(Migration) [2021] AATA 1361 (18 May 2021); Mr R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category 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

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

(Migration) [2021] AATA 1510 (28 May 2021); Mr R Reitano, Member

MIGRATION – mandatory cancellation of applicant’s Class AH Subclass 101 Child visa – applicant is a citizen of Kenya – attempted sexual intercourse without consent – robbery armed with an offensive weapon – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction no. 90 – protection of the Australian community – family violence – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – international non-refoulement obligations – decision under review affirmed

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

(Migration) [2021] AATA 1360 (17 May 2021); Senior Member T Tavoularis

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 set aside

[1828193](#) (Migration) [2021] AATA 1254 (3 March 2021); K Raif, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – ground for cancellation – incorrect information in previous protection visa application – country of nationality – claimed statelessness – Rohingya born in Myanmar – possession of Bangladeshi passports – nature of a bogus passport – eligibility of Rohingya for Bangladeshi citizenship – decision under review set aside

[1730896](#) (Migration) [2021] AATA 1136 (10 March 2021); S Clarey, Member

MIGRATION – Partner (Resident) (Class BS) visa – Subclass 801 (Spouse) – relationship ceased – applicant suffered family violence committed by the sponsor – evidence that the relationship existed – previous extensive joint travel – joint financial commitments – statutory declaration regarding family violence – psychological report – Social Work Assessment Report – decision under review remitted

[Nguyen](#) (Migration) [2021] AATA 1330 (19 March 2021); J Meyer, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – ‘dependent child’ – applicants over 18 – full-time study requirement – continual satisfaction of requirement at the time of decision – time between finishing bachelor’s degree and starting master’s degree – master’s entrance examination – decision under review remitted

[Shurvinton](#) (Migration) [2021] AATA 1207 (27 March 2021); A George, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – health criteria – severe autism spectrum disorder – MOC opinion – significant cost to the Australian community – waiver of requirement – taxpayer support not required – close ties to Australia – occupational skills and potential contribution to Australia – expert on metal 3D printing – decision under review remitted

[Zhou](#) (Migration) [2021] AATA 1249 (28 April 2021); K Raif, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information in primary applicant wife’s previous visa application – wife unaware of husband’s two children from another relationship – husband’s claim to have been unaware that children were his – DNA testing – children’s later applications for visas – discretion to cancel visa – balance of family test – at least possible that children were his – no relationship with children – long and settled residence in Australia, with child of marriage and grandchildren here – wife’s health and treatment – hardship if cancellation affirmed – decision under review affirmed

## **National Disability Insurance Scheme**

[Deayton and National Disability Insurance Agency](#) [2021] AATA 1506 (28 May 2021); Dr S Fenwick, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – applicant with nemaline myopathy – no disadvantage principle – whether day to day living costs – whether supports relate to disability – decision under review affirmed

[Goodwin and National Disability Insurance Agency](#) [2021] AATA 1438 (21 May 2021); Mr I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – early intervention requirements – consideration of medical history – decision affirmed

[Marshall and National Disability Insurance Agency](#) [2021] AATA 1508 (28 May 2021); Deputy President JW Constance

NATIONAL DISABILITY INSURANCE SCHEME – access – cognitive impairment – back pain – right leg pain – access criteria – Rule 5.8 of the National Disability Insurance Scheme (Becoming a Participant) Rules 2016 – where Tribunal not satisfied the Applicant’s impairments resulted in substantially reduced functional capacity – decision affirmed

## **Practice and Procedure**

[Ehrenfeld and Australian Securities and Investments Commission](#) [2021] AATA 1406 (19 May 2021); Deputy President Rayment OAM QC

PRACTICE AND PROCEDURE – application for dismissal under s 42A(5) of the Administrative Appeals Tribunal Act 1975 – repeated non-compliance with Tribunal’s directions – re-litigation of matters already decided in the Supreme Court of NSW – whether the Tribunal is bound by s 91 Evidence Act 1995 (Cth) – propensity for needless delay and prolongation of final determination – application dismissed

[Palmer and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 1347 (14 May 2021); Mr S Webb, Member

PRACTICE AND PROCEDURE – Military compensation – threshold liability claim refused – application for review withdrawn during hearing – medical documents produced under compulsion not taken into evidence – request for release from Harman obligation – inconsistent Tribunal decisions – consideration of applicable principles – requirement for release to use documents for claim management purposes – meaning of ‘any other purpose’ – claim management purposes outside the purposes of Tribunal proceedings – release not appropriate in hypothetical circumstances – no special circumstance or good reason made out – request refused.

[SJRP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1344 (17 May 2021); Senior Member A Poljak

PRACTICE AND PROCEDURE – application for an extension of time to make an application for review – whether it is reasonable in all the circumstances to do so – extent and reason for the delay – merits of the substantive matter – extension of time application granted

[Tebbie and Decision Maker](#) [2021] AATA 1459 (25 May 2021); Senior Member A Poljak

PRACTICE AND PROCEDURE – jurisdiction – application for review of a decision by the Australian Financial Complaints Authority – decision in favour of financial firm – whether Tribunal has jurisdiction to review decision – whether decision was made by the Minister within meaning of section 1317B of Corporations Act – Tribunal does not have jurisdiction to review decision

## Professions and Trades

[PCBQ and Commissioner for Fair Trading](#) (NSW) [2021] AATA 1436 (24 May 2021); Mr S Evans, Member

MUTUAL RECOGNITION OF OCCUPATIONS – applicant applied for a builders licence in NSW via mutual recognition scheme – applicant holds builders licence (limited) in Victoria – respondent offered NSW licences to the applicant – applicant refused those licences – meaning of within one month – review application lodged with AAT – applicant contends that licences offered by respondent were not equivalent and that licence application was not processed within timeframe stipulated by Mutual Recognition Act 1992 (Cth) – respondent contends that licences offered are equivalent and that the application was processed within time – provisions of the Acts Interpretation Act 1901 (Cth) considered – provisions of the Mutual Recognition Act 1992 (Cth) considered – decision under review set aside and remitted to the respondent

## Refugee

[1620282](#) (Refugee) [2020] AATA 6122 (7 January 2020); C Smolicz, Member

REFUGEE – protection visa – Cameroon – religion – Christian – father converted to Islam – forced marriage to Muslim man – particular social group – female victim of domestic violence – credibility concerns – contradictory information in visitor visa application – inconsistent evidence – document authenticity – decision under review affirmed

[1731244](#) (Refugee) [2021] AATA 1358 (2 March 2021); M Hawkins, Member

REFUGEE – cancellation – protection visa – nationality – Stateless – race – Faili Kurd – ground for cancellation – incorrect information in visa application – adverse profile as a stateless Faili Kurd – information in subsequent Partner visa application – Iranian citizenship – marriage certificate – child's birth certificate – chances of obtaining genuine Iranian identity documents through fraudulent means – bogus documents provided in Partner visa application – applicant's passport beyond the scope of current review application – decision under review set aside

[1707097](#) (Refugee) [2021] AATA 1222 (15 March 2021); R Shanahan, Member

REFUGEE – protection visa – Yemen – political opinion – targeted as a Family Member of a Former Soldier – forced military service – support for the Youth Movement and Secularism – credibility concerns – delay in seeking protection – complementary protection – security and general humanitarian situation – decision under review remitted

[1800064](#) (Refugee) [2021] AATA 1223 (16 March 2021); J Pennell, Senior Member

REFUGEE – protection visa – Pakistan – race – ethnic Hazara – religion – Shia Muslim – fear of being harmed by Sunni Muslim extremists such as the Lashkar-e-Jhangvi (LeJ) – country information – DFAT Report – decision under review remitted

[1704387](#) (Refugee) [2021] AATA 1507 (8 April 2021); A Murphy, Member

REFUGEE – protection visa – Vietnam – applicant unable to participate meaningfully in hearing because of cognitive impairment, mental health and interpretation difficulties – tribunal's obligation to complete review on available evidence – inconsistencies and lack of details – fear of harm from illegal moneylender and police – business lost in storms and floods – threats to family since

applicant's departure – member of particular social group – homeless people with mental illness – country information – inadequate services and social stigma but no systematic and discriminatory conduct – complementary protection – real chance of significant harm – no protection by authorities – decision under review remitted

[1717702](#) (Refugee) [2021] AATA 1425 (19 April 2021); J Marquard, Member

REFUGEE – protection visa – Ghana – particular social group – single woman with no male protection – bore two children as a result of rape and experienced other sexual assaults – fear of harm from sexual assault and stigmatisation as single mother – country information – no systematic or discriminatory conduct or discriminatory withholding of state protection – complementary protection – married to Australian citizen – partner visa refused – one Australian citizen child and pregnant with second – best interests of children – referred for ministerial consideration – decision under review affirmed

[1837574](#) (Refugee) [2021] AATA 1231 (27 April 2021); S Roushan, Senior Member

REFUGEE – cancellation – protection visa – Afghanistan – risk to the health or safety of individuals in the Australian community – charged with serious violent offences – religion – Christian convert – imputed Shi'a – race – Hazara – imputed political opinion – anti-Taliban – returnee from the west – imputed spy – medical condition – effect of non-refoulement obligations – prospect of indefinite detention – decision under review affirmed

[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**

[Bond and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1458 (25 May 2021); Mr W Frost, Member

SOCIAL SECURITY PAYMENT – age pension – whether the Applicant is taken to have received a decision from the Agency – whether the Applicant was given notice of the decision – whether special circumstances or backdating provisions allow personal circumstances to be considered – whether legislative provisions are discretionary to allow payment of age pension from earlier date – decision affirmed



[Briscoe and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1348 (12 May 2021); Senior Member BJ Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – whether Applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether Applicant’s conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[Kornmann and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1422 (21 May 2021); Dr S Fenwick, Senior Member

SOCIAL SECURITY – carer payment – date of effect of higher rate of carer payment – where incorrect income taken into account by Centrelink – failure to respond to electronic notification from Centrelink – consent to use of electronic communications – decision under review affirmed

[Kristoffersen and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1345 (14 May 2021); Mr D Mitchell, Member

SOCIAL SECURITY – Family Tax Benefit (FTB) – FTB Part A Supplement – withheld as a matter of offset – whether a FTB Part B debt arose – if so whether it was appropriate to offset the debt by way of reduction to amount to FTB Part A Supplement paid – decision under review affirmed

[Marskell and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1371 (18 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

[McGillivray and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1509 (28 May 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffers from permanent impairments that attract 20 points or more under the Impairment Tables – Impairment Table 2 – Upper Limb Function – Impairment Table 3 – Lower Limb Function – Impairment Table 4 – Spinal Function – spinal condition – shoulder pain – knee pain – Applicant found not to meet eligibility requirements – recommendation made by Tribunal for Department to assist applicant to make new application for a DSP – Reviewable Decision affirmed

[Peng and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1350 (17 May 2021); Ms S Taglieri SC, Member

Social Security – Eligibility to make Newstart claim – Whether Applicant an Australia resident- Periods of absence from Australia and other considerations – Imprisonment and overseas legal proceedings explaining absence- Intention to return

[Rahi and Secretary, Department of Education, Skills and Employment](#) (Social services second review) [2021] AATA (17 May 2021); Senior Member R Pintos-Lopez

SOCIAL SECURITY – childcare benefit – childcare rebate – recovery of debt – approved service provider – decision affirmed

[Rychtowski and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1346 (14 May 2021); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – rejection of disability support pension claim – whether the Applicant qualified for disability support pension – trigeminal neuralgia – whether the Applicant had a physical, intellectual or psychiatric impairment under s 94(1)(a) – whether impairment was of 20 points or more under s 94(1)(b) – whether Applicant had continuing inability to work under s 94(1)(c) – decision under review affirmed

[Tawodros and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1484 (26 May 2021); Senior Member CJ Furnell

SOCIAL SECURITY – application for disability support pension refused – whether conditions were fully diagnosed, treated and stabilised in the qualification period – whether Applicant’s conditions attracted an impairment rating of at least 20 points – whether Applicant had a continuing inability to work – decision under review affirmed

[Wain and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1505 (27 May 2021); Ms AE Burke AO, Member

SOCIAL SECURITY – Austudy Debt – overpayment – debt due to the Commonwealth – not studying full time – ceased studying – recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – whether applicant knowingly made false statements or gave false representation in claims – notional entitlement – special circumstances found – decision under review remitted for waiver of debt due to administrative error in part and special circumstances

## **Taxation**

[McCarthy and Commissioner of Taxation](#) (Taxation) [2021] AATA 1511 (28 May 2021); Deputy President Boyle

TAXATION – income tax assessment objection – whether subdivision of the Property amounted to carrying out a business operation or commercial transaction – whether profits from the sale of subdivided lots are assessable as ordinary income under s 6-5 of ITAA-1997 – Myer Emporium principles applied – Applicant’s intention at time of purchase – property acquired in a business operation or commercial transaction – profits assessable as ordinary income under s 6-5 of ITAA – reviewable decision affirmed

[RHXV and Commissioner of Taxation](#) (Taxation) [2021] AATA 1349 (14 May 2021); Deputy President Boyle

TAXATION – objection to assessment of shortfall penalty – refusal to remit penalty – Applicant failed to exercise reasonable care in maintaining records of deductions claimed – lack of evidence to prove that the penalty was not properly imposed – Applicant failed to discharge burden of proof (TAA s 14ZZK) – reviewable decision affirmed



## Veterans' Affairs

[Sands and Repatriation Commission](#) (Veterans' entitlement) [2021] AATA 1342 (14 May 2021);  
Ms D Mitchell, Member

VETERANS' AFFAIRS – claim for partner service pension – applicant not in Australia on the day application made – residence requirements – proper application – impacts of COVID-19 – decision under review

[Yanda and Repatriation Commission](#) (Veterans' entitlement) [2021] AATA 1433 (14 May 2021);  
The Hon. J Pascoe AC CVO, Deputy President

INTERLOCUTORY HEARING – veterans affairs – whether the Tribunal has jurisdiction to review the decision of the Department of Veterans Affairs – where the reviewable decision was not appealed to the Veterans Review Board under section 135 of the Veterans Entitlements Act 1986 (Cth) – application dismissed under section 42A(4) of the Administrative Appeals Act 1975 (Cth)

# 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>BCDC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1424</a>
<b>LRMM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 923</a>
<b>Mailau and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1224</a>
<b>NLHN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 502</a>
<b>QDKH and National Disability Insurance Agency</b>	<a href="#">[2021] AATA 922</a>
<b>XSLJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 939</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>CGX20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 668</a>	<a href="#">[2021] FCAFC 69</a> <a href="#">[2020] FCA 1842</a>
<b>Cullen v Secretary, Department of Education, Skills and Employment</b>	<a href="#">[2019] AATA 777</a>	<a href="#">[2021] FCCA 1117</a>
<b>Zyambo v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 2473</a>	<a href="#">[2021] FCA 545</a>

# Statements of Principles

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

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

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

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

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **21 June 2021**:

**Asbestosis (Balance of Probabilities) - No. 60 of 2021**

<https://www.legislation.gov.au/Details/F2021L00606>

**Asbestosis (Reasonable Hypothesis) - No. 59 of 2021**

<https://www.legislation.gov.au/Details/F2021L00605>

**Gastro-oesophageal reflux disease (Balance of Probabilities) - No. 62 of 2021**

<https://www.legislation.gov.au/Details/F2021L00602>

**Gastro-oesophageal reflux disease (Reasonable Hypothesis) - No. 61 of 2021**

<https://www.legislation.gov.au/Details/F2021L00601>

**Hypogonadism (Balance of Probabilities) - No. 74 of 2021**

<https://www.legislation.gov.au/Details/F2021L00620>

**Hypogonadism (Reasonable Hypothesis) - No. 73 of 2021**

<https://www.legislation.gov.au/Details/F2021L00619>

**IgA nephropathy (Balance of Probabilities) - No. 64 of 2021**

<https://www.legislation.gov.au/Details/F2021L00621>

**IgA nephropathy (Reasonable Hypothesis) - No. 63 of 2021**

<https://www.legislation.gov.au/Details/F2021L00618>

**Pes planus (Balance of Probabilities) - No. 68 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00614>

**Pes planus (Reasonable Hypothesis) - No. 67 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00613>

**Porphyria cutanea tarda (Balance of Probabilities) - No. 70 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00616>

**Porphyria cutanea tarda (Reasonable Hypothesis) - No. 69 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00615>

**Malignant neoplasm of the oral cavity, oropharynx and hypopharynx (Balance of Probabilities) - No. 66 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00604>

**Malignant neoplasm of the oral cavity, oropharynx and hypopharynx (Reasonable Hypothesis) - No. 65 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00603>

**Transverse myelitis (Balance of Probabilities) - No. 72 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00608>

**Transverse myelitis (Reasonable Hypothesis) - No. 71 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00609>

## **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 **21 June 2021**:

**Non-Hodgkin lymphoma (Balance of Probabilities) - No. 76 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00612>

**Non-Hodgkin lymphoma (Reasonable Hypothesis) - No. 75 of 2021**  
<https://www.legislation.gov.au/Details/F2021L00611>

## **Statements of Principles to be revoked**

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked on 21 June 2021**:

**Asbestosis - No. 56 of 2013**  
<https://www.legislation.gov.au/Details/F2013L01644>

**Asbestosis - No. 55 of 2013**  
<https://www.legislation.gov.au/Details/F2013L01643>

**Gastro-oesophageal reflux disease - No. 66 of 2013**  
<https://www.legislation.gov.au/Details/F2013L01654>

**Gastro-oesophageal reflux disease - No. 65 of 2013**  
<https://www.legislation.gov.au/Details/F2013L01653>

**Malignant neoplasm of the oral cavity, oropharynx and hypopharynx - No. 2 of 2013**  
<https://www.legislation.gov.au/Details/F2013L00017>

**Malignant neoplasm of the oral cavity, oropharynx and hypopharynx - No. 1 of 2013**  
<https://www.legislation.gov.au/Details/F2013L00016>

**Mesangial IgA glomerulonephritis - No. 53 of 2012**  
<https://www.legislation.gov.au/Details/F2012L01794>

**Mesangial IgA glomerulonephritis - No. 52 of 2012**  
<https://www.legislation.gov.au/Details/F2012L01792>

**Pes planus - No. 46 of 2012**  
<https://www.legislation.gov.au/Details/F2012L01364>

**Pes planus - No. 45 of 2012**  
<https://www.legislation.gov.au/Details/F2012L01361>

**Porphyria cutanea tarda - No. 44 of 2012**  
<https://www.legislation.gov.au/Details/F2012L01358>

**Porphyria cutanea tarda - No. 43 of 2012**  
<https://www.legislation.gov.au/Details/F2012L01357>



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