



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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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

[BMSJ and Child Support Registrar](#) (Child support second review) [2021] AATA 1614 (1 June 2021); M Kennedy, Member

CHILD SUPPORT – percentage of care – whether change in pattern of care - whether existing determination of care should be revoked under section 54G or 54F of the Child Support (Assessment) Act 1989 – consideration of actual 'care change day' - new care percentage determination made – decision under review set aside and substituted

[Goring and Daneman](#) (Child support) [2021] AATA 1271 (18 February 2021); Member A Schiwy

CHILD SUPPORT – child support agreement – refusal to register agreement – whether agreement meets the requirements of a child support agreement – decision under review affirmed

[Nealey and Nealey](#) (Child support) [2021] AATA 1279 (17 February 2021); Member J D'Arcy

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond the child's eighteenth birthday – last day of school year correctly applied – decision under review affirmed

Citizenship

[Machar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1615 (8 June 2021); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – satisfaction of identity – insufficient evidence regarding identity of the Applicant – limited primary documentation – reviewable decision affirmed

[Mahamud and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1635 (9 June 2021); Dr M Evans-Bonner, Senior Member, Member Dr J Henderson

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant's identity – three pillars of identity – inconsistencies in Applicant's name and date of birth in documentation submitted to the Department – Applicant made honest and reasonable attempts to obtain official documentation – Applicant promptly corrected discrepancies in Australian government documents – Applicant found to be an honest and credible witness – Tribunal is satisfied of Applicant's identity – Reviewable Decision set aside and remitted

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

(Citizenship) [2021] AATA 1539 (18 May 2021); D Katter, Senior Member

CITIZENSHIP – application for citizenship by conferral – whether satisfied as to the identity of the person - refusal of citizenship – not satisfied of identity – decision under review affirmed

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

(Citizenship) [2021] AATA 1551 (2 June 2021); S Evans, Member

CITIZENSHIP – refusal of citizenship by conferral – applicant citizen of Jordan – applicant applied for citizenship by conferral – respondent’s delegate refused the grant of citizenship by conferral – delegate was not satisfied that the applicant was a person of good character as required by paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – application for review made to AAT – applicant’s offending and criminal history considered – decision under review affirmed

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

(Citizenship) [2021] AATA 1619 (1 June 2021); M O'Loughlin, Member

CITIZENSHIP – application for citizenship refused by the Minister under s 24(2) of the Australian Citizenship Act – whether Applicant is of good character pursuant to s 21(2)(h) of the Act – Decision under review affirmed.

Compensation

[Hickey and Australian Postal Corporation](#) (Compensation) [2021] AATA 1521 (20 May 2021); Ms

LM Gallagher, Member

COMPENSATION – workplace injury – whether the Australian Postal Corporation had a present liability to pay compensation – whether lower back injury resolved or ceased – whether Mr Hickey ceased to suffer from the effects of the injury – L5-S1 disc prolapse on the left with a sequelae of soft tissue injury – where Australian Postal Corporation initially accepted liability – Reviewable Decision affirmed

[FSBS and Australian Capital Territory](#) (Compensation) [2021] AATA1661 (10 June 2021); S

Webb, Member

WORKERS' COMPENSATION – claimed back injury arising from the first of two alleged incidents 4 days apart – threshold liability – veracity of claim – issues of reliability and credit – probable soft tissue lumbar strain – assessment of strain as an 'injury' – tests for 'disease' and 'injury (other than a disease)' - ailment - factors when evaluating employment contribution – employment contribution to a significant degree – frank injury - meaning of 'impairment' and 'incapacity for work' – inability to complete work duties – 'medical treatment' – liability to pay compensation established – decision set aside

Freedom of Information

[Gadens Lawyers Brisbane and Australian Securities and Investments Commission](#) (Freedom of information) [2021] AATA 1634 (9 June 2021); Deputy President R I Hanger AM QC

FREEDOM OF INFORMATION – Access to documents – Exemption provisions – Whether documents are conditionally exempt under s 47G(1)(a) of the Freedom of Information Act 1982 – Whether disclosure would unreasonably affect lawful business, commercial or financial affairs – Public interest considerations – Whether access to the document would be contrary to the public interest for the purposes of s 11A(5) – The decision granting access to the documents is set aside – Access to certain documents refused.

Industrial Law

[Tjoputra and Secretary, Attorney-General's Department](#) [2021] AATA 1596 (4 June 2021); Senior Member C Puplick AM

FAIR ENTITLEMENTS GUARANTEE – whether the applicants are entitled to redundancy payment – where governing instrument is Fair Work Act 2009 (Cth) – employer is small business employer at date of written termination notice – role and responsibility of liquidator – decisions under review are affirmed

Migration

[BHHX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1574 (2 June 2021); Emeritus Professor PA Fairall, Senior Member

MIGRATION – refusal of protection visa – finding of good character – discretion to refuse visa – Direction No. 90 – primary considerations – protection of the Australian community – expectations of the Australian community – other considerations – international non-refoulement obligations – effect of impediments – links to the Australian community – decision set aside and remitted

[JGCD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1576 (11 March 2021); Deputy President P Britten-Jones

MIGRATION — Protection (Class XA) (subclass 866) Visa refusal — section 36(1C) of Migration Act 1958 (Cth) — parties agree that the applicant is not a danger to the Australian community — procedural question as to whether it is necessary for the Tribunal to determine whether the applicant had been convicted by a final judgment of a particularly serious crime — decision under review set aside and remitted with a direction that the applicant satisfies the criterion set out in section 36(1C)(b) of Migration Act

[LBND and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1621 (12 April 2021); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass character test – whether there is another reason to revoke the mandatory cancellation decision – consideration and application of Ministerial Direction No 79 – decision under review is affirmed

Miller and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 1623 (8 June 2021); The Hon. D Cowdroy AO QC, Deputy President, Mr C Puplick AM, Senior Member

MIGRATION – preliminary consideration of jurisdiction – application found to be valid – 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 affirmed

Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 1578 (3 June 2021); LM Gallagher, Member

MIGRATION – decision of delegate of Minister to refuse Bridging E visa – character test – criminal record – criminal damage – family violence – 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 – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to Vietnam – reviewable decision affirmed

NRFX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 1577 (1 June 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 - Five Year Resident Return visa- where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – isolated offending – exceptionally low risk of re-offending – best interests of minor child – decision under review set aside

Okoh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 1662 (10 June 2021); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Nigeria – Class SN Subclass 190 Skilled-Nominated (Permanent) Visa – failure to pass good character test – money laundering – three-year sentence of imprisonment – unexplained wealth and overseas transactions – intention to commit romance frauds – provision of false document at hearing – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision affirmed

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

(Migration) [2021] AATA 1522 (28 May 2021); Senior Member DJ Morris

MIGRATION – mandatory cancellation of Class BF Transitional (Permanent) visa – where the applicant is a citizen of the Federal Republic of Somalia – where visa cancelled as minister satisfied applicant failed character test – where applicant made representations seeking revocation of visa cancellation – where delegate not satisfied another reason to revoke visa cancellation – where applicant seeks review by Tribunal – where applicant seeks to summons respondent – summons refused – where minister has made direction to decision-makers – Direction No. 90 – direction has primary and other considerations – primary considerations – protection of Australian community – whether conduct constituted family violence – best interests of minor children in Australia – expectations of Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – impact on victims – links to Australian community – any other relevant claim – decision under review affirmed

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

(Migration) [2021] AATA 1622 (7 June 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa - Class BB Return (Residence) Subclass 155 (Five Year Resident Return) visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record - applicant’s credibility – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – best interests of minor children – other considerations – extent of impediments if removed – links to the Australian community – potential breach of Australian International Treaty Obligations – decision under review affirmed.

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

(Migration) [2021] AATA 1616 (1 June 2021); Member O'Loughlin

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) - 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 – decision under review set aside and substituted with a decision that the visa cancellation be revoked.

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

(Migration) [2021] AATA 1624 (4 June 2021); Senior Member K Millar

MIGRATION – cancellation of a Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) – Applicant does not meet the character test - whether there is another reason to revoke the cancellation of the visa – consideration of Ministerial Direction No. 90 – four children under 18 years of age – best interests of the child– decision under review set aside

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

(Migration) [2021] AATA 1548 (1 June 2021); Mr S Evans, Member

MIGRATION – applicant’s visa mandatorily cancelled under subsection 501(3A) of the Migration Act 1958 (Cth) (“the Act”) – visa cancellation not revoked under subsection 501CA(4) of the Act – application for review made to AAT – provisions of the Act considered, particularly sections 501 and 501CA – direction no. 90 considered – applicant’s background and other characteristics/factors considered – decision under review set aside and substituted

[2104884](#) (Migration) [2021] AATA 1516 (26 April 2021); M Sheargold, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – unlawful Non-Citizen – willfully acting in breach of the conditions of visa – criminal conviction – not satisfied that applicant would abide by conditions imposed on a bridging visa if granted to him – decision under review affirmed

[Cabsari](#) (Migration) [2021] AATA 1432 (13 May 2021); J Clarke, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – Federal Circuit Court remittal – de facto partners at time of application – religious marriage while sponsor legally married to first wife – scope of sponsor’s interactions with first wife – ongoing relationship, separation or religious divorce – concern for well-being of children with first wife – credibility – evidence given to previously constituted tribunal and member’s findings on that evidence – applicant’s and interpreter’s misunderstanding of some questions – later written statements and oral evidence to present tribunal – financial, household and social aspects of relationship – nature of commitment – spouses at time of decision – sponsor divorced first wife and married applicant in Australia – decision under review remitted

[Daniels](#) (Migration) [2021] AATA 1452 (13 May 2021); L Holub, Member

MIGRATION – Working Holiday (Temporary) (Class TZ) – Subclass 417 (Working Holiday) – specified work in regional Australia for at least 3 months – ongoing business unregistered during applicant’s employment – registration later reinstated – visa, employment and financial procedures followed and documented – co-worker granted second visa in same circumstances – applicant undertook work in good faith and had no reason to question business’s status – decision under review remitted

[Muca](#) (Migration) [2021] AATA 1387 (29 January 2021); J Cipolla, Senior Member

MIGRATION – cancellation – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – ground for cancellation – incorrect information in previous visa application – place of birth – citizenship – Kosovo – Albania – bogus document – British certificate of registration – British passport – genuinely issued documents – obtained because of a false or misleading statement lodged by the applicant’s parents – consideration of discretion – present circumstances of the visa holder – long term relationship with an Australian citizen – highly valued skills – time elapsed since the non-compliance – significant contribution to the community – decision under review set aside

[Panduss Pty Ltd](#) (Migration) [2021] AATA 1364 (4 February 2021); M Kennedy, Member

MIGRATION – cancellation – approval as a standard business sponsor – sponsorship application or variation criteria no longer met – no ‘adverse information’ about entity ‘associated with’ the sponsor – at the time of sponsorship approval – applicant is the ‘phoenix’ of a liquidated entity – definition of ‘associated with’ prior to 18 March 2018 – liquidated entity wound up, deregistered and legally ceased to exist – decision under review set aside

National Disability Insurance Scheme

[Markaboui and National Disability Insurance Agency](#) [2021] AATA 1632 (8 June 2021); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – voice and composition classes – hydrotherapy – education related expenses – spinal muscular atrophy – therapeutic value – value for money – application of National Disability Insurance Scheme Rules – where Tribunal not satisfied the requested voice classes will be effective and beneficial to the Applicant having regard to current good practice – where Tribunal not satisfied composition classes most appropriately funded through the Scheme – where Tribunal satisfied assessment of suitability of hydrotherapy appropriate – where Tribunal not satisfied educational expenses most appropriately funded through the Scheme – decision set aside and remitted

[Young and National Disability Insurance Agency](#) [2021] AATA 1555 (2 June 2021); Senior Member C Puplick AM

NATIONAL DISABILITY INSURANCE SCHEME – whether claimed supports are reasonable and necessary – where certain supports not subject to internal review – Tribunal has no jurisdiction to consider such supports – where supports agreed – where supports agreed conditionally – where supports declined for insufficient evidence as reasonable and necessary – where supports agreed to be excluded – where supports are contested as to being before the internal review process – decision under review set aside and substituted

Practice and Procedure

[Antoniou and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1627 (8 June 2021); Member A Durkin

EXTENSION OF TIME APPLICATION – application filed for an extension of time to seek review of a decision under s 29(7) Administrative Appeals Tribunal Act 1975 – whether extension of time should be granted – reasonableness of the request considered – application refused.

[BWLK and National Disability Insurance Agency](#) [2021] AATA 1631 (8 June 2021); Deputy President Rayment OAM QC

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where applicant applied to Tribunal to review a decision not to approve certain supports – where the applicant requested the Tribunal consider additional supports – where additional supports not subject to internal review – jurisdiction of the Tribunal – Tribunal has no jurisdiction to consider additional supports

[Garton and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 1666 (19 May 2021); BJ Illingworth, Senior Member

PRACTICE AND PROCEDURE – JURISDICTION – Veterans' Entitlement Act 1986 (Cth) – application to cancel debt accrued under Pension Loan Scheme – no reviewable decision – Tribunal does not have jurisdiction

[GZZT and Child Support Registrar](#) (Child support second review) [2021] AATA 1658 (2 June 2021); S Barton, Member

PRACTICE AND PROCEDURE – extension of time application – Child Support – percentage of care – length of delay – explanation for delay – prejudice to Respondent – prospects for success – application for an extension of time in which to lodge an application refused

[Hassan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1629 (7 June 2021); Senior Member T Tavoularis

PRACTICE AND PROCEDURE – Application for extension of time – factors that are relevant when considering an application for extension of time – length of delay – explanation for the delay – merits of the substantive application for review – alternative avenues for relief available – application refused

[Hawk and Linfox Armaguard Pty Ltd](#) (Compensation) [2021] AATA 1525 (31 May 2021); The Hon. J Pascoe AC CVO, Deputy President

COSTS – compensation – whether costs should be awarded under s 67(9) of the Safety, Rehabilitation and Compensation Act 1988 – whether the Tribunal can correct an error of law made in a substantive decision – costs awarded

[Henschke and National Disability Insurance Agency](#) [2021] AATA 1523 (28 May 2021); I Thompson, Member

PRACTICE AND PROCEDURE – Jurisdiction – Whether internal review requested and conducted – Tribunal does not have jurisdiction – Application dismissed.

[Nugawela and Commissioner of Taxation](#) (Taxation) [2021] AATA 1636 (8 June 2021); Deputy President Boyle

PRACTICE AND PROCEDURE – application for dismissal of proceedings under s 42B of the AAT Act – decision of the AAT set aside and remitted for further consideration – matter remitted to the Tribunal to consider a “limited question” – whether a determination of the application for dismissal should be held in abeyance pending the outcome of the Applicant’s challenge to Trustee’s abandonment of proceeding – Bankruptcy Act s 60 – whether Applicant’s applications for review should be dismissed – Applicant has failed to advance the Federal Court proceedings for over three years – Tribunal’s objective under ss 2A and 33(1) of the AAT Act – expeditious procedure of Tribunal – application for dismissal should not be held in abeyance – applications for review dismissed

[Ramling and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1630 (8 June 2021); Senior Member B J Illingworth

PRACTICE AND PROCEDURE – application for extension of time to lodge an application for review – explanation for delay – no prospects of success – no prejudice to respondent – extension of time refused

[Riepon and Australian Capital Territory](#) [2021] AATA 1556 (2 June 2021); Mr S Webb, Member

PRACTICE & PROCEDURE – application for review of reconsideration decision denying liability in respect of a workers' compensation claim – Tribunal's jurisdiction - scope of claim – implied rejection – jurisdiction conferred

[Steer and Secretary, Department of Social Services](#) (social services second review) [2021] AATA 1620 (8 June 2021); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – EXTENSION OF TIME – disability support pension – extension of time application – length of delay – reasonable prospects of success – application refused

[Tsering and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1592 (4 June 2021); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – EXTENSION OF TIME – original application for citizenship refused – 28-day period has elapsed – out of time by six months – where extent of delay not acceptably explained – where prospects of success are very limited – application refused

[Wilson and Secretary, Department of Education](#) [2021] AATA 1554 (2 June 2021); Senior Member R Cameron

PRACTICE AND PROCEDURE – extension of time application – no reasonable prospect of success – application refused

Professions and Trades

[Boulous and Migration Agents Registration Authority](#) [2021] AATA 1594 (4 June 2021); Dr S Fenwick, Senior Member

MIGRATION AGENTS REGISTRATION – suspension of registration as migration agent – where complaints made in relation to Applicant's conduct – whether Applicant breached Code of Conduct for registered migration agents – whether Applicant is not a person of integrity or otherwise not a fit and proper person to give immigration assistance – nature of conduct after sanctions imposed – decision set aside and substituted

[Le'Sam Accounting Pty Ltd and Tax Practitioners Board](#) [2021] AATA 1593 (21 May 2021); Deputy President B J McCabe

REGISTRATION AS A TAX AGENT – where the records of a former client were improperly accessed – where the former client was engaged in litigation against the applicant – where the applicant was evasive, dishonest and non-compliant in his dealings with the respondent – where the applicant was late in filing a personal income tax return - where the applicant was evasive in his evidence provided to the Tribunal – applicant no longer satisfies the fit and proper person requirement for registration – decisions under review affirmed – periods precluding application for re-registration varied

Refugee

[1730799](#) (Refugee) [2021] AATA 1543 (22 February 2021); A Mercer, Member

REFUGEE – protection visa – Indonesia – race – Balinese – workplace racism – promotion difficulties – threats of harm by loan shark – fear of harm from Indonesian ex-wife – fear of being unemployed and jobless – stateless child born in Australia to Malaysian mother – rights of Malaysian spouses in Indonesia – rights of stateless children in Indonesia – Indonesian citizenship law – delay in applying for protection – decision under review affirmed

[1617313](#) (Refugee) [2021] AATA 1389 (19 March 2021); D Connolly, Member

REFUGEE – protection visa – India – particular social group – a single woman with no male protection in India – a single mother – single divorced woman who is also a mother – victim of domestic violence – husband’s father is an influential politician – fears harm from her ex in-laws – manufactured claims to strengthen her protection claims – dowry issues – honour killings – credibility concerns – decision under review affirmed

[1907109](#) (Refugee) [2021] AATA 1530 (16 April 2021); M Moustafine, Member

REFUGEE – Protection visa – Lebanon – no longer s.438(1) restrictions on any documents on Department file – adverse political opinion – anti-Syrian opinion – sectarian and political conflict – drug smuggling – inconsistent evidence – Insufficient information and lack of detail – applicant fabricated his claims for the purpose of obtaining a protection visa – credibility concerns – decision under review affirmed

[1906435](#) (Refugee) [2021] AATA 1520 (5 January 2021); M Hawkins, Member

REFUGEE – protection visa – Iran – Federal Court remittal – particular social group – women in Iran – women in Iran that contravene the Iranian dress code – religion – Christian convert – political opinion – human rights activist – feminist – non-compliance with religious moral code – pro-Western – husband assaulted over applicant’s manner of dress – fear of acid attacks against women – Basij – morality police – decision under review remitted

[1710245](#) (Refugee) [2021] AATA 1391 (2 March 2021); S Baker, Member

MIGRATION – cancellation – protection visa – Indonesia/Papua New Guinea – incorrect information in visa application – applicant’s and children’s names, places of birth and/or citizenship – applicant born to West Papuan parents in transit between West Papua and PNG – parents and applicant did not seek PNG citizenship – wife a PNG citizen and children notionally Indonesian citizens through father – Indonesian and PNG documents for parents, applicant, wife and children – discretion to cancel visa – consistent and plausible explanations for use of fraudulent documents and provision of incorrect information – country information about document fraud – increasing involvement in West Papua independence movement – country information about secessionist groups – decision under review set aside

[1705564](#) (Refugee) [2021] AATA 1403 (13 April 2021); L. Symons, Member

REFUGEE – protection visa – China – religion and imputed political opinion – Falun Gong – low-level practitioner in China – surveillance of family and sister’s intention to apply for permanent residence in third country – increased activity in Australia – weekly and major annual events – credibility – implausible, inconsistent, contradictory and unconvincing aspects of claims and evidence – initial activity to support application for protection – formed a genuine belief and commitment – decision under review remitted

[1722396](#) (Refugee) [2021] AATA 1401 (21 April 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – Federal Court remittal – political opinion – participation in anti-government protests – attendance at protests in Australia – ethnicity – Ahwazi Arab – – arrested, detained, beaten and tortured – discrimination in employment and extortion – returned failed asylum seeker – country information – credibility – inconsistent evidence – preferred language and issues with interpretation – decision under review affirmed

[1620818](#) (Refugee) [2021] AATA 1388 (27 April 2021); A Murphy, Member

REFUGEE – protection visa – Uganda – member of a particular social group – lesbian – imputed political opinion – supporter of gay and lesbian rights against government policies – beatings, sexual assault and family estrangement – physical and mental health and treatment – two significant lesbian relationships in home country – lifestyle and participation in organisations in Australia – profile in home country – country information – state and non-state actors – treaty right to enter other East African countries limited in practice – COVID-19 border closures – decision under review remitted

[2101907](#) (Refugee) [2021] AATA 1460 (4 May 2021); J Marquard, Member

REFUGEE – protection visa – South Sudan – race – Dinka – imputed political opinion – Dinka government supporter – inter- and intra-ethnic conflict – particular social group – returnee from Western country – conscription and general violence – mental health – humanitarian visa – citizenship law of South Sudan – widespread security and economic conditions – third country protection – East African Community – COVID-19-related border closures – decision under review remitted

[1919414](#) (Refugee) [2021] AATA 1461 (5 May 2021); K Raif, Senior Member

REFUGEE – protection visa – cancellation – Afghanistan – incorrect information – previous Global Special Humanitarian visa application – aliases and different dates of birth – presence of brother in Australia – contribution to society as business owner and employer – Hazara ethnicity – sectarian violence in Afghanistan – claims still relevant – decision under review set aside

Social Services

[BNYP; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 1549 (1 June 2021); Dr L Bygrave, Member

SOCIAL SECURITY – youth allowance – whether the respondent was entitled to receive youth allowance – whether the respondent has youth allowance debts – whether there are grounds for writing off or waiving all or part of the debt – whether debt should be waived by reason of sole administrative error – whether debt should be waived by reason of special circumstances – decision set aside and substituted

[Conway; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 1552 (28 May 2021); Senior Member B J Illingworth

SOCIAL SECURITY – Claim for Disability Support Pension – Physical, intellectual or psychiatric impairment – Whether a combined impairment rating of 20 points or more exists under the Impairment Tables – Whether fully diagnosed, fully treated and stabilised – Decision under review set aside and substituted

[DJHN and Secretary, Department Social Services](#) (Social services second review) [2021] AATA 1660 (10 June 2021); L Rieper, Member

SOCIAL SECURITY – eligibility for Newstart allowance – family law affected income stream – Defence Force Retirement and Death Benefits Scheme – DFRDB assessed as income stream – no exemption in s 9A applicable

[EI-Behidi and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1617 (4 June 2021); Member I Thompson

SOCIAL SECURITY – disability support pension – whether medical conditions diagnosed, treated and stabilised during the qualification period - whether an impairment rating of 20 points or more existed under the Impairment Tables - decision under review set aside

[Emanuel and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1591 (4 June 2021); Senior Member A Poljak

SOCIAL SECURITY – application for JobSeeker Payment – where applicant received lump sum compensation payment – compensation preclusion period imposed – whether special circumstances exist – whether applicant's claim for JobSeeker Payment was correctly rejected – decision under review set aside and substituted

[Kaplan and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1553 (28 May 2021); Senior Member B J 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

[Lester; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 1575 (3 June 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions and benefits – age pension – residency – appeal by Secretary from AAT1 – determination of the reviewable decision where ambiguity in AAT1 decision – whether Respondent qualified to receive age pension – whether the Respondent was an Australian Resident at the time he lodged his claim – factors to be taken into account to determine if a person is residing in Australia – Reviewable Decision affirmed

[Vella and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1618 (7 June 2021); Senior Member M Griffin QC

SOCIAL SECURITY – disability support pension – blood condition – how many points from the Impairment Tables Applicant's disability attracts – Applicant's continuing inability to work – Applicant does not attract sufficient points under Impairment Tables – Applicant does not demonstrate continuing inability to work – decision under review affirmed

[Zareba and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1625 (7 June 2021); Mr S Evans, Member

AGE PENSION – applicant seeking age pension to be paid prior to date of claim – applicant contends that they were a vulnerable person and their application should be taken to have been received when first contact was made with Centrelink – applicant also contends that confusions regarding paper and online applications led them to believe that a joint application was made when the applicant's partner lodged his own age pension application – provisions of the Social Security (Administration) Act 1999 (Cth) considered – provisions of the Social Security (Administration) (Class of Persons – Intent to Claim) Determination 2018 (Cth) considered – decision under review affirmed

Taxation

[Olias Pty Ltd as trustee for the Storer Family Trust and Commissioner of Taxation](#) (Taxation) [2021] AATA 1524 (28 May 2021); D Mitchell, Member

TAXATION – superannuation guarantee charge – whether worker is an employee or independent contractor – multi-factorial approach to characterisation – objection decision under review is varied for one quarter in accordance with the agreement of the parties – the objection decision is otherwise affirmed

[Rothnie and Australian Securities and Investments Commission](#) (Taxation) [2021] AATA 1545 (31 May 2021); Deputy President I R Molloy

TAXATION AND COMMERCIAL – Australian Securities and Investments Commission – financial services provider – banning order under s 920A of the Corporations Act 2001 (Cth) – breach of banning order – failure to act in the best interest of clients – failure to provide appropriate advice – failure to prioritise clients' interests – contravention of financial services laws – decision under review affirmed

[VNBM and Commissioner of Taxation](#) (Taxation) [2021] AATA 1626 (7 June 2021); Senior Member R J Olding

TAXATION – Coronavirus Economic Response Package – Cash Flow Boost – where applicant purported to greatly increase wages for a single week – whether applicant entered into scheme for the sole or dominant purpose of obtaining a Cash Flow Boost – whether subjective intention relevant – where no contemporaneous evidence of payment of wages – whether wages paid – decision affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Beckett and Tax Practitioners Board	[2021] AATA 1234
DTCB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 833
Qalovaki and Minister for Immigration and Border Protection	[2017] AATA 2582
VGJG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1045

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BFMV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5213	[2021] FCA 573
DVDP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4671	[2021] FCA 567
Koka v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 5289	[2021] FCAFC 82 [2020] FCA 1471
Say v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 694	[2021] FCAFC 84 [2020] FCA 1489
XJLR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 3406	[2021] FCA 619
VKTT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 649	[2021] FCAFC 94 [2020] FCA 1437
VZKW v Minister for Immigration,	[2020] AATA 4959	[2021] FCA 579

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 31 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:

asbestos exposure as a factor in malignant neoplasm of the prostate:

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

malignant neoplasm of the prostate - No. 53 of 2014
<https://www.legislation.gov.au/Details/F2017C00076>

malignant neoplasm of the prostate - No. 54 of 2014
<https://www.legislation.gov.au/Details/F2017C00059>

psoriasis and psoriatic arthritis as factors in ischaemic heart disease

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

ischaemic heart disease (Reasonable Hypothesis) - No. 1 of 2016
<https://www.legislation.gov.au/Details/F2021C00463>

ischaemic heart disease (Balance of Probabilities) - No. 2 of 2016
<https://www.legislation.gov.au/Details/F2021C00464>

exposure to carbamate insecticides and fungicides as a factor in malignant neoplasm of the brain

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

malignant neoplasm of the brain (Reasonable Hypothesis) - No. 85 of 2016
<https://www.legislation.gov.au/Details/F2017C00807>

malignant neoplasm of the brain (Balance of Probabilities) - No. 86 of 2016
<https://www.legislation.gov.au/Details/F2017C00805>



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