



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.

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

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Recent news

Visiting the AAT during COVID-19

Consistent with the NSW Government's announcement on 26 June 2021 about [additional restrictions](#), the AAT has closed its Sydney registry to the public from 28 June until 9 July, inclusive.

We will make arrangements with people who were scheduled to visit the AAT office during this period.

For more information visit our website, www.aat.gov.au.

Changes to our application fees on 1 July 2021

Application fees in the Administrative Appeals Tribunal will increase on 1 July 2021.

General, Freedom of Information, security, taxation and commercial and small business taxation

From 1 July 2021, application fees for the review of a decision, where a fee is payable, will increase in accordance with reg 27(1) of the *Administrative Appeals Tribunal Regulations 2015* (Cth):

- The standard application fee will increase to \$962.
- The fee payable for review of Small Business Taxation Decisions will increase to \$517.
- The fee payable for certain taxation applications will increase to \$95.
- Concession: no change from \$100.

These fee increases will apply where an application fee is paid on or after 1 July 2021, even if the application was lodged before that date.

Migration

From 1 July 2021, application fees for the review of most migration decisions will increase. Review of migration decisions under Part 5 of the *Migration Act 1958* will increase to \$3,000. In cases where a 50% fee reduction is granted, the reduced fee payable will be \$1,500.

The application fee payable is based on when the application was lodged.

The decision to increase this fee was announced by the Government in the Federal Budget for 2021–22.

Refugee

The fee for the review of a protection visa decision under Part 7 of the *Migration Act 1958* will increase to \$1,846.

This fee is payable if the review is not successful. The application fee payable is based on when the application was lodged.

This fee was increased in accordance with changes in the Consumer Price Index under Regulation 4.31BA of the *Migration Regulations 1994*.

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.

Aviation

[Schott and Civil Aviation Safety Authority](#) [2021] AATA 1855 (23 June 2021); Deputy President I R Molloy

CIVIL AVIATION – fit and proper person – flight examiner rating – aviation safety duties and obligations – safe operation and navigation of aircraft – duties and obligations of flight examiner rating holder – breach of Civil Aviation Safety Regulations 1998 – instrument rating flight tests – examiner proficiency tests – passengers during emergency procedures – auditors – crew members – decision under review affirmed

Bankruptcy

[Swampillai and Inspector-General in Bankruptcy](#) [2021] AATA 1771 (16 June 2021); R Reitano, Member

BANKRUPTCY – objection to discharge of bankruptcy – failure to disclose beneficial interest – failure to disclose a liability – whether there are special grounds under s 149(1) – whether there is a reasonable excuse for the failure or conduct that lead to the special ground – decision under review affirmed

Citizenship

[Ahmadi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1877 (25 June 2021); Deputy President J Sosso

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – character test – false statements in a Statutory Declaration – false identity provided to the Department – fear of persecution – passage of time – Applicant now of good character – decision set aside and remitted

[Beamson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1705 (10 June 2021); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – where Minister not satisfied of the good character of the applicant – where applicant has single criminal conviction in Australia – where applicant received custodial sentence – applicant found to not satisfy good character requirement at this time – decision under review affirmed

Dawood and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2021] AATA 1699 (11 June 2021); S Evans, Member

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

Docherty and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2021] AATA 1822 (16 June 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – close and continuing association with Australia – applicant likely to reside, or to continue to reside, in Australia – application of Citizenship Procedural Instruction 11 – decision under review affirmed

Hamood and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2021] AATA 1847 (21 June 2021); G Hallwood, Member

CITIZENSHIP – application for Australian citizenship – application for citizenship refused – multiple offences – whether Tribunal is satisfied Applicant is of good character – decision under review affirmed

Jazireh and Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs

(Citizenship) [2021] AATA 1918 (31 May 2021); Mr A Maryniak QC, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether Applicants have satisfied paragraph 21(2)(h) of Australian Citizenship Act – false and misleading conduct in dealing with immigration authorities and in relation to passports – decision affirmed

Ramazani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2021] AATA 1801 (17 June 2021); L M Gallagher, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied applicant was of good character – wilfully providing false information – reviewable decision affirmed

Sherwan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2021] AATA 1702 (11 June 2021); Dr D Cremean, Senior Member

CITIZENSHIP – application for Australian citizenship refused – good character requirement allegedly not satisfied – Alleged lie by Applicant about being stateless – decision under review set aside

YXTS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2021] AATA 1698 (11 June 2021); Dr P McDermott RFD, Deputy President

CITIZENSHIP – citizenship by descent – citizenship by descent where Applicant's lineage was unestablished – decision under review affirmed

Child Support

[Bostwick and Spickernell](#) (Child support) [2021] AATA 1265 (25 March 2021); K Dordevic, Member

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

[Pippen and Child Support Registrar](#) (Child support) [2021] AATA 1284 (26 March 2021); S Brakespeare, Member

CHILD SUPPORT – application for extension of time to object – no satisfactory explanation for the delay – no merit – prejudice to other party – extension of time refused

[Roach and Child Support Registrar](#) (Child support) [2021] AATA 1289 (31 March 2021); F Staden, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made - decision under review set aside and substituted – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist

[Seaver and Corey](#) (Child support) [2021] AATA 1764 (31 March 2021); M Baulch, Member

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

[Whiteway and Sturridge](#) (Child support) [2021] AATA 1293 (23 March 2021); C Breheny, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been accepted – estimate of income accepted – decision under review affirmed

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable income was correctly applied by the Registrar – decision under review affirmed

Compensation

[Gordon and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 1706 (11 June 2021); Dr P McDermott, RFD Deputy President

COMPENSATION – claim for compensation for cervical spondylosis – entitlement to compensation – transitional provisions – ignorance of entitlements or procedural obligations not reasonable cause – Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) s 124(1A) – Commonwealth Employees' Compensation Act 1930 (Cth) s 16(1) – decision under review affirmed

[Hogan and Comcare](#) (Compensation) [2021] AATA 1870 (7 May 2021); The Hon. M Groom, Senior Member

COMPENSATION – entitlement to compensation – review of determinations that applicant was not entitled to compensation for conditions under sections 16, 19 and 29 of the Safety, Rehabilitation and Compensation Act 1988 – whether applicant continuing to suffer from conditions - whether reasonable medical treatment required – whether incapacitated for work – whether household and attendant care services required – decisions under review affirmed

COMPENSATION - permanent impairment – review of determinations that applicant was not entitled to compensation for conditions under sections 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 – whether aggravation of conditions contributed to by Commonwealth – whether a permanent impairment rating of 10% or more should be applied – whether entitled to non-economic loss - decisions under review affirmed

COMPENSATION – psychological conditions – review of determination that applicant was not entitled to compensation under section 14 of the Safety, Rehabilitation and Compensation Act 1988 – whether applicant suffered psychological ailment – whether contributed to by Commonwealth – whether ailment resulted in an incapacity to work - decision under review affirmed

COMPENSATION – psychological treatment – review of determinations that applicant was not entitled to compensation under section 16 of the Safety, Rehabilitation and Compensation Act 1988 – whether treatment claimed by applicant was reasonable treatment - decisions under review affirmed

[Kroes and Comcare](#) (Compensation) [2021] AATA 1917 (23 June 2021); A Ward, Member

COMPENSATION – Workplace bullying – treatment costs – use of clinical framework for the delivery of health services – medical opinions needing to be based on factual findings – decisions under review set aside

[Melville and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 1737 (7 June 2021); Senior Member D Katter

MILITARY COMPENSATION – Military Rehabilitation and Compensation Act 2004 (Cth) – pilonidal sinus – decision under review affirmed

[Shields and Comcare](#) (Compensation) [2021] AATA 1868 (2 June 2021); The Hon. M Groom, Senior Member

COMPENSATION - permanent impairment – review of determinations that applicant was not entitled to compensation for condition under sections 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 – whether a permanent impairment rating of 10% or more should be applied – whether entitled to non-economic loss - decision under review affirmed

[Stamatopoulos and Linfox Australia Pty Ltd](#) (Compensation) [2021] AATA 1790 (9 June 2021); Senior Member J C Kelly

COMPENSATION – workers compensation – major depressive disorder – section 19 claim – incapacity for work – whether incapacity is due to accepted psychological condition or due to termination of employment – decision under review set aside

Freedom of information

[Webb and Chief Executive Officer, Services Australia](#) (Freedom of information) [2021] AATA 1825 (21 June 2021); Senior Member C Puplick AM

FREEDOM OF INFORMATION – Office of Australian Information Commissioner declined to undertake further review under 54W of the Freedom of Information Act 1982 (Cth) – remittal of decision under s 42D(1) of the Administrative Appeals Tribunal Act 1975 (Cth) – freedom of information decision under review by the Tribunal – whether respondent has taken all steps to find documents within the scope of the applicant’s freedom of information request – whether conditional exemptions in 47E and 47F of the Freedom of Information Act 1982 (Cth) properly applied – relevant documents provided by the respondent – conditional exemptions properly applied – decision under review affirmed

Industrial Law

[Polome and Secretary, Attorney-General's Department](#) [2021] AATA 1724 (11 June 2021); The Hon. J Pascoe AC CVO, Deputy President

FAIR ENTITLEMENTS GUARANTEE – eligibility for advance under subsection 10(1) of the Fair Entitlements Guarantee Act 2012 (Cth) – unpaid remuneration due to insolvency event – where Applicant employed in “chaotic” corporate structure – where nature of the employment relationship unclear – where claims made against two separate entities – whether the Applicant took reasonable steps to prove debts in the winding up of the employer – whether the Applicant took reasonable steps before insolvency event to be paid debts – decision set aside and substituted

Migration

[BDSG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1735 (11 June 2021); Senior Member D O'Donovan

IMMIGRATION & CITIZENSHIP – decision made under section 65 of Migration Act 1988 to refuse applicant’s application for protection visa – where applicant has been convicted of a serious crime – whether applicant is a danger to the Australian community – decision under review affirmed

[Campbell and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1879 (21 June 2021); Senior Member T Tavoularis

MIGRATION – review of decision under s 501CA(4) of the Migration Act 1958 (Cth) refusing to revoke a mandatory cancellation made under s 501(3A) of the Migration Act 1958 (Cth) – where the Applicant does not pass the character test – where there is a substantial criminal record – whether there is another reasons to revoke the mandatory cancellation – consideration of Ministerial Direction Number 90 – decision under review affirmed

[CVKB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1789 (11 June 2021); M O'Loughlin, Member

MIGRATION – cancellation of Class BB Subclass 155 Five Year Resident Return 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 – interests of minor child weigh in favour of revocation – non-refoulement obligations owed to applicant – decision under review set aside

Faavesi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1872 (24 June 2021); Senior Member C Puplick AM

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – non-refoulement obligations – impediments to removal – impact on victims – strength, nature and duration of ties to Australia – support from Applicant's partner – decision set aside and substituted

Kalubuth De Silva and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1848 (22 June 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – Partner (Temporary) (Class UK) Visa (Visa) – where visa was cancelled under section 501(1) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – lack of remorse – refusal to accept responsibility – best interests of minor children - expectations of the Australian community - links to the Australian community – impact on Australian business interests – original cancellation decision affirmed

Leota and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1826 (21 June 2021); Mrs J C 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 – strength, nature and duration of ties – extent of impediment if removed – decision under review set aside

NCHC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1840 (21 June 2021); R Bellamy, Member

MIGRATION – refusal of application for a Partner (Temporary) (Class UK) visa under section 501(1) - where the visa 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 affirmed

Pretorius and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1869 (15 June 2021); Senior Member T Tavoularis

MIGRATION – review of decision under s 501(1) of the Migration Act 1958 (Cth) refusing to grant a Class FA subclass 600 visitor visa – where the visa Applicant does not pass the character test – where there is a substantial criminal record – consideration of Ministerial Direction Number 90 – decision under review set aside and substituted

QDVJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1841 (1 June 2021); Senior Member P Q Wood

MIGRATION – visa cancellation – non-revocation of mandatory visa cancellation – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass 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 - Direction 90 – substantial criminal offending – protection of the Australian community – best interests of minor children – expectations of the Australian community – Applicant’s substance abuse – links to the Australian community – any other relevant claim - non-refoulement obligations - decision under review affirmed

Ross and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1773 (15 June 2021); Senior Member B Pola

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 and application of Ministerial Direction No. 90 – decision under review affirmed

Sesay and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1827 (26 May 2021); Senior Member L Kirk

VISA CANCELLATION - substantial criminal record – Ministerial Direction No. 90 – whether there is another reason the visa cancellation should be revoked – nature and seriousness of offences – best interests of minor children – extent of impediments if removed – strength, duration and nature of ties – decision under review set aside and substituted

Smith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1853 (23 June 2021); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass good character test – substantial criminal record – family violence – alcohol and drug abuse issues – anger management issues – right to silence and privilege against self-incrimination – whether another reason to revoke the mandatory cancellation – Ministerial Direction No. 90 applied – decision affirmed

Taukolo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1833 (21 June 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – primary considerations – assault – armed robbery – voluntary surrender to police – remorse – protection of the Australian community – expectations of the Australian community – other considerations – links to the Australian community – alcohol abuse disorder – decision set aside

Tekorona and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1873 (24 June 2021); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 applied – 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 children – expectations of the Australian community – ties to Australia – impediments to removal – impact on victims – decision set aside and substituted

TNHY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1708 (8 June 2021); Deputy President J W Constance

MIGRATION – mandatory cancellation – character test – whether there is another reason why the original decision should be revoked – application of Direction 90 – money laundering offences – where offences serious – where low risk of re-offending – where Applicant has two Australian citizen children – best interests of minor children in Australia – extent of impediments if removed – strength, nature and duration of ties to Australia – balancing exercise – decision set aside and substituted

VZWF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1876 (27 May 2021); Deputy President A G Melick AO SC

MIGRATION – Non-revocation of mandatory cancellation of a Class VB Subclass 886 – (skilled) – sponsored visa – 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 – domestic violence – alcohol and illicit drug use – decision under review is affirmed

YFTQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1792 (17 June 2021); R Reitano, Member

VISA CANCELLATION – mandatory visa cancellation under s 501(3A) – substantial criminal record – best interests of minor children – impact on victims – international non-refoulement obligations – extent of impediments if removed – whether there is another consideration – where, on appeal, the sentence was changed – decision under review set aside and substituted

ZSQC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1738 (15 June 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 – driving offences and other general offending – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – best interests of minor children – expectations of the Australian community – extent of impediments if removed – links to the Australian community – strength, nature and duration of ties to Australia – Applicant has a 15-year-old daughter and minor nieces and nephews – Applicant is a 56-year-old man who arrived in Australia as a four-year-old child – confirmation given by Department in 1994 that Applicant not liable for deportation – Applicant was born in Germany but is British citizen who has never been to the United Kingdom – extent of impediments if removed to United Kingdom – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted

[Huang](#) (Migration) [2021] AATA 1628 (9 June 2021); M Ison, Senior Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – PIC 4003(b) determination made – directly or indirectly associated with the proliferation of weapons of mass destruction – PhD research student – Mechanical and Aerospace Engineering – Tribunal’s proper conduct of a review – ‘act according to substantial justice and the merits of the case’ – source of the Tribunal’s powers – reasonable opportunity to progress request for DFAT to review its determination – PIC 4003(b) determination revoked by DFAT – decision under review remitted

[Lahav](#) (Migration) [2021] AATA 1571 (22 March 2021); Mr S Norman, Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – employment with the sponsor ceased over 60 days – applicant high professional skills and expertise in the IT industry – family mental health issues – COVID-19 outbreak in Israel – participation in community work in Australia – new employment offer – decision under review set aside

[Singh](#) (Migration) [2020] AATA 6127 (31 August 2020); K Raif, Senior Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – graduate work stream – Australian study requirement – qualifications closely related to nominated occupation – qualification in business and nominated occupation of chef – advice from agent – qualification in hospitality management completed after application made cannot be considered – decision under review affirmed

[Thanphanith](#) (Migration) [2021] AATA 1583 (6 April 2021); D Crawshay, Member

MIGRATION – Partner (Temporary) (Class UK) visa - Subclass 820 – not dependants of primary applicant – first applicant not wholly or substantially reliant on primary visa applicant or sponsor for food, shelter and clothing at time of decision or for a substantial period immediately before the time of decision – second applicant married – living with Australian citizen husband and children – compelling reason for second applicant due to Australian citizen husband and children – second applicant can apply for ministerial intervention – decision under review affirmed

[Yun](#) (Migration) [2021] AATA 1680 (13 April 2021); M Bourke, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – sponsorship requirements – person with the medical condition is not the sponsor – decision under review remitted

National Disability Insurance Scheme

[Tennant and National Disability Insurance Agency](#) [2021] AATA 1842 (22 June 2021); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME – access – Lyme’s disease – fatigue – myoclonus – principles in Mulligan v National Disability Insurance Agency – meaning of “substantially” reduced functional capacity – whether impairments result in substantially reduced functional capacity – where insufficient evidence of reduction in functional capacity – decision affirmed

Practice and Procedure

[Al Sadek and National Disability Insurance Agency](#) [2021] AATA 1770 (16 June 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – authority of applicant’s representative to represent applicant in Tribunal proceedings – where no evidence of representative’s authority to represent applicant – capacity and competency of applicant – where no evidence of applicant’s capacity or competency – applicant’s representative removed from proceedings – applicant directed to establish capacity and competency

[Huang and Tax Practitioners Board](#) (Taxation) [2021] AATA 1824 (17 June 2021); Deputy President B J McCabe

Registration as a tax agent – where the applicant’s registration was cancelled for failure to meet the fit and proper person requirement – whereas the applicant has been in non-compliance on multiple occasions – where the applicant has been afforded numerous extensions to file material – whether the applicant has failed to comply with directions and reasonably progress his application – applicant has so failed – application dismissed

[Malgapo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1707 (11 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 – pending criminal proceedings – alternative avenues for relief available – application refused

[Nguyen and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1844 (14 May 2021); The Hon. M Groom, Senior Member

PRACTICE AND PROCEDURE – application for extension of time – appeal of application to raise and recover parenting payment and Newstart Allowance debt – consideration of extent of delay and whether applicant rested on rights – consideration of merit in substantive application – extension of time refused

[PKMW and Wilson Security Pty Ltd](#) (Compensation) [2021] AATA 1704 (11 June 2021); Deputy President S Boyle

PRACTICE AND PROCEDURE – application to extend the time for the making of an application to the Tribunal for a review of a decision – reconsideration affirming a decision that the Respondent was not liable to pay compensation under ss 14, 16 and 19 of the SRC Act – delay of over two years in filing the application for an extension of time – application of Hunter Valley considerations – Tribunal is satisfied that it is reasonable in all the circumstances to grant an extension of time – application granted

[Thiruchelvam and Secretary, Department of Agriculture, Water and the Environment](#) [2021] AATA 1739 (5 May 2021); Senior Member R Cameron

PRACTICE AND PROCEDURE – dismissal application – import permit – live dog – permit expired – frivolous – no useful purpose – no reasonable prospects of success – application dismissed

[Toki and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1820 (18 June 2021); Deputy President J W Constance

PRACTICE AND PROCEDURE – DISMISSAL APPLICATION – whether application for review has no reasonable prospect of success – application for disability support pension – where statute provides that social security pension not payable when a person is in goal – where Applicant sentenced to a term of imprisonment due to expire in 2025 – where Applicant currently in psychiatric institution – where Applicant still under sentence – where statutory bar applies – no reasonable prospects of success – application dismissed

[VXVL and National Disability Insurance Agency](#) [2021] AATA 1709 (14 June 2021); K Buxton, Member

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where Applicant applied to Tribunal to review a decision to approve the statement of participant supports in the Applicant’s plan – where additional supports not considered within internal review decision – jurisdiction of the Tribunal – Tribunal has jurisdiction to consider matters that were before the primary decision-maker

[Watkins and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 1700 (11 June 2021); S Webb, Member

AUSTRALIAN CITIZENSHIP – application for conferral refused – permanent resident requirement not met – decision does not refer to statelessness eligibility provision – applicant not a permanent resident at time of application for review – no application for review can be made – no discretion – application made for an extension of time in which to make a further application yet to be decided – extension of time application not material – application dismissed

Refugee

[1700704](#) (Refugee) [2021] AATA 1579 (30 April 2021); P Windsor, Member

REFUGEE – protection visa – Nigeria – religion – Muslim convert to Christianity – fear of harm from social prayer group – ostracism by family, friends and community – member of particular social group – gang member – fear of harm from gang members and rival gangs – credibility – visitor visa obtained by sophisticated fraud – inconsistent claims and evidence – claim based on gang membership not made in written application – country information – decision under review affirmed

[1703968](#) (Refugee) [2021] AATA 1794 (7 April 2021); N Lamont, Member

REFUGEE – protection visa – Democratic Republic of Congo – imputed political opinion – journalist – particular social group – women in the Democratic Republic of Congo – NGO worker – religion – Christian – Bundu dia Kongo movement – victim of rape – detained by intelligence services – decision under review remitted for reconsideration

[1710844](#) (Refugee) [2021] AATA 1643 (8 April 2021); S Roushan, Senior Member

REFUGEE – cancellation – protection visa – Afghanistan – incorrect information in application – bogus document – imputed political opinion – pro-western – religion – Shi'a – race – Hazara – voluntary return to Afghanistan – visited sick mother – non-genuine Taskera – contribution to community – decision under review set aside

[1814085](#) (Refugee) [2021] AATA 1641 (26 April 2021); S Baker, Member

REFUGEE – protection visa – Papua New Guinea – particular social group – single women without protection of husband/father – gender-based violence – systemic and discriminatory failure by state agents – decision under review remitted

[1906572](#) (Refugee) [2021] AATA 1642 (3 May 2021); S Clarey, Member

REFUGEE – protection visa – Pakistan – religion – Christian – particular social group – Christian converts from Islam – some church attendance and questioning of Islam in home country – increasing attendance and activities and baptism in Australia – genuine convert – mental health and treatment – significant diagnosed disorders – fear of harm from family and extremist individuals and groups – blasphemy laws, violence, harassment and discrimination – vulnerability due to mental health conditions – decision under review remitted

[2013370](#) (Refugee) [2021] AATA 1607 (12 April 2021); M Hawkins AM, Member

REFUGEE – protection visa – South Sudan – humanitarian visa cancelled on character grounds – statelessness – nationality law of South Sudan – race – Dinka ethnicity – civil war between Dinkas and the Nuer tribe – generalised violence – religion – Christianity – language – Arabic speaker – particular social group – long absent returnees to South Sudan with no family or support networks – forced conscription – generally credible witness – strength of the applicant's claims – decision under review affirmed

[2015286](#) (Refugee) [2021] AATA 1606 (27 April 2021); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Iran – applicant convicted of several offences – religion – conversion to Christianity – Community Correction Order – impact on family – mental health issues – relationship with an Australian citizen – protection obligations – decision under review affirmed

Social Services

[Cai and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1838 (18 June 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – disability support pension – spinal condition - Upper Limb and Shoulder Condition – pain as a separate condition - whether severe impairment – decision under review affirmed

[Goward and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1849 (23 June 2021); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Henneker and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1701 (8 June 2021); Senior Member J Rau SC

Family Tax Benefit – FTB – was there a change in the pattern and percentage of care of child – determination of percentage of care – decision under review affirmed

[Kumar and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1823 (21 June 2021); Mr S Evans, Member

SOCIAL SECURITY – disability support pension (“DSP”) – applicant seeking review of decision by Social Security & Child Support Division – issue to be determined: whether the applicant is entitled to DSP according to section 94 of the Social Security Act 1991 (Cth) (“the Act”) – provisions of the Act considered – provisions of the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 (Cth) considered – medical reports, surveillance reports and other records and material considered – decision under review affirmed

[Lym and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1916 (10 June 2021); A E Burke AO, Member

SOCIAL SECURITY – widows allowance – overpayment – debt due to the Commonwealth – undeclared income – whether 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 – special circumstances not found – decision under review affirmed

[Musawi and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1852 (22 June 2021); R West, Member

SOCIAL SECURITY – disability support pension – mental health condition – spinal condition – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Paoli and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1703 (11 June 2021); K Parker, Member

SOCIAL SECURITY – automatic cancellation of applicant’s age pension under s 95(1) of the Social Security (Administration) Act 1999 (Cth) – applicant failed to respond to information requests by Centrelink about her income stream – whether information requests “given” to the applicant – notices posted to applicant’s myGov account – applicant’s myGov account registered by her late partner without applicant’s knowledge – information requests not accessed by applicant or any other person – information requests not sent to applicant’s authorised nominee – whether “special circumstances” exist to enliven discretion under s 95(2) – whether discretion should be exercised to determine that the automatic cancellation provision does not apply – whether s 109 limits the effect of any favourable determination made under s 95(2) – decision under review set aside and substituted – cancellation of applicant’s age pension taken not to have occurred – applicant entitled to back payment of age pension

[RLGV and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1787 (17 June 2021); Senior Member A Poljak

SOCIAL SECURITY – youth allowance – parenting payment – whether applicant was a member of a couple – financial aspects of relationship – nature of commitment – social aspects of relationship – sexual relationship – nature of household – recoverable debt – whether debts can be waived or written off – decision under review affirmed

[Sadikovski and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1791 (17 June 2021); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether insufficient medical evidence provided – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review affirmed

[Tang and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1736 (2 June 2021); R Reitano, Member

DISABILITY SUPPORT PENSION – review of start date of claim – previous reviews before the Administrative Appeals Tribunal – relevance of hardship or other personal circumstances – decision under review affirmed

[Walker and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1767 (16 June 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including back injury – whether fully diagnosed, treated and stabilised – decision under review affirmed

Taxation

[Behrndt and Commissioner of Taxation](#) (Taxation) [2021] AATA 1769 (16 June 2021); Deputy President P Britten-Jones

TAXATION – income tax – burden of proof – onus on applicant to prove amended assessments excessive – applicant unable to prove actual taxable income – applicant failed to discharge onus of proving amended assessments excessive – Income Tax Assessment Act 1936 (Cth), s 167 – Taxation Administration Act 1953 (Cth), s 14ZZK – decision under review affirmed

[Munkayilar and Commissioner of Taxation](#) (Taxation) [2021] AATA 1839 (22 June 2021); Senior Member L Kirk

TAXATION – objection to assessment – shortfall penalty – claimed work-related clothing, self-education and other expenses – whether Applicant discharge burden under s 14ZZK Taxation Administration Act 1953 – whether shortfall penalty is excessive or incorrect – whether to remit shortfall penalty – expenses not incurred by Applicant – insufficient evidence to substantiate claimed deductions – Applicant failed to exercise reasonable care in preparing return – Applicant made genuine attempt to meet tax obligations – penalty remitted – reviewable decision set aside and substituted

[Smith and Commissioner of Taxation](#) (Taxation) [2021] AATA 1851 (14 May 2021); The Hon. M Groom, Senior Member

TAXATION – taxation liability – release from liability – whether payment of tax liability would cause serious hardship – consideration of factors relevant to exercise of discretion – decision under review set aside and substituted

[SYRF and Commissioner of Taxation](#) (Taxation) [2021] AATA 1845 (6 May 2021); The Hon. M Groom, Senior Member

TAXATION – application for review of an objection decision – whether commissioner can grant release of certain tax liabilities – whether application would suffer serious hardship if required to pay tax debt – consideration of reasonableness of applicant’s spending and taxation compliance history – decision under review affirmed

Veterans' Affairs

[Martino and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 1867 (13 May 2021); The Hon. M Groom, Senior Member

VETERANS' ENTITLEMENTS – application for special rate of pension – veteran medically discharged due to accident – consideration of veterans' capacity for work during the assessment period – consideration of medical evidence on state of veterans' accepted condition at different times during assessment period – eligibility for special or intermediate rate of pension met for specific periods – consideration of evidence of permanency of condition – condition not permanent – decision set aside and substituted

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
Ahmed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1185
Hickey and Australian Postal Corporation	[2021] AATA 1521
Kura and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1365
Mukiza and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1488

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Guruge v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4670	[2021] FCA 630
King Eeducational Service Pty Ltd v Chief Executive Officer of the Australian Skills Quality Authority (No 3)	[2020] AATA 5105	[2021] FCA 692
Trang (formerly named as AZL20) v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (No 1)	[2019] AATA 4087	[2021] FCAFC 72 [2020] FCA 1490
YVTG by his Litigation Representative AKI21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 93	[2021] FCA 655



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