



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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Contents

Recent news.....	3
New migration and refugee application forms.....	3
AAT Recent Decisions.....	4
Aviation.....	4
Child Support.....	4
Citizenship.....	5
Compensation.....	6
Corporations.....	7
Customs.....	7
Education and Research.....	7
Migration.....	8
National Disability Insurance Scheme.....	14
Practice and Procedure.....	14
Professions and Trades.....	15
Refugee.....	16
Social Services.....	17
Taxation.....	19
Veterans' Affairs.....	19
Appeals	20
Appeals lodged	20
Appeals finalised	20
Statements of Principles	22
Notification of Investigations relating to existing Statements of Principles	22
Notification of Investigations (where there is no existing Statement of Principles).....	22
New Statements of Principles	23
Amended Statements of Principles.....	23
Statements of Principles to be revoked	23

Recent news

New migration and refugee application forms

The application forms for review of migration and protection visa decisions by the Tribunal's Migration and Refugee Division were updated.

The new application forms include changes about:

- representatives in the Migration and Refugee Division
- new reviewable decisions
- the amount of application fees payable, and
- the declaration section.

The [online application form](#) on our website has also been updated for matters in the Migration and Refugee Division.

The new forms should be used from 1 July 2021.

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

[BRM Aero Ltd and Civil Aviation Safety Authority](#) [2021] AATA 2167 (8 June 2021); R Cameron, Senior Member

JURISDICTION – civil aviation – light sports aircraft – decision to impose operating limitations – Civil Aviation Regulations 1988 reg 262APA – decision not reviewable – no jurisdiction

Child Support

[DLDX and Child Support Registrar](#) (Child support second review) [2021] AATA 2161 (30 June 2021); R West, Member

CHILD SUPPORT ASSESSMENT – application for review – child care percentage – change of percentage – revocation under s 54H and s 54G of the Child Support (Assessment) Act 1989 – decision set aside – new determination

[QWKW and Child Support Registrar](#) (Child support second review) [2021] AATA 2060 (2 July 2021); P J Clauson AM, Senior Member

CHILD SUPPORT – percentage of care – whether Tribunal should approach assessment with retrospective approach – where parent alleged other parent had occasional missed care events – whether missed care events were established – where pattern of care established regular care – decision set aside and substituted

[Verey and Artell](#) (Child support) [2021] AATA 1763 (22 April 2021); J Leonard, Member

CHILD SUPPORT – opt-in arrears – whether payments to third parties should be credited towards unpaid amounts – payments should not be credited – decision under review affirmed

[Grist and Grist](#) (Child support) [2021] AATA 1975 (13 April 2021); C Breheny, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – earning capacity of liable parent – reduction in income – affecting rate of child support not a major purpose of decision to cease work – not just and equitable to retrospectively disturb decision of objections officer – decision under review affirmed

[Naismith and Naismith](#) (Child support) [2021] AATA 1693 (19 April 2021); J Thomson, Member

CHILD SUPPORT – percentage of care – parents living under the same roof – extent of care provided by each parent – shared care determination not appropriate – decision under review affirmed

[Wigton and Child Support Registrar](#) (Child support) [2021] AATA 1766 (3 May 2021); D Benk, Senior Member

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

[Lizarraga and Lizarraga](#) (Child support) [2021] AATA 1980 (6 May 2021); Y Webb, 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 affirmed

Citizenship

[Abedi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2092 (5 July 2021); J Sosso, Deputy President

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – character test – domestic violence – breach of Protection Order – enduring moral qualities – decision set aside and remitted

[Adam and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2109 (4 June 2021); M Kennedy, Member

CITIZENSHIP – application for citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied applicant is of good character – inconsistency in evidence – credibility – good character not satisfied – application not approved

[Alimoradi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2054 (1 July 2021); A Maryniak QC, Member

CITIZENSHIP – Applicant granted a protection visa – Applicant's statelessness – citizenship by conferral – birth certificate not provided – process of identity proofing – consistent life story evidence – direct evidence holding greater weight – decision set aside and remitted to the Respondent – Tribunal satisfied of Applicant's identity

[Et Tash and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2056 (2 July 2021); S Evans, Member

CITIZENSHIP – applicant applied for citizenship by conferral – claimed permanent or enduring physical or mental incapacity – provisions of the Australian Citizenship Act 2007 (Cth) considered – relevant policy/instructions considered – decision under review affirmed

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

(Citizenship) [2021] AATA 1997 (30 June 2021); Dr S Fenwick, Senior Member

CITIZENSHIP – application for citizenship by conferral – general residence requirement – spouse of Australian citizen – whether close and continuing association with Australia during periods of absence – decision affirmed

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

(Citizenship) [2021] AATA 2105 (28 June 2021); B J Illingworth, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to identity – whether Tribunal is satisfied of Applicant’s date of birth – decision under review set aside and remitted

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

(Citizenship) [2021] AATA 2000 (30 June 2021); D O’Donovan, Senior Member

IMMIGRATION & CITIZENSHIP – cancellation of approval to become Australian citizen – Applicant’s approval was cancelled under section 25 of the Australian Citizenship Act 2007 – whether Applicant is not of good character – decision under review affirmed

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

(Citizenship) [2021] AATA 2121 (28 June 2021); M Kennedy, Member

CITIZENSHIP – application for Australian citizenship – whether Tribunal satisfied Applicant is of good character – false statements – moral qualities of Applicant – decision under review set aside and remitted

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

(Citizenship) [2021] AATA 2122 (6 July 2021); Dr L Bygrave, Member

CITIZENSHIP – application of citizenship by descent – where applicant adopted – whether parent of the applicant was an Australian citizen at time of birth – decision under review affirmed

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

(Citizenship) [2021] AATA 2096 (2 July 2021); C Puplick AM, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – Rohingya persons – meaning of identity – application of Citizenship Procedural Instructions – decision set aside and remitted

Compensation

Dzajkoska and Comcare (Compensation) [2021] AATA 2035 (1 July 2021); J W Constance, Deputy President

WORKERS’ COMPENSATION – right shoulder ligament tear – neck pain – whether the Applicant suffered a physical injury arising out of, or in the course of her employment – where insufficient change in the Applicant’s shoulder symptoms immediately after the fall to relate the shoulder symptoms to the fall – where injury did not arise out of or in the course of the Applicant’s employment – decision affirmed

[Ford and Comcare](#) (Compensation) [2021] AATA 2170 (2 July 2021); A G Melick AO SC, Deputy President

SAFETY, REHABILITATION AND COMPENSATION ACT 1988 (Cth) – Compensation – Causal connection between injury and employment – Entry and exit from place of employment – Land of a third-party – Arising out of employment – decision under review is set aside

Corporations

[MTM Ship Management PTE LTD, Singapore and Australian Maritime Safety Authority](#) [2021] AATA 1998 (30 June 2021); J W Constance, Deputy President and S Evans, Member

MARITIME SAFETY – detention order – whether vessel was at the time of inspection unseaworthy or substandard – appropriate Action Code – International Convention for the Safety of Life at Sea – where emergency generator not automatically powering the emergency switchboard in a blackout situation – where deficiency rectified on the same day – reasonable suspicion – Tribunal satisfied vessel detained on the basis of a deficiency which rendered the vessel incompatible with SOLAS guidelines – Tribunal satisfied at the time of inspection the vessel was substandard – Tribunal satisfied that at the time of inspection the vessel was unseaworthy – where decision to detain preferable decision – decision affirmed

Customs

[Paracella Pty Ltd ATF The Kelvin Flintoff Family Trust and Comptroller-General of Customs](#) [2021] AATA 1988 (29 June 2021); S Boyle, Deputy President

CUSTOMS – decision to reject the Applicant’s application for a refund of duty paid in respect of steel pallet racking – whether steel pallet racking constitutes ‘like goods’ for the purposes of the Act – statutory interpretation of ‘dimensions that can be adjusted as required’ – Project Blue Sky principles and s 15AA Acts Interpretation Act 1901 (Cth) applied – pallet racking in question falls within the scope of Australian Standard 4084-2012 – reviewable decision affirmed

Education and Research

[TYJD and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 2184 (8 July 2021); Dr L Bygrave, Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-crediting – where the applicant did not apply for remission of debt before the end of the application period – whether requirement to apply within the application period should be waived – whether it was not possible for applicant to make the application within that period – whether special circumstances apply to the applicant – where it is found that it was possible for the applicant to make the application within the application period – decision affirmed

Industrial Law

[Elsadat and Secretary, Attorney-General's Department](#) [2021] AATA 2101 (5 July 2021); A E Burke AO, Member

EMPLOYMENT – fair entitlements guarantee – entitlement to redundancy payment – when did employment cease – employees governing instrument – whether Applicant was employed by a small business – whether assurance to redundancy payment was made by insolvency practitioner – the decision set aside and remitted for recalculated to include redundancy payment

Migration

[BMGT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2173 (1 June 2021); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of Special Category (Class TY) (Subclass 444) 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 90 – decision under review is affirmed

[Burns and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2114 (2 July 2021); J Rau SC, Senior 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 – history of domestic violence – whether “another reason” to revoke visa cancellation – Ministerial Direction 90 – Discretion exercised – Decision under review affirmed

[Cowgill and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2162 (7 July 2021); Brigadier A G Warner AM LVO (Retd), Member

MIGRATION – Applicant is a 43 year old man who arrived in Australia as an 11 month old infant – decision of delegate of Respondent not to revoke mandatory cancellation of visa – character test – substantial criminal record – Applicant sentenced to five and a half years imprisonment – Direction No 90 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to Australian community – family violence – best interests of minor children in Australia – expectations of Australian community – international non-refoulement obligations – extent of impediments if removed – impact on victims – strength, nature and duration of ties to Australia – impact on Australian business interests – reviewable decision affirmed

[Deng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2097 (5 July 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Woman at Risk (Class XB) (Subclass 204) 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 – violence including family violence – decision under review affirmed

Di Meco and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 1952 (25 June 2021); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of Partner (subclass 801) 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 90 – decision under review is affirmed

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

(Migration) [2021] AATA 1993 (29 June 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of safe haven enterprise (class XE) visa – character test – substantial criminal record – driving offences – drug offences – other general offending, including weapons possession, assault public officer and possessing stolen property – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – effect of amendments to ss 197C and 198 of the Migration Act – extent of impediments if removed – weight to be given to extent of impediments if removed where protection obligations and operation of s 197C prevent removal – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 39-year-old man who arrived in Australia in 2012 by boat – Applicant is a citizen of Iran – extent of impediments if removed to Iran – Applicant is a person to whom Australia owes protection obligations – whether risk of harm due to bisexuality – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 2037 (30 June 2021); D J Morris, Senior Member

MIGRATION – refusal of a Protection (Subclass 866) visa – Cambodian citizen – where the respondent's delegate has accepted that the applicant fulfils the requirement of engaging Australia's protection obligations – criminal record – has the 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 community' – consideration of relevant factors – seriousness and nature of offending – mitigating or aggravating circumstances – the period of offending – risk of re-offending – decision under review is affirmed

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

(Migration) [2021] AATA 2099 (5 July 2021); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – criminal record – possession of firearms – drug offences – Direction No. 90 – primary and other considerations – protection of the Australian community – family violence – 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 – Applicant is a 51-year-old man who came to Australia as two-year-old – extent of impediments if returned to UK – reviewable decision affirmed

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

(Migration) [2021] AATA 1991 (29 June 2021); S Evans, Member

MIGRATION – Applicant’s visa mandatorily cancelled per subsection 501(3A) of the Migration Act 1958 (Cth) (“the Act”) – cancellation not revoked – application for review – issue to be determined: whether to revoke the original decision to cancel the Applicant’s visa pursuant to subsection 501CA(4) of the Act – provisions of the Act considered – provisions of Direction no. 90 – Visa refusal and cancellation under section 501 and revocation of a mandatory cancellation of a visa under section 501CA considered – Applicant’s background and criminal history considered – decision under review set aside and substituted

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

(Migration) [2021] AATA 2111 (6 July 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – primary considerations – serious traffic offences – protection of the Australian community – expectations of the Australian community – other considerations – links to the Australian community – child migrant – aboriginal wife and children – decision set aside

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

(Migration) [2021] AATA 1994 (29 June 2021); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Partner (Residence) (Class BS) (subclass 801) 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

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

(Migration) [2021] AATA 2224 (7 July 2021); P Q Wood, Senior Member

MIGRATION – visa cancellation – non-revocation of mandatory visa cancellation – Class 801 – 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 – expectations of the Australian community – links to the Australian community – any other relevant claim – non-refoulement obligations – affirmed the decision under review

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

(Migration) [2021] AATA 2093 (5 July 2021); C Puplick AM, Senior Member

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 – impediments to removal – strength, nature and duration of ties to Australia – decision set aside and substituted

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

(Migration) [2021] AATA 2107 (22 June 2021); B J Illingworth, Senior 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 – Ministerial Direction 90 – Discretion exercised – Decision under review set aside and substituted

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

(Migration) [2021] AATA 2120 (6 July 2021); The Hon. D Cowdroy AO QC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – extensive history of criminal convictions – crimes of violence – repeated warnings of action against visa if further offending – 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 2055 (22 June 2021); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BF Transitional (Permanent) 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

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

(Migration) [2021] AATA 2165 (7 July 2021); B Pola, Senior Member

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

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

(Migration) [2021] AATA 2119 (7 June 2021); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – interests of minor children – strength, nature and duration of ties – where applicant convicted of serious assault – where applicant intoxicated during offending – low risk of recidivism – other factors – decision under review set aside and in substitution decided that visa cancellation be revoked

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

(Migration) [2021] AATA 2095 (5 July 2021); Dr S Fenwick, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Malaysia – Class BS Subclass 801 (Partner) visa – single instance of offending – trafficking in a drug of dependence in a large commercial quantity – knowingly dealing with the proceeds of crime – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision affirmed

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

(Migration) [2021] AATA 1992 (29 June 2021); L Kirk, Senior Member

MIGRATION – Protection visa – Refugee convention and legislative framework – Evidence before the Tribunal – Consideration and reasons – Applicant convicted by a final judgement of a particularly serious crime – Applicant danger to the Australian community – Seriousness and nature of crimes committed – Length of sentence imposed – Mitigating and aggravating circumstances – Extent of the criminal history – Prospects of rehabilitation – Likelihood of relapsing into crime – Decision affirmed

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

(Migration) [2021] AATA 1955 (17 June 2021); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of Class AO Subclass 831 Prospective Marriage Spouse 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 90 – decision under review is set aside and substituted

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

(Migration) [2021] AATA 2226 (21 June 2021); L Kirk, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – Direction 90 – primary considerations - protection of Australian community – family violence – best interests of minor children – expectations of Australian community – other considerations – impediments if removed from Australia – impact on victims – links to Australian community – decision affirmed

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

(Migration) [2021] AATA 2036 (1 July 2021); D J Morris, Senior Member

MIGRATION – applicant is a Vietnamese national – applicant held class BB subclass 155 resident return visa – where applicant’s visa cancelled owing to substantial criminal record – where applicant sought revocation of visa cancellation – where delegate of minister refused to revoke – where applicant seeks review by Tribunal – where applicant seeks to summon servant of the minister – summons refused – consideration of two questions – has applicant failed statutory character test – is there another reason to revoke mandatory cancellation of his visa – where minister has made instrument with which decision-makers must comply – Direction No. 90 – primary considerations – other considerations – any other reason – where tribunal satisfied discretion is enlivened – decision under review set aside and new decision substituted

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

(Migration) [2021] AATA 2059 (2 July 2021); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – whether conduct constituted family violence – best interests of a minor child – expectations of the Australian community – extent of impediments if removed – links to the Australian community – other considerations – decision affirmed

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

(Migration) [2021] AATA 2163 (7 July 2021); M Griffin QC, Senior Member

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

[2009842](#) (Migration) [2021] AATA 1958 (28 April 2021); H Claringbold, Member

MIGRATION – Other Family (Migrant) (Class BO) visa – Subclass 116 (Carer) – sponsorship requirements – mental capacity to understand obligations and undertakings – Alzheimer’s type dementia – significant global impairment – enduring power of attorney – Enduring Guardian – decision under review remitted

[Xie](#) (Migration) [2021] AATA 1775 (6 May 2021); B Darcy, Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 802 (Child) – local law permission for child’s removal – 16th Article of the Civil Code of People’s Republic China – rights of minors’ guardianship after divorce – commercial surrogacy arrangement – consent of biological mother required – best interest of the applicant – child’s emotional and psychological wellbeing – child’s young and impressionable age – father’s single status – adverse emotional impact of long-term separation – decision under review affirmed

[Savane](#) (Migration) [2021] AATA 1909 (6 May 2021); M Sripathy, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – members of the family unit – no evidence of formal adoption orders – customary adoption – no other living relatives to care for the applicants – Guardianship order – review applicant’s increased remittances – school registration – inconclusive DNA test results – traditional care arrangements in Sierra Leone – formal adoption not reasonably practicable – decision under review remitted

[1916280](#) (Migration) [2021] AATA 1774 (17 May 2021); A Murphy, Member

MIGRATION – cancellation – Return (Residence) (Class BB) – Subclass 155 (Five Year Resident Return) – incorrect information in visa application – previous visa application in different name and relative in Australia not declared – ethnicity, religion and imputed political opinion – Hazara Shia – no known relatives in home country – work and community activities in Australia – decision under review set aside

[An](#) (Migration) [2021] AATA 1901 (20 May 2021); M Brophy, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Sponsored Family stream – genuine temporary entrant – visiting family – immigration history – intention to comply with visa conditions – reason for visit – incentives to return to home country – married couple not permitted to travel to Australia together – decision under review remitted for first named applicant – decision under review affirmed for second named applicant

National Disability Insurance Scheme

[Chau and National Disability Insurance Agency](#) [2021] AATA 1996 (29 June 2021); J W Constance, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – request for increase in transport funding – where funding to be used to transport Applicant to hydrotherapy and gym sessions – where transport can be provided by supports already in place – where requested support does not represent value for money – decision affirmed

[Loadsman and National Disability Insurance Agency](#) [2021] AATA 1990 (29 June 2021); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – Motor Neuron Disease – whether support is reasonable and necessary – whether NDIA should fund a lift – whether NDIA should fund a stairclimber – whether cost of support is reasonable – whether funding for support is consistent with the Support for Participant Rules and Operational Guidelines – decision under review set aside and substituted

[Nika and National Disability Insurance Agency](#) [2021] AATA 2127 (6 July 2021); F Meagher, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether applicant meets disability requirement – complex fracture of left leg – chronic post-traumatic musculoskeletal pain – adjustment disorder with anxiety and depressed mood – post-traumatic stress disorder – whether impairments substantially reduce functional capacity – whether impairments affect applicant's capacity to undertake social interaction, mobility and or self-care – whether applicant likely to require support under NDIS for lifetime – whether early intervention requirements met – decision under review affirmed

[QTBR and National Disability Insurance Agency](#) [2021] AATA 1951 (28 June 2021); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – disability requirements – cerebral palsy – congenital cytomegalovirus – epilepsy – neural migrational defects – microcephaly – developmental delay – congenital profound sensorineural deafness – whether the disputed supports requested by Applicant are reasonable and necessary pursuant to subsection 34(1) of the National Disability Insurance Scheme Act – whether requested supports are duplicates of other supports already funded by the National Disability Insurance Agency – decision under review affirmed

Practice and Procedure

[Betalli and Australian Securities and Investments Commission](#) [2021] AATA 1953 (24 June 2021); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of publication of banning order by the Respondent – where applicant is banned for 2 years for – objectives of the regulators in making a decision – protection – objective of transparency – stay application granted

[QZXS and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2094 (29 June 2021); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – recusal application – apprehended bias – application by Applicant for recusal of Senior Member constituted to hear substantive application – test for apprehended bias in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 – whether a fair-minded lay observer would reasonably apprehend that the Senior Member might not bring an impartial mind to the resolution of the issues to be decided – Applicant alleged bias due to alleged conduct by Senior Member during three telephone directions hearings – Applicant seeking adjournment of substantive hearing at short notice – recusal grounds alleged by Applicant included that she felt “manipulated” by the Senior Member into proceeding with the substantive hearing – Applicant alleged Senior Member being too experienced and qualified and/or not disclosing qualifications/experience to the Applicant raised apprehended bias – protracted proceedings – DSP application lodged with the General Division of the Tribunal in October 2016 – objectives of the Tribunal considered – Applicant’s claims of bias found to be subjective – no logical connection between alleged conduct and ability to determine the issues on their merits – duty of both parties to assist the Tribunal – application for recusal refused

[Thomas and Tax Practitioners Board](#) [2021] AATA 2164 (11 June 2021); J C Kelly, Senior Member

PRACTICE AND PROCEDURE – application to stay decision under review – decision to terminate tax agent registration – applicant’s personal circumstances – where public interest against stay order outweighs other considerations – stay refused

Professions and Trades

[LNDN and Inspector-General in Bankruptcy](#) [2021] AATA 1995 (21 June 2021); D Mitchell, Member

BANKRUPTCY – objection to discharge – where bankruptcy trustee filed a notice to objection to the Applicant’s discharge from bankruptcy – objection on special grounds – whether evidence supports grounds – whether Applicant had a reasonable excuse for conduct or failure constituting special grounds – decision under review affirmed

[Tomkinson and Tax Practitioners Board](#) [2021] AATA 2172 (8 July 2021); L Kirk, Senior Member

TAX AGENTS – termination of registration as tax agent – non-application period of 18 months imposed – contraventions of the Code of Professional Conduct – Applicant failed to manage personal tax affairs – multiple failures to lodge business activity statements, income tax returns and superannuation statements – multiple failures to pay superannuation, business activity statement, income tax and trust indebtedness – multiple payment arrangement defaults – whether Applicant is a fit and proper person – failure to act honestly and with integrity – Applicant lodged application for renewal with false declaration – Applicant failed to comply with stay order – whether non-application period of 18 months is appropriate – decisions under review affirmed

Refugee

[1621365](#) (Refugee) [2021] AATA 1836 (15 April 2021); D McCulloch, Member

REFUGEE – protection visa – Fiji – imputed political opinion – ex-supporter of Christian breakaway states – ex-follower of Oni Kirwin – past association with secessionist organisations – Fiji Native Government in Exile – Pacific Indigenous Samaritan Association Inc (PISAI) – religion – Methodist Christian – race – indigenous Fijian – iTaukei – vague and inconsistent evidence – credibility issues – decision under review affirmed

[2012904](#) (Refugee) [2021] AATA 2130 (21 April 2021); M Hawkins, Member

REFUGEE – cancellation – protection visa – Afghanistan – Federal Circuit Court remittal – incorrect information in application – bogus document – core protection claims fabricated to obtain a protection visa – religion – Christian convert – Iranian citizenship by marriage – applicant ten years older than originally claimed – estranged husband – no family or male support – victim of domestic violence – risk of honour killing – contradictory and inconsistent evidence – decision under review set aside

[1727246](#) (Refugee) [2021] AATA 1843 (23 April 2021); N Burns, Member

REFUGEE – protection visa – Bangladesh – race – Bihari – political opinion – Bangladesh Nationalist Party (BNP) supporter and activist – unofficial position with Jubo Dal youth wing – threatened and assaulted by Awami League supporters – decision under review remitted for reconsideration

[1718354](#) (Refugee) [2021] AATA 1859 (29 April 2021); L Hardy, Member

REFUGEE – protection visa – Pakistan – particular social group – homosexual male – rejection by family members – refusing family pressure to marry – money transfers to family – fear of killing – delay in applying for protection – return visit to Pakistan – decision under review affirmed

[1711494](#) (Refugee) [2021] AATA 2007 (30 April 2021); T Hamilton-Noy, Member

REFUGEE – protection visa – Papua New Guinea – single female – no male protection – brought up by aunt – victim of abuse – situation of single women – lack of protection from authorities – decision under review remitted

[1618576](#) (Refugee) [2021] AATA 1858 (4 May 2021); K Millar, Senior Member

REFUGEE – protection visa – Nigeria – political opinion – support of Biafran independence – beliefs about the treatment of Igbo people – Igbo Youths Association – Movement of the Actualisation of the Sovereign State of Biafra (MASSOB) – credibility concerns – bogus documents – likely actions in the future if returned to Nigeria – response of the government to protests – use of force against demonstrators – relocation to another ECOWAS Country – decision under review remitted

[1724937](#) (Refugee) [2021] AATA 2010 (10 May 2021); N Lamont, Member

REFUGEE – protection visa – Afghanistan – adverse information – migration fraud – incorrect information provided in visa applications – bogus documents – member and follower of the Taliban – no response to ss.424A and 424(2) invitation – not entitled to appear before the Tribunal – political opinion – member of the Nangarhar Peace Council – threatened by the Taliban – credibility concerns – document fraud – decision under review affirmed

[1701222](#) (Refugee) [2021] AATA 2004 (18 May 2021); A Murphy, Member

REFUGEE – protection visa – Uganda – member of a particular social group – homosexual man – caned and ostracised by family, charged and given court bond, and tortured by police – told that partner beaten to death – for tribunal hearing, no accredited interpreter for applicant's language available locally – technical difficulties with links to interpreter interstate – applicant's and representative's agreement to continue hearing – new claims based on political opinion not explored at hearing and ultimately not considered – country information – laws, discrimination, harassment and physical and sexual attacks – relocation within country not available and limited treaty right to enter and reside in other countries – COVID-19 border closures – decision under review remitted

[1725786](#) (Refugee) [2021] AATA 1857 (8 June 2021); S Roushan, Senior Member

REFUGEE – protection visa – Turkey – capacity to participate in Tribunal's hearing – cognitive and psychological impairment – race – Kurdish ethnicity – religion – Alevi – imputed political opinion – pro-Kurdish views – particular social group – family member of pro-Kurdish and anti-government activist – credibility assessment – inconsistencies between oral evidence of the applicant and her son at the Departmental interview – applicant's vulnerability – decision under review remitted

Social Services

[Brooks and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2057 (2 July 2021); C Puplick AM, Senior Member

SOCIAL SECURITY – entitlement to disability support pension – whether conditions fully treated and stabilised during the qualification period – decision affirmed

[Dow and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2098 (28 June 2021); M Kennedy, Member

EXTENSION OF TIME APPLICATION – Applicant requested extension of time to seek review of a decision under s 29(7) Administrative Appeals Tribunal Act 1975 – extension of time opposed by Respondent – explanation for the delay not relevantly acceptable – application refused

[Frearson and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2112 (5 July 2021); P J Clauson AM, Senior Member

SOCIAL SECURITY – rate of age pension – whether a member of a couple – whether living separately and apart on a permanent and indefinite basis - whether separated under one roof - financial aspects of the relationship – social aspects of the relationship – sexual relationship between the people – nature of the people's commitment to each other – evidence supports that applicant a member of a couple – decision affirmed

[GYYG and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1989 (29 June 2021); C J Furnell, Senior Member

SOCIAL SECURITY – disability support pension – rate of payment – whether applicant a member of a couple – shared parentage of a child – co-habitation – not a de facto relationship – decision set aside and substituted

[Kalan and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2001 (30 June 2021); K Parker, Member

FAMILY TAX BENEFIT – eligibility for family tax benefit (FTB) for past periods – whether all or any claims made for past periods were “effective” – applicant claims she received erroneous advice from Centrelink which is why she had not made her claims earlier in time – claims not made within permissible legislative time frames, even if “special circumstances” found to exist – claims not “effective” and taken not to have been made – applicant not eligible to receive FBT for any of the past periods – decision under review affirmed

[Kaler and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1920 (25 June 2021); D K Grigg, Member

PARENTAL LEAVE – parenting leave payment – whether applicant satisfies “work test” under the Paid Parental Leave Act 2010 (Cth) – decision under review affirmed

[Moslemi and Secretary, Department of Social Services](#) (Social services second review) [2021] 2106 AATA (2 July 2021); G Hallwood, Member

SOCIAL SECURITY – Age pension – Calculation – Whether member of a couple – Marriage-like relationship – financial aspects of relationship – nature of household – social aspects of relationship – sexual relationship – nature of commitment to each other – Decision under review is affirmed

[Ponting and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2053 (1 July 2021); R West, Member

SOCIAL SECURITY – disability support pension – overpayment – disability support pension debt – unexplained deposits – recycled share receipts – gambling receipts – deemed income and value of shares – recalculation – remitted for recalculation and consideration of write off or waiver of the recalculated debt

[Riley and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1919 (25 June 2021); L Rieper, Member

SOCIAL SECURITY – carer allowance – adult disability assessment tool – consideration of medical information supplied – decision under review is affirmed

[Russell and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1921 (25 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 – continuing inability to work – decision under review set aside and substituted

[WVSP and Secretary, Department of Education, Skills and Employment](#) (Social services second review) [2021] AATA 2058 (29 June 2021); J Rau SC, Senior Member

SOCIAL SECURITY – childcare benefit – childcare subsidy – immunisation requirements – Australian Immunisation Handbook – contraindication – decision affirmed

Taxation

[Singh and Commissioner of Taxation](#) (Taxation) [2021] AATA 2125 (15 June 2021); Dr N A Manetta, Senior Member

TAXATION – A New Tax System (Goods and Services Tax) Act 1999 – road transport business – ITCs claimed – no supporting invoices or alternatively inadequate invoices – ITCs properly disallowed in these circumstances – business set up from the outset with no adequate record-keeping system – accountant making claims on the basis of inadequate documentation furnished to him – recklessness shown on the evidence before the Tribunal – penalties properly imposed

Veterans' Affairs

[Karrasch and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlement) [2021] AATA 1999 (30 June 2021); D Mitchell, Member

VETERANS' AFFAIRS – claim for compensation – anxiety and depression – erectile dysfunction – related to military service – date of onset – decision under review affirmed

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
PCBQ and Commissioner for Fair Trading (NSW)	[2021] AATA 1436
RNVF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1522
QDVJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1841

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Grima v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5074	[2021] FCA 761
JNMK v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 26	[2021] FCA 762
Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4	[2021] FCA 769
RGKY v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4255	[2021] FCA 750
TGWR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5076	[2021] FCA 763
TNVP v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5186	[2021] FCA 726
WQRJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2018] AATA 3854	[2021] FCA 736

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 **25 June 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:

xylene as a factor in sensorineural hearing loss

<https://www.legislation.gov.au/Details/C2021G00542>

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

sensorineural hearing loss (Reasonable Hypothesis) - No. 98 of 2019

<https://www.legislation.gov.au/Details/F2019L01360>

sensorineural hearing loss (Balance of Probabilities) - No. 99 of 2019

<https://www.legislation.gov.au/Details/F2019L01361>

Notification of Investigations (where there is no existing Statement of Principles)

On **25 June 2021**, the AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

horacic outlet syndrome - <http://www.ma.gov.au/assets/Reviews/2021/050c4bf1d9/454-01-Notice-of-investigation-thoracic-outlet-syndrome-6-July-2021.pdf>

gender dysphoria - <http://www.rma.gov.au/assets/Reviews/2021/614d97b968/456-01-Notice-of-investigation-gender-dysphoria-6-July-2021.pdf>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **26 July 2021**:

familial adenomatous polyposis (Balance of Probabilities) - No. 78 of 2021

<https://www.legislation.gov.au/Details/F2021L00921>

familial adenomatous polyposis (Balance of Probabilities) - No. 78 of 2021

<https://www.legislation.gov.au/Details/F2021L00921>

solar keratosis (Balance of Probabilities) - No. 80 of 2021

<https://www.legislation.gov.au/Details/F2021L00940>

solar keratosis (Reasonable Hypothesis) - No. 79 of 2021

<https://www.legislation.gov.au/Details/F2021L00938>

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 **26 July 2021**:

hypopituitarism (Balance of Probabilities) - No. 82 of 2021

<https://www.legislation.gov.au/Details/F2021L00892>

hypopituitarism (Reasonable Hypothesis) - No. 81 of 2021

<https://www.legislation.gov.au/Details/F2021L00891>

diabetes mellitus (Balance of Probabilities) - No. 84 of 2021

<https://www.legislation.gov.au/Details/F2021L00927>

diabetes mellitus (Reasonable Hypothesis) - No. 83 of 2021

<https://www.legislation.gov.au/Details/F2021L00926>

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 **26 July 2021**:

familial adenomatous polyposis - No. 40 of 2013

<https://www.legislation.gov.au/Details/F2013L01127>

familial adenomatous polyposis - No. 40 of 2013

<https://www.legislation.gov.au/Details/F2013L01127>

solar keratosis - No. 74 of 2012

<https://www.legislation.gov.au/Details/F2012L02085>

solar keratosis - No. 73 of 2012

<https://www.legislation.gov.au/Details/F2012L02084>



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