



Administrative
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The *AAT Bulletin* is a fortnightly 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 online. 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

AAT Recent Decisions	3
Child Support.....	3
Citizenship.....	4
Compensation	5
Education and Research.....	6
Migration.....	6
National Disability Insurance Scheme.....	10
Practice and Procedure.....	10
Professions and Trades	12
Refugee.....	12
Social Services.....	14
Taxation.....	15
Veterans' Affairs	15
Appeals.....	16
Appeals lodged.....	16
Appeals finalised	16
Statements of Principles	17
Notification of Investigations relating to existing Statements of Principles	17
New Statements of Principles	18
Amended Statements of Principles	19
Statements of Principles to be revoked.....	19

AAT Recent Decisions

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

Child Support

[RSRB and Child Support Registrar](#) (Child support second review) [2022] AATA 1915 (24 June 2022); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – interim care determination – Federal Court Orders – care withheld – when does an interim care order end – what is a care order – is visitation different from care – decision affirmed

[Awford and Lightbody](#) (Child support) [2022] AATA 1558 (26 April 2022); S Letch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – decision under review affirmed

[Murnan and Murnan](#) (Child support) [2022] AATA 1562 (22 April 2022); P Jensen, Member

CHILD SUPPORT – collection of arrears – non-agency payments - whether payment made to a third party in lieu of child support – no intention of both parents - decisions under review affirmed

[Ratliff and Ratliff](#) (Child support) [2022] AATA 1566 (20 April 2022); H Moreland, Member

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond the child's eighteenth birthday – whether the child was in full-time secondary education on his eighteenth birthday – application should be accepted - decision under review set aside and substituted

[Walden and Masland](#) (Child support) [2022] AATA 2095 (21 April 2022); Y Webb, 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

[Welch and Child Support Registrar](#) (Child support) [2022] AATA 1563 (20 April 2022)

CHILD SUPPORT – application for extension of time – departure determination - no satisfactory explanation for the delay – some merit – prejudice to the other parent - extension of time refused

Citizenship

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

(Citizenship) [2022] AATA 2143 (5 July 2022); S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – application refused since delegate not satisfied that applicant is of good character pursuant to paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – issue: whether the applicant is of good character – where applicant has multiple driving offences over a short period of time – where applicant has shown some reform – on balance applicant not of good character at this time – decision under review affirmed

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

(Citizenship) [2022] AATA 1969 (28 June 2022); S Evans, Member

CITIZENSHIP – where approval of applicant's citizenship application has been cancelled – where applicant failed to take the pledge of commitment – issue: whether the applicant is not likely to reside or continue to reside in Australia or maintain a close and continuing association with Australia such that approval of the applicant's citizenship application should be cancelled – decision under review set aside and remitted

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

(Citizenship) [2022] AATA 2061 (30 June 2022); T Tavoularis, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether prohibition under subsection 24(3) of the Australian Citizenship Act 2007 (Cth) applies – Shia Muslim – where Applicant stateless – where Applicant a refugee – inconsistent evidence about familial background – inconsistencies critical to question of identity – decision under review affirmed

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

(Citizenship) [2022] AATA 2133 (1 July 2022); J C Kelly, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – whether satisfied of identity of applicants – Australian Citizenship Procedural Instructions – decision under review affirmed

[LGXQ and Minister for Immigration, Citizenship and Multicultural Affairs](#)

(Citizenship) [2022] AATA 2159 (8 July 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – Faili Kurd – whether the Tribunal is satisfied of the Applicant's identity – s 24 Australian Citizenship Act 2007 (Cth) – National Identity Proofing Guidelines – Revised Citizenship Procedural Instructions – three pillars of identity – no biometrics or original documents – Applicant questions accuracy of some documents he submitted – inconsistencies in life story – Tribunal not satisfied of Applicant's identity – decision affirmed

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

(Citizenship) [2022] AATA 2149 (6 July 2022); Dr D Cremean, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – identity – whether Tribunal is satisfied of Applicant’s identity – s 24 Australian Citizenship Act 2007 (Cth) – documents unavailable to refugees and undocumented people from undeveloped countries – Myanmar – truthful witnesses – insufficiency of evidence argument rejected – Tribunal satisfied of Applicant’s identity – decision set aside

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

(Citizenship) [2022] AATA 2144 (5 July 2022); S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – issue: whether the applicant is of good character for the purposes of paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – where the applicant was convicted of an act of indecency – offending not disclosed – decision under review affirmed

Compensation

[Mercado and National Australia Bank Limited](#) (Compensation) [2022] AATA 2136 (1 July 2022); P Q Wood, Senior Member

COMPENSATION – claimed injury identified as right extensor carpi ulnaris tenosynovitis – right wrist and forearm – whether the Applicant suffered incapacity or impairment that arose out of or during the course of employment – decision under review set aside

[Newitt and Comcare](#) (Compensation) [2022] AATA 1928 (23 June 2022); P Q Wood, Senior Member

COMPENSATION – history of pack pain – bladder neck obstruction – sexual function impairment – whether Table 12.7 or Table 10.3 of the Comcare Guide apply – whether the current level of impairment results in an increase in the level of impairment of at least a 10% WPI – maximum amount payable reached – reviewable decision affirmed

[Rietwyk and Linfox Armaguard Pty Ltd](#) (Compensation) [2022] AATA 2135 (30 June 2022); P Q Wood, Senior Member

COMPENSATION – claim for compensation for right knee condition – whether claimed right knee condition is an ‘injury’ for the purposes of the Safety, Rehabilitation and Compensation Act 1988 – whether injury arose out of or during the course of employment – decision under review set aside

[Torr and Cleanaway Operations Pty Ltd](#) (Compensation) [2022] AATA 2134 (30 June 2022); P Q Wood, Senior Member

COMPENSATION – left shoulder condition – whether condition suffered is an injury or a disease – whether arose out of or during the course of employment – reviewable decision set aside

Education and Research

[AbilitySeer Pty Ltd and Australian Skills Quality Authority](#) [2022] AATA 2129 (1 July 2022); W Frost, Member

Vocational Education and Training – Application for accreditation of a vocational and education training course – NDIS Support Coordination – Compliance with legislative requirements and standards – established industry, enterprise, education, legislative or community need – developed in consultation with, and validated by, industry, enterprise, community and/or professional groups – duplication and technical defects – limited support from peak bodies and organisations – adequacy of the course – decision affirmed

Migration

[BCDC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2054 (30 June 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class XB Subclass 200-Refugee Visa under section 501CA(4) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – consideration of Plaintiff M1/2021 v Minister for Home Affairs [2022] HCA 17 – decision under review is affirmed

[BMGT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2148 (6 July 2022); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of visa – Special Category (Class TY) (Subclass 444) visa – visa cancelled under s 501(3A) because Applicant did not pass character test – substantial criminal record – remittal from the Federal Court – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – nature and seriousness of Applicant’s conduct – seriousness of offending and future risk – best interests of minor children in Australia – expectations of the Australian community – extent of impediments if removed – extent of impediments if removed – Impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – decision set aside and substituted

Dunasemant and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 1967 (22 June 2022); C Puplick, 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 – non-refoulement obligations – impact on victims – impediments if removed – links to the Australian community – degree and commitment to rehabilitation – decision set aside and substituted

Garland and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 2022 (29 June 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – offences include aggravated burglary with intent in dwelling and assault occasioning bodily harm – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no domestic violence – no minor children – expectations of the Australian community – extent of impediments if removed to New Zealand – links to the Australian community – Applicant is a 50 year old man who has resided in Australia for 33 years – strength, nature and duration of ties to Australia – there is not another reason to revoke the Cancellation Decision – Reviewable Decision affirmed

KZQV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 2055 (29 June 2022); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – Resident Return (subclass 155) visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – decision affirmed

LQFH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 2145 (4 July 2022); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Vietnam – Partner (Temporary) and Partner (Residence) (Subclass 820/801) Visa – failure to pass good character test – substantial criminal record – whether another reason why the mandatory visa cancellation should be revoked – non-refoulement obligations – fear of harm – Ministerial Direction No. 90 applied – Applicant's voluntary departure from Australia after hearing ended – Applicant's current location unknown – decision affirmed

[Radburn and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2158 (8 July 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – where the applicant is now deceased – appropriate resolution of proceedings – discussion of appropriate basis upon which the application can be dismissed – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth) on the basis that it is not reviewable by the Tribunal

[RLXN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2152 (4 July 2022); C J Furnell, Senior Member

MIGRATION – mandatory cancellation of Partner (Class BC) (subclass 100) visa – Migration Act 1958 (Cth) s 501(3A) – Lebanon – Applicant does not pass character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 90 – primary and other considerations – decision under review affirmed

[SSCJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2131 (5 July 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 - decision under review is set aside

[STKN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2121 (4 July 2022); Dr S Fenwick, Senior Member

MIGRATION – Mandatory visa cancellation – national of a Country in Africa – failure to pass the character test – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 90 applied – very serious offending as a minor – offending against an immediate family member also a minor – decision affirmed

[Uili and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 1968 (24 June 2022); C Puplick, 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 – where applicant will be returned to a country where he has not lived for any extended period of time – links to the Australian community – decision affirmed

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

(Migration) [2022] AATA 1929 (24 June 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – citizenship by conferral – application refused under s 24(3) of the Australian Citizenship Act – not satisfied of the Applicant’s identity – whether the Tribunal can be satisfied of the applicant’s identity – inconsistent life story – inconsistent documentation – decision under review affirmed

[2015666](#) (Migration) [2022] AATA 1733 (5 May 2022); M Sripathy, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – members of the family unit – dependent on the primary visa applicant – time of application circumstances – full-time studies – money transfers – limited informal work – identity documents – taskeras and passports obtained in the same process – decision under review remitted

[Razwantee](#) (Migration) [2019] AATA 6942 (27 November 2019); K Synon, Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visas – Subclass 457 (Temporary Work (Skilled)) – applicant ceased employment over 90 days – allegations of payments demanded for sponsorship – applicant forced to resign – disruption to family’s education – conversion to Christianity – decision under review affirmed

[Saeed](#) (Migration) [2022] AATA 1676 (1 June 2022); K Malyon, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – Cook – subject of an approved nomination – unique or exceptional circumstances – Minister’s Guidelines – exceptional economic benefit – unfair or unreasonable results – lodgement of nomination by new employer – adverse impact on the business – impact of the s 48 bar – unanticipated impact of COVID-19 on ability to travel offshore – Ministerial Intervention requested – decision under review affirmed

[Shi](#) (Migration) [2022] AATA 1682 (22 April 2022); S Trotter, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – graduate work stream – most recent qualification closely related to nominated skilled occupation – qualification in interpreting and occupation of developer programmer – comparison of units of study and ANZSCO description of occupation – relationship must be more than merely complementary – bilingual systems, software, clients and data – requirement applies to nominated occupation, not to nominee’s particular position – some units of study directly related to occupation – computer code not ‘language other than English’ – other, closely related qualifications completed more than six months before visa application made – members of family unit – decision under review affirmed

[Tennakoon Mudiyansele](#) (Migration) [2022] AATA 1685 (27 April 2022); S Trotter; Member

MIGRATION – Business Skills (Provisional) (class EB) visa – Subclass 188 (Business Innovation and Investment (Provisional)) – primary applicant not in migration zone when visa application made – application made online and taken to have been received by department in Australia – ‘while’ or ‘physically present’ in migration zone – plain reading of requirement – no reviewable decision – secondary applicant wife established and was running business but was not invited to apply for visa – secondary applicants in migration zone at relevant times – decision under review affirmed for secondary applicants – no jurisdiction for primary applicant

National Disability Insurance Scheme

[Papakostas and National Disability Insurance Agency](#) [2022] AATA 2153 (1 July 2022); C Puplick AM, Senior Member

National Disability Insurance Scheme – access to the scheme – issue of jurisdiction or power – error of the NDIA – where a second contradictory decision issued on the same matter where there was no valid revocation of the initial decision – whether the second decision is valid – decision not valid – tribunal able to set decision aside – decision set aside and remitted with direction

[Rainbow and National Disability Insurance Agency](#) [2022] AATA 2127 (30 June 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – application remitted for reconsideration – Applicant satisfied with reconsideration decision and requested additional funding in respect of medium-term accommodation received during period of earlier NDIS plan preceding the plan the subject of review – no internal review sought, or decision made in respect of statement of participant supports in the earlier NDIS plan – taking into account reconsideration decision, this application is now misconceived, lacking in substance and has no reasonable prospect of success – application dismissed

[TMVJ and National Disability Insurance Agency](#) [2022] AATA 2053 (30 June 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether applicant meets disability requirement – whether impairments are, or are likely to be, permanent – disability and early intervention requirements not met – decision under review affirmed

Practice and Procedure

[DVFW and Comcare](#) (Compensation) [2022] AATA 2126 (24 June 2022); B W Rayment OAM QC, Deputy President

PRACTICE AND PROCEDURE – applicant unable to view summons material to avoid reliving trauma – independent lawyer to review for legal professional privilege

[Gilligan and Director-General, National Archives of Australia](#) (Freedom of information) [2022] AATA 2150 (4 July 2022); S Webb, Member

PRACTICE AND PROCEDURE – jurisdiction – request for access to records – decision not made within consideration period – deemed decision – allowance of additional time to deal with the request – alleged destruction of records – conduct of searches for records – ambit of Tribunal’s jurisdiction where records identified have been destroyed or are not able to be found – jurisdiction conferred to review decision in respect of access to a record – issues of practicality not determinative of jurisdiction – Tribunal has jurisdiction – grounds for dismissal not made out – dismissal application refused

[Nadiry and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 2122 (27 June 2022); D J Morris, Senior Member

PRACTICE AND PROCEDURE – request for extension of time to lodge application – discretionary power – factors to take into account in exercising discretion – length of the delay – reasons for the delay – whether there is an arguable case – prejudice to the other party – other avenues of relief – substantive case has no reasonable prospect of success – not desirable to exercise discretion – oral decision – written reasons provided

CITIZENSHIP – application for Australian citizenship by conferral – applicant satisfies certain requirements – applicant has not successfully completed citizenship test – mandatory requirement for conferral not met – substantive application has no prospect of success

[Pudniks and Civil Aviation Safety Authority](#) [2022] AATA 2125 (27 May 2022); B W Rayment OAM QC, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – whether a reviewable decision was made by CASA – no refusal to grant a permission, permit or licence granted or issued under Part 149 of the Civil Aviation Safety Regulations 1998 – no jurisdiction

[QXZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2060 (29 June 2022); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – jurisdiction – Migration Act 1958 (Cth) – s 500(6B) – decision of delegate of the Minister to refuse the grant of a Temporary Protection (Class XD) visa – Applicant received s 501G documents including the Refusal Decision but lost some of the documentation and requested the documents again – application for review lodged after the nine day time limit – Tribunal has no discretion to extend the time for making the application – Administrative Appeals Tribunal Act 1975 (Cth) – s 42A(4) – Tribunal satisfied no jurisdiction – application dismissed

Professions and Trades

[Carbine Chemicals Pty Ltd and Australian Pesticides and Veterinary Medicines Authority](#)

[2022] AATA 2157 (8 July 2022); Dr D Cremean, Senior Member

Agricultural and Veterinary Chemicals Code – recall notice – where product labels amended – whether recall notice was valid – whether products veterinary chemical products – decision affirmed

[Gruszka and Migration Agents Registration Authority](#) [2022] AATA 2128 (23 June 2022); B W Rayment OAM QC, Deputy President

MIGRATION AGENTS REGISTRATION – application for a stay – suspension of migration agent registration – whether granting a stay would have any utility – effect of s.299 of the Migration Act 1958 – stay application allowed

[Hala Phcy Pty Ltd and Australian Community Pharmacy Authority](#) [2022] AATA 2155 (7 July 2022); J W Constance, Deputy President

HEALTH – PHARMACISTS – application for approval to supply pharmaceutical benefits – whether there is a supermarket with gross leasable area of 1,000 square metres within prescribed distance of proposed premises – consideration of Pharmacy Authority Rules – construction of the definition of supermarket as defined by the Rules – meaning of "range" of foods, beverages, groceries and other domestic goods – context and purpose of Rules – decision affirmed

Refugee

[1618210](#) (Refugee) [2021] AATA 5527 (5 July 2021); S Burford, Member

REFUGEE – protection visa – Afghanistan – dismissal decision – failure to attend Tribunal hearing – whether it is appropriate to reinstate the application – mental health issues – medical evidence of inability to attend hearing – disproportionate consequences – paranoia about medication and treatment – common law principles of agency – fitness to provide instructions – dismissal confirmed – decision under review affirmed

[1722699](#) (Refugee) [2022] AATA 1695 (12 April 2022); P Hunter, Member

REFUGEE – protection visa – Pakistan – particular social group – children in Pakistan without effective adult or family protection – Shia children in Pakistan without effective adult protection from societal violence or exploitation – Shia faith – mother's mental health issues – credibility assessment – Tribunal's Guidelines on Vulnerable Persons – family violence – societal violence or exploitation – state protection – decision under review remitted

[1731064](#) (Refugee) [2022] AATA 1546 (3 May 2022); J Lambie, Senior Member

REFUGEE – cancellation – protection visa – Iraq – incorrect answers given in visa application – fear of harm from militia – religion and imputed political opinion – two voluntary extended returns to home country with no harm – initial claim of losing passport at sea – found in possession of valid passport used before and after arriving in Australia – later claim of surrendering passport to people smugglers and them returning it to his brother – travel to third country on Australian titre de voyage, then to home country on own passport – compassionate and compelling reasons for travel – father’s serious illness and surgery – time in home country declared on incoming passenger cards – discretion to cancel visa – vague and inconsistent claims of activities and interest to militia – limited adverse profile – late provision of some supporting documents – decision under review affirmed

[1818213](#) (Refugee) [2022] AATA 2021 (21 April 2022); P Vlahos, Member

REFUGEE – protection visa – Uganda – particular social group – journalist resisting the Museveni regime – interviewed opposition politician – Anti-Age limit Bill – detention without due process – raped by male prisoners – subject to intimidation and threats – country information – political unrest – increasing lawlessness – freedom of expression & assembly – media freedom – decision under review remitted

[1823483](#) (Refugee) [2022] AATA 1505 (27 April 2022); P Haag, Member

REFUGEE – protection Visa – Ethiopia – race – Oromo – imputed political opinion – Oromo Liberation Front supporter – fears harm from Government authorities – supporter of Oromo Liberation Army – particular social group – young able bodied Oromo male persons who hold university level qualifications – involuntary military service – decision under review remitted

[1837475](#) (Refugee) [2022] AATA 1550 (6 May 2022); P Windsor, Member

REFUGEE – Protection visa – Ghana – religion – Christian – chieftaincy dispute – fear of harm by elders and members of own family – refused kingship of his tribe – applicant suffered no harm at all – credibility concerns – decision under review affirmed

[2118373](#) (Refugee) [2022] AATA 1741 (28 April 2022); T Flood, Member

REFUGEE – protection visa – Lebanon – religion – Muslim apostate – particular social group – Lebanese drug abusers – criminal record – recovering drug addict – father holds prominent Islamic role in local community – disowned by family – threats of harm by family – honour killing – lack of support from community – severe economic, political and social crisis – security forces, healthcare and welfare systems overwhelmed by multiple crises – access to drug addiction treatment – access to effective state protection – prospects of securing employment – impact on mental and physical wellbeing – decision under review remitted

Social Services

[Brown and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 2132 (4 July 2022); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including chronic low back pain; depression; right foot pain; left total knee joint replacement and right knee pain; right shoulder condition; right sensorineural hearing loss; ichthyosis; right hip condition; and alcohol abuse – whether fully diagnosed, treated and stabilised – whether Applicant’s conditions attract an impairment rating of at least 20 points – decision under review affirmed

[GRYB and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 2156 (1 July 2022); Emeritus Professor P A Fairall, Senior Member

DISABILITY SUPPORT PENSION – long marriage – member of a couple – joint tenants of residential property – domestic violence – emotional abuse – continued co-residence – whether living separately and apart – decision under review set aside and remitted

[Hoefl and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 2130 (30 June 2022); J Sosso, Deputy President

SOCIAL SECURITY – age pension – personal assets – trust – family companies – assets test – asset threshold – designated private companies – designated private trust – attribution of assets – source and control tests – what attribution percentage applies – whether Applicant is entitled to age pension based on assets and income – decision under review affirmed

[Macri and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 2124 (4 July 2022); K Millar, Senior Member

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

[RFGW and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 2154 (1 July 2022); Emeritus Professor P A Fairall, Senior Member

DISABILITY SUPPORT PENSION – long marriage – member of a couple – joint tenants of residential property – domestic violence – continued co-residence – whether living separately and apart – decision under review affirmed

[Taylor; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 2146 (6 July 2022); J C Kelly, Senior Member

SOCIAL SECURITY – jobseeker payment – where Respondent received termination payment – whether income maintenance period was correctly calculated – decision set aside – parenting payment – whether Respondent is residentially qualified to receive payment – whether Respondent is a protected Special Category Visa holder – decision under review set aside

Taxation

[Douglas and Commissioner of Taxation](#) (Taxation) [2022] AATA 2056 (30 June 2022); D K Grigg, Senior Member

TAX – where amended income tax assessment issued by the Australian Tax Office – whether assessment excessive – whether “special dividend” paid by BHP Group Limited to shareholders following sale of assets was a “dividend” pursuant to section 44 of the Income Tax Assessment Act 1936 (Cth) – whether the distribution should be treated as assessable income or a return of capital – decision under review affirmed

[Thiele and Commissioner of Taxation](#) (Taxation) [2022] AATA 2123 (1 July 2022); R Olding, Senior Member

TAXATION – CORONAVIRUS ECONOMIC RESPONSE PACKAGE – CASH FLOW BOOST – where applicant carried on business in partnership in 2018-19 but took over business as a sole trader from 1 February 2020 – whether an “amount was included in applicant’s assessable income for the 2018-19 income year in relation to it carrying on a business” – where partnership returned a loss – held no amount so included – decision affirmed

Veterans' Affairs

[Kuhn and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 2151 (5 July 2022); J Sosso, Deputy President

VETERANS' AFFAIRS – war widow's pension – eligibility – whether Applicant is a dependant – whether Applicant entered into a de facto relationship after Veteran's death – Applicant did not enter into a de facto relationship after death of Veteran

[XRNX and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 2024 (29 June 2022); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – veteran deceased – cause of death Alzheimer disease – claim for widow's pension – standard of proof ss 120(1), 120(3) and 120A of the Act – relevant Statement of Principles – whether operational service rendered – whether death related to operational service – whether there is a reasonable hypothesis supported by the relevant SoP – Deledio steps – factors of the SoP are satisfied – reasonable hypothesis raised connecting the death of veteran with his service – decision under review set aside and substituted – applicant entitled to widow's pension

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
Buykx and Comcare	[2022] AATA 810
MDCT and National Disability Insurance Agency	[2022] AATA 697

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BYJB v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3315	[2022] FCA 734
Comptroller-General of Customs v Alstom Transport Australia Pty Ltd	[2021] AATA 3816	[2022] FCAFC 109
DGPZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 115	[2022] FCAFC 107 [2020] FCA 1569
KXXH v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5313	[2022] FCAFC 111 [2021] FCA 1229
Manebona v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4680	[2022] FCA 730
MDXJ v Secretary, Services Australia (No 3)	[2020] AATA 2520	[2022] FCA 765
MQHN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 119	[2022] FCA 701

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 5 July 2022, the AAT was advised that the RMA intends to carry out an [investigation](#) under subsection 196B(7A) of the VEA in respect of the following:

the definition of 'combined oral contraceptive pill as specified' as a factor in gingivitis.

<https://www.legislation.gov.au/Details/C2022G00536>

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

Gingivitis (Reasonable Hypothesis) - No. 17 of 2022

<https://www.legislation.gov.au/Details/F2022L00010>

Gingivitis (Balance of Probabilities) - No. 18 of 2022

<https://www.legislation.gov.au/Details/F2022L00011>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These commence on **25 July 2022**:

Dermatomyositis (Balance of Probabilities) - No. 71 of 2022

<https://www.legislation.gov.au/Details/F2022L00916>

Dermatomyositis (Reasonable Hypothesis) - No. 70 of 2022

<https://www.legislation.gov.au/Details/F2022L00909>

Erectile dysfunction (Balance of Probabilities) - No. 73 of 2022

<https://www.legislation.gov.au/Details/F2022L00911>

Erectile dysfunction (Reasonable Hypothesis) - No. 72 of 2022

<https://www.legislation.gov.au/Details/F2022L00910>

Hiatus hernia (Balance of Probabilities) - No. 61 of 2022

<https://www.legislation.gov.au/Details/F2022L00944>

Hiatus hernia (Reasonable Hypothesis) - No. 60 of 2022

<https://www.legislation.gov.au/Details/F2022L00943>

Otitis media (Balance of Probabilities) - No. 63 of 2022

<https://www.legislation.gov.au/Details/F2022L00947>

Otitis media (Reasonable Hypothesis) - No. 62 of 2022

<https://www.legislation.gov.au/Details/F2022L00945>

Sick sinus syndrome (Balance of Probabilities) - No. 67 of 2022

<https://www.legislation.gov.au/Details/F2022L00920>

Sick sinus syndrome (Reasonable Hypothesis) - No. 66 of 2022

<https://www.legislation.gov.au/Details/F2022L00919>

Sleep apnoea (Balance of Probabilities) - No. 69 of 2022

<https://www.legislation.gov.au/Details/F2022L00907>

Sleep apnoea (Reasonable Hypothesis) - No. 68 of 2022

<https://www.legislation.gov.au/Details/F2022L00906>

Somatic symptom disorder (Balance of Probabilities) - No. 65 of 2022
<https://www.legislation.gov.au/Details/F2022L00905>

Somatic symptom disorder (Reasonable Hypothesis) - No. 64 of 2022
<https://www.legislation.gov.au/Details/F2022L00902>

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 amendments commence on **25 July 2022**:

Guillain-Barre syndrome (Balance of Probabilities) - No. 75 of 2022
<https://www.legislation.gov.au/Details/F2022L00913>

Guillain-Barre syndrome (Reasonable Hypothesis) - No. 74 of 2022
<https://www.legislation.gov.au/Details/F2022L00912>

Osteoarthritis (Balance of Probabilities) - No. 77 of 2022
<https://www.legislation.gov.au/Details/F2022L00942>

Osteoarthritis (Reasonable Hypothesis) - No. 76 of 2022
<https://www.legislation.gov.au/Details/F2022L00941>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be repealed** on **25 July 2022**:

Dermatomyositis - No. 10 of 2014
<https://www.legislation.gov.au/Details/F2014L00011>

Dermatomyositis - No. 9 of 2014
<https://www.legislation.gov.au/Details/F2014L00008>

Erectile dysfunction - No. 44 of 2013
<https://www.legislation.gov.au/Series/F2013L01137>

Erectile dysfunction - No. 43 of 2013
<https://www.legislation.gov.au/Series/F2013L01136>

Hiatus hernia - No. 69 of 2014

<https://www.legislation.gov.au/Details/F2014L00925>

Hiatus hernia - No. 68 of 2014

<https://www.legislation.gov.au/Series/F2014L00924>

Otitis media - No. 52 of 2014

<https://www.legislation.gov.au/Series/F2014L00484>

Otitis media - No. 51 of 2014

<https://www.legislation.gov.au/Series/F2014L00483>

Sick sinus syndrome - No. 16 of 2014

<https://www.legislation.gov.au/Details/F2014L00024>

Sick sinus syndrome - No. 15 of 2014

<https://www.legislation.gov.au/Details/F2014L00020>

Sleep apnoea - No. 42 of 2013

<https://www.legislation.gov.au/Details/F2013L01133>

Sleep apnoea - No. 41 of 2013

<https://www.legislation.gov.au/Details/F2013L01129>

Somatic symptom disorder - No. 25 of 2014

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

Somatic symptom disorder - No. 24 of 2014

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



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