



Administrative  
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Bulletin

# AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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# 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

[Matthews and Civil Aviation Safety Authority](#) [2020] AATA 1163 (6 May 2020); Senior Member R Cameron and Dr S Lewinsky, Member

CIVIL AVIATION – Class 1 and Class 2 medical certificate – medical standards – brain injury – substance abuse disorder – personality disorder – medically significant condition – safety-relevant condition – can any conditions be imposed – no conditions able to ameliorate risk – reviewable decision affirmed

## Child Support

[YKYS and Child Support Registrar](#) (Child support second review) [2020] AATA 1153 (4 May 2020); Mr R West, Member

CHILD SUPPORT ASSESSMENT – application for review – out of time – whether special circumstances – determination under s.95N(2) of the Child Support (Registration and Collection) Act 1988 – decision affirmed

[Cleveland and Parkes](#) (Child support) [2020] AATA 1038 (13 February 2020); K Dordevic, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations - decision under review set aside and substituted

[Gallegos and Felipe](#) (Child support) [2020] AATA 1030 (12 February 2020); S Brakespeare, Member

CHILD SUPPORT - opt-in arrears – application for collection of unpaid amounts should be accepted – calculation of unpaid amount - decision under review set aside and substituted

[Larsen and Vancliff](#) (Child support) [2020] AATA 900 (12 February 2020); M Baulch, Member

CHILD SUPPORT – particulars of the administrative assessment – whether post separation costs should be excluded from the adjusted taxable income for the last relevant year – additional income was earned not in the ordinary course after separation – an amount should be excluded - decision under review set aside and substituted

[Rosales and Child Support Registrar](#) (Child support) [2020] AATA 898 (12 February 2020); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations were correctly revoked and new determinations made – decision under review affirmed

[Sloan and Sloan](#) (Child support) [2020] AATA 881 (14 February 2020); P Jensen, Member

CHILD SUPPORT – particulars of the administrative assessment – whether post separation costs should be excluded from the adjusted taxable income for the last relevant year – additional income was not earned in the ordinary course after separation – an amount should be excluded - decision under review affirmed

## **Citizenship**

[Al-Hussaini and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1267 (12 May 2020); Senior Member C Puplick AM

CITIZENSHIP – two applications for citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person(s) – whether the applicant is of good character – making false and misleading statements in relation to identity – bogus document – use of multiple and changing names or nicknames – what may constitute acts of deception (deliberate and otherwise) – application of Citizenship Policy – decision affirmed – decision set aside and remitted

[Bayat and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1155 (6 May 2020); Ms A Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – Applicant Afghani national – whether satisfied of identity of applicant – inconsistent information in various visa applications regarding identity, family composition, residence history, occupation – identity documents include Afghan passport and Taskera – Taskera not assessed for genuineness – consideration of DFAT Country Information Report – whether the application for citizenship should be approved – life story remained consistent – Tribunal satisfied of identity – decision under review set aside and remitted

[NXDP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1251 (5 May 2020); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – Refusal of application for Australian citizenship by conferral – citizen of Iraq – applicant is holder of refugee (subclass XB-200) visa – whether applicant has a permanent or enduring physical or mental incapacity – assisted test – citizenship policy – decision under review affirmed

[Thompson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1159 (6 May 2020); Mr C Puplick AM, Senior Member

CITIZENSHIP – application for citizenship by descent – refusal of citizenship – whether at time of birth the applicant had an Australian citizen parent – whether applicant's parent was present in Australia for at least 2 years prior to application – decision under review affirmed

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

(Citizenship) [2020] AATA 1121 (5 May 2020); Mr S Webb, Member

CITIZENSHIP – application for conferral of Australian citizenship – applicant under 18 on application date – permanent resident – legislative requirements for conferral satisfied – discretion to approve or refuse to approve application – applicability of Australian Citizenship Policy and Citizenship Procedural Instructions - residence requirement – flexibility - absences from Australia exceeding 12 months in 4 years before application – adopted child of Australian citizen working outside Australia - discretion if residence requirement would result in significant hardship or disadvantage – meaning of ‘significant hardship or disadvantage’ – inability to access Commonwealth Heals-HELP for tertiary study – no significant hardship - ambiguity in policy – desirability of consistency – consideration of all relevant circumstances – appropriate to approve conferral of citizenship – decision set aside

## **Compensation**

[Bailey and Comcare](#) (Compensation) [2020] AATA 1244 (8 May 2020); Deputy President J Sosso

COMPENSATION – liability under Safety, Rehabilitation and Compensation Act 1988 (Cth) s 14 – aggravation of psychological ailment – pre-existing vulnerability – whether contributed to, to a significant degree, by employment – whether reasonable administrative action – whether undertaken reasonably – decision under review set aside and substituted

[Crisp and Comcare](#) (Compensation) [2020] AATA 1122 (1 May 2020); Mr W Frost, Member

WORKERS’ COMPENSATION – whether the applicant suffered an ailment or an aggravation of an ailment as defined by section 4 of the Safety, Rehabilitation and Compensation Act 1988 – whether the ailment or aggravation of an ailment was significantly contributed to by the applicant’s employment – de Quervain’s tenosynovitis – where the applicant’s condition has not been diagnosed – decision under review affirmed

[Ferris and Comcare](#) (Compensation) [2020] AATA 1218 (7 May 2020); Mr W Frost, Member

WORKERS’ COMPENSATION – whether the applicant suffered an injury pursuant to section 5A of the Safety, Rehabilitation and Compensation Act 1988 – whether that injury gave rise to permanent impairment under the Safety, Rehabilitation and Compensation Act – degree of permanent impairment under the Comcare Guide - healed fracture of the sacrum – permanent impairment does not meet 10% threshold – decision under review affirmed

WORKERS’ COMPENSATION – whether the applicant suffered an injury pursuant to section 5A of the Safety, Rehabilitation and Compensation Act 1988 – medical expenses – incapacity for work – whether Comcare is presently liable to pay compensation – no present liability – decision under review affirmed

## **Corporations**

[Hammond and Australian Securities and Investments Commission](#) [2020] AATA 1325 (13 May 2020); Mr R Reitano, Member

CORPORATIONS – disqualification under s 206F of the Corporations Act 2001 (Cth) – decision by Australian Securities and Investments Commission to disqualify Applicant from managing corporations for a period of 5 years – whether the Applicant was a director or officer of two or more corporations – shadow director – grounds for disqualification – superannuation obligations – management of corporations – protection of public interest – corporate responsibility – tax liability – decision under review is varied

[Poidevin and Australian Securities and Investments Commission](#) [2019] AATA 6806 (20 December 2019); The Hon. Justice D G Thomas, President & Deputy President J Redfern

CORPORATIONS LAW – banning order – applicants prohibited from providing any financial services for a certain period – alleged market manipulation over a period of nine days – whether transaction likely to have had the effect of creating an artificial price for trading in a financial product on a financial market – meaning of ‘transaction’ in s 1041A of the Corporations Act 2001 (Cth) — whether the applicants had the sole or dominant purpose of setting or maintaining the price for shares – meaning of ‘take part in or carry out’ – whether there is reason to believe that the second named applicant is likely to contravene a financial services law pursuant to s 920A(1)(f) of the Corporations Act 2001 (Cth) – findings of contravention made

PRACTICE AND PROCEDURE – threshold issue – findings of contravention – whether banning to make banning orders enlivened

PRACTICE AND PROCEDURE – evidentiary standard to be applied in respect of finding(s) of serious contravention of the law, including market misconduct provisions of the Corporations Act 2001 (Cth) – finding(s) of contravention to be based on cogent, reliable evidence

PRACTICE AND PROCEDURE – consideration of the application of the rule in Jones v Dunkel to assist in the fact finding process – no inference drawn against the applicants in relation to their failure to call certain witnesses in support of their respective applications

PRACTICE AND PROCEDURE – purported failure to deny or explain prior inconsistent statements and other evidentiary discrepancies – consideration of the circumstances in which an adverse inference can be drawn – case by case assessment by reference to particular evidence and submissions made is required

## **Education and Research**

[Schiebaan and Secretary, Department of Education](#) [2020] AATA 1305 (14 May 2020); Mr S Evans, Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for remission – special circumstances – whether circumstances beyond applicant’s control – whether circumstances made their full impact on or after the census date – whether impracticable for applicant to complete the unit requirements – Tribunal does not find special circumstances – decision under review affirmed

## **Freedom of Information**

[Leichsenring and Secretary, Department of Defence](#) [2020] AATA 1157 (4 May 2020); Deputy President G Humphries AO

FREEDOM OF INFORMATION – exempt documents – legal professional privilege – whether legal professional privileged waived – decision under review affirmed

## **Migration**

[Bristowe and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1217 (7 May 2020); Senior Member T Tavoularis

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

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

(Migration) [2020] AATA 1252 (7 May 2020); Deputy President B W Rayment OAM QC

MIGRATION - cancellation of visa on character grounds under s 501(3A) – where applicant was involved in robbery in company – where applicant was violent when committing the offence – whether to exercise discretion under Direction No. 79 – protection and expectations of the Australian community – where applicant was affected by alcohol and gambling addiction – where applicant breached bail – where applicant has rehabilitated – where applicant was allowed on work release – expectations of the Australian community – non-refoulement obligations – where applicant owed protection obligations – where not revoking cancellation would result in prolonged or indefinite detention – decision set aside and substituted

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

(Migration) AATA 1255 (2 April 2020); Senior Member K Millar

MIGRATION – discretionary cancellation of applicant’s visa - failure to pass character test – substantial criminal record – applicant sentenced to 12 months or more imprisonment – exercise of the discretion to cancel – consideration of principles under Ministerial Direction 79 – Primary and Other Considerations – set aside and substituted

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

(Migration) [2020] AATA 1216 (7 May 2020); Senior Member D J Morris

MIGRATION – mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa – substantial criminal record – applicant is a citizen of South Sudan – applicant does not pass character test – Ministerial Direction No. 79 – whether another reason to revoke mandatory cancellation of visa – primary considerations – protection of the Australian community – sexual offences – previous immigration warning – expectations of Australian community – other relevant considerations – non-refoulement obligations – strength, nature and duration of ties to Australia – extent of impediments if removed – discretion not enlivened – decision under review affirmed

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

(Migration) [2020] AATA 1123 (4 May 2020); Ms L M Gallagher, Member

MIGRATION – decision of delegate of Minister to cancel visa – character test – substantial criminal record – drug convictions – traffic convictions – Direction No. 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to the United Kingdom – reviewable decision affirmed

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

(Migration) [2020] AATA 1306 (12 May 2020); Senior Member L Kirk

MIGRATION – Class WA Subclass Bridging A visa – citizen of Nigeria – failure to pass character test – offending history – whether discretion to revoke mandatory cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – decision under review affirmed



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

(Migration) [2020] AATA 1256 (4 May 2020); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – another reason why the cancellation decision should be revoked – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – best interests of the child – strength, nature and duration of ties – extent of impediments if removed – COVID-19 – decision affirmed

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

(Migration) [2020] AATA 1246 (7 May 2020); Senior Member A Nikolic AM CSC

MIGRATION – Visa cancellation – citizen of Afghanistan – Resident Return (Class BB) (Subclass 155) visa – failure to pass character test – Ministerial Direction No. 79 applied – reviewable decision set aside and substituted

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

(Migration) [2020] AATA 1154 (6 May 2020); Senior Member D J Morris

MIGRATION – mandatory cancellation of visa – Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – applicant is a citizen of New Zealand and Samoa – applicant does not pass character test – Ministerial Direction No. 79 – whether another reason to revoke mandatory cancellation of visa – primary considerations – protection of the Australian community – violent offending – domestic violence offending – best interests of minor children – expectations of Australian community – other relevant considerations – impact on victims – strength, nature and duration of ties to Australia – extent of impediments if removed – other submissions relating to current public health emergency – the decision under review is affirmed

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

(Migration) [2020] AATA 1257 (11 May 2020); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – Mandatory visa cancellation – Class TY Subclass 444 Special Category (Temporary) visa – multiple convictions – domestic violence – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

**Balaei** (Migration) [2020] AATA 1105 (20 March 2020); R Anderson, Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – preliminary issue – BAS statements not included with visa application – provided 14 months after application was lodged – time of application criteria – necessary grammatical connection found in wording of provision – decision under review affirmed

**Darji** (Migration) [2020] AATA 1054 (16 March 2020); M Bradford; Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 500 (Student) – study at lower level than visa requirement – discretion to cancel visa – poor study history – non-commencement and cancellation of higher-level course, discontinuation by provider of lower-level course and enrolment in vocational course – inconsistent evidence – enrolment in further courses after hearing invitation sent – uncorroborated assertions of misconduct by agents and education provider – decision under review affirmed for first applicant, no jurisdiction for second applicant



[Le](#) (Migration) [2020] AATA 1112 (19 March 2020); S Trotter, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – Federal Court remittal – false or misleading information in a material particular – sponsor’s relationship history and number of children – compelling reasons for waiver – sponsor’s chronic medical condition – provision of emotional and moral support – fraud or deception by the sponsor – decision under review affirmed

[Metwest Steel Pty Ltd](#) (Migration) [2020] AATA 913 (20 March 2020); P Dunn, Member

MIGRATION – application for approval of nomination of position – temporary residence transition stream – training benchmark commitments – incomplete evidence of expenditure on training in most recent year of sponsorship – total expenditure over three years – expenditure more than minimum requirement – employer barred from applying as standard business sponsor – actions of ‘rogue’ employee – steps to prevent future breaches of obligations – period of bar shortened on review – decision under review set aside

[Pahonchiya](#) (Migration) [2020] AATA 861 (14 April 2020); Dr J Harkess, Member

MIGRATION – visa cancellation – Student (Temporary) (Class TU) Subclass 500 – non-compliance with visa condition – Condition 8202 – not enrolled in registered course – enrolled in course at lower AQF level than contemplated by visa grant – 11 months continuous non-compliance – whether extenuating circumstances – illness and death of grandfather – mental health issues – no supporting medical evidence – decision under review affirmed

PRACTICE & PROCEDURE – use of interpreter at hearing – Gujarati language – standard of interpretation – complaint by applicant – applicable principles – whether applicant denied procedural fairness – whether interpreter qualified and competent – whether complaint made during or after hearing – 14 specific interpretation errors alleged – all complaints unsubstantiated – no denial of procedural fairness

## **Practice and Procedure**

[Al-Zeebaree and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 1119 (4 May 2020); Dr L Bygrave, Member

EXTENSION OF TIME – citizenship – principles to be applied – applicant seeking an extension of time to make an application for review – whether application for extension of time is reasonable in all the circumstances – merits of substantial application – whether applicant meets general eligibility requirements – extension of time refused

[Birdseye and Tax Practitioners Board](#) [2020] AATA 1250 (8 May 2020); Senior Member R J Olding

PRACTICE AND PROCEDURE – STAY APPLICATION – termination of tax agent registrations – whether Applicants denied procedural fairness by decision-maker – whether conditional stays should be granted pending decisions on applications for review – whether conditional stays should be granted pending determination of procedural fairness issue as a preliminary issue – where Tribunal not satisfied there are prospects of success – stays refused

[Filardo and National Disability Insurance Agency](#) [2020] AATA 1138 (21 April 2020); K Parker, Member

PRACTICE AND PROCEDURE – issue regarding representation of applicant – applicant is a participant under National Disability Insurance Scheme (NDIS) – father of participant appointed by National Disability Insurance Agency (NDIA) as plan nominee – father engaged pro bono lawyers and counsel who appeared at hearing – application adjourned part-heard following open offer made by NDIA – after adjournment father terminated existing agreement with pro bono lawyers and counsel – pro bono lawyers and counsel sought to remain as representatives of applicant – father sought to continue to represent applicant – father requested funding for participant for specialist disability accommodation (SDA) at identified location by identified service provider – NDIA contended that father had conflict of interest due to his involvement with identified SDA service provider which was founded by and is controlled by father – father and applicant’s mother own the premises at identified SDA location – consideration of role of appointed plan nominee – consideration that NDIA has not, at this stage, sought to cancel or suspend the appointment of father as applicant’s plan nominee – acknowledgement of role of father who provides daily care to applicant – consideration of wishes of applicant – consideration of termination of previous agreement between father and pro bono lawyers and counsel – Tribunal decides father will continue to represent participant in this application and that previously engaged pro bono lawyers and counsel are excluded from doing so

[Hartley and Commissioner of Taxation](#) (Taxation) [2020] AATA 1260 (11 May 2020); Senior Member R Olding

PRACTICE AND PROCEDURE – where applicant sought an “abeyance” for an indeterminate period – where applicant made unsupported assertions of spying and other allegations against the respondent – where the applicant persisted in using obscene language in communications with tribunal staff contrary to a direction of the tribunal – where applicant otherwise non-compliant with directions - whether to dismiss the application without proceeding to review the reviewable decision

[Munir and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1253 (30 April 2020); Senior Member A Nikolic AM CSC

PRACTICE AND PROCEDURE – jurisdiction – migration – visa cancellation under s 501(2) of Migration Act – nine day time limit – whether notice complied with s 501G(1) of the Migration Act and given in prescribed manner – whether application for review lodged within time – notice complied with and was given in accordance with s 501G – application not lodged within time – no discretion to extend time to lodge review application – no jurisdiction – application dismissed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1156 (23 April 2020); Dr L Bygrave, Member

EXTENSION OF TIME – principles to be applied – reasons for delay – prejudice to the respondent and general public if extension granted – merits of substantive application – youth allowance debt – extension of time refused

[VMHX and Child Support Registrar](#) (Child support second review) [2020] AATA 1258 (22 April 2020); K Parker, Member

EXTENSION OF TIME APPLICATION – whether reasonable in all the circumstances to grant an extension of time – application lodged approximately six weeks out of time – applicant claimed he did not receive notice of the reviewable decision – explanation for the delay – whether applicant rested on his rights – merits of the substantive application – other factors considered – application refused

## Professions and Trades

[Nguyen and Migration Agents Registration Authority](#) [2020] AATA 1124 (1 May 2020); Deputy President J W Constance

MIGRATION AGENTS REGISTRATION – review of decision to cancel registration – where complaints made in relation to applicant’s conduct – whether applicant is a person of integrity – whether applicant breached the Code of Conduct for registered migration agents – where applicant misled the Authority – where applicant failed to properly supervise the work carried out by staff – decision under review affirmed

[Raygan and Migration Agents Registration Authority](#) [2020] AATA 1164 (6 May 2020); Deputy President P Britten-Jones

Migration Agent Registration Authority – migration agent – code of conduct breached under Migration Agents Regulations 1998 – cancellation of registration – failure to comply with code of conduct – not a person of integrity – not a fit and proper person to give immigration assistance – decisions affirmed.

## Refugee

[1700793](#) (Refugee) [2019] AATA 6743 (30 September 2019); A Grant, Member

REFUGEE – protection visa – China – religion – Christian – wholly fabricated by purported ‘agent’ – particular social group – homosexual woman – dresses in a masculine manner – low level official and societal discrimination – mental health condition – credible witness – unique or exceptional circumstances – circumstance not anticipated by relevant legislation – victim of an unconscionable ‘agent’ – acted beyond scope of actual or ostensible authority – prejudiced visa applicant’s migration status – Ministerial Intervention requested – decision under review affirmed

[1713094](#) (Refugee) [2020] AATA 990 (27 March 2020); Senior Member A Younes

REFUGEE – cancellation – protection visa – Iran – incorrect information in visa application – not stateless Faili Kurd but Iranian citizen – documentation – member of a particular social group – divorced woman – harassment by former husband and others – religion – conversion to Christianity in Australia – practice and understanding consistent with genuine conversion – discretion to cancel visa – married to Iranian citizen on protection visa – two children born after applicant’s visa cancelled – children’s migration status uncertain – best interests of the children – country information – decision under review set aside

[1820805](#) (Refugee) [2020] AATA 895 (6 April 2020); Senior Member S Roushan

REFUGEE – protection visa – Iraq – Federal Circuit Court remittal – religion – Christian – particular social group – widowed Christian women in Iraq – moderate risk of official and societal discrimination and violence – right to enter and reside in a third country – Greece – implications of the EU’s temporary restrictions on non-essential travel in response to the COVID-19 pandemic – racially motivated violence against migrants and refugees – fear of Black Shirts and other right-wing extremist groups – access to health care services in light of the COVID-19 pandemic – decision under review affirmed

[1820986](#) (Refugee) [2020] AATA 973 (23 April 2020); Deputy President J Redfern

REFUGEE – Protection (Class XA) (Subclass 866) visa – Sri Lanka - application for protection on the basis of the refugee and complementary protection criterion – applicant claims to fear persecution for reasons of Tamil ethnicity, imputed political opinion and membership of the particular social group – fear of arrest and torture – returning asylum seeker who departed Sri Lanka illegally -- errors in interpretation of evidence at the hearing before the previous Tribunal - credibility findings - consideration of refugee criterion in s 36(2)(a) of the Migration Act 1958 – applicant found not to have a well-founded fear of persecution – consideration of complementary protection criteria in s 36(2)(aa) of the Migration Act 1958 – no substantial grounds for believing that as a necessary and foreseeable consequence of removal to Sri Lanka there is a real risk the applicant will suffer significant harm – decision under review affirmed

[1903956](#) (Refugee) [2020] AATA 975 (14 April 2020); Senior Member D Dragovic

REFUGEE – cancellation – protection visa – Afghanistan – ground of cancellation – satisfaction as to visa holder’s identity – two comprehensive identities with detailed narratives and family structures – National Identity Proofing Guidelines – biometrics, documentation and biography – provision of a bogus document and incorrect information – powers of the Tribunal – power to request for Departmental investigation – power to summon a person to appear before the Tribunal – decision under review set aside

[1911719](#) (Refugee) [2019] AATA 5923 (18 July 2019); Dr C Huntly, Member

REFUGEE – Protection visa – India – unlawful non-citizen – mental health condition – religious conversion – Christianity – familial rejection – vague and illogical evidence – delay in lodging protection application– lack credibility – applicant did not subjectively have the necessary fear of persecution – decision under review affirmed

[1934715](#) (Refugee) [2020] AATA 1134 (11 March 2020); Senior Member S Roushan

REFUGEE – cancellation – protection visa – Iraq – risk to safety of segment of Australian population – charged with criminal offences against a child – intention to plead not guilty – claim that wife’s relatives instigated false accusations – conditional bail – discretion to cancel visa – strong family connections in Australia – wife’s financial hardship, mental health and approval for Australian citizenship – best interests of Australian citizen children – indefinite detention and non-refoulement – risk of serious harm if returned – decision under review set aside

## **Social Services**

[Abdulrahim and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1160 (7 May 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – whether applicant satisfies residency requirements – whether applicant was an Australian permanent resident during the qualification period – motor vehicle accidents – cervical and lumbar disc condition – mental health condition – bilateral shoulder condition – knee and hip condition – decision under review affirmed

[Burrell and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1162 (6 May 2020); Ms D Mitchell, Member

SOCIAL SECURITY – Age Pension – rate of pension – overpayment – wife's income not taken into consideration – whether Applicant was a member of a couple – decision under review affirmed

[Dempsey; Secretary, Department of Social Services and](#) (Social services second review) [2020]  
AATA 1302 (13 May 2020); Mr S Evans, Member

SOCIAL SECURITY – age pension – qualification – residence requirements – decision set aside and substituted

[Dewis and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1249 (8 May 2020); Ms L Rieper, Member

SOCIAL SECURITY – Disability support pension – rejection – qualification – medical – whether the Applicant's impairments have a rating of 20 points or more under the Impairment Tables – were the Applicant's conditions fully diagnosed, treated and stabilised during the qualification period – no impairment ratings able to be assigned – decision under review affirmed

[Djuric and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1137 (6 May 2020); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – cancellation – whether the Applicant has an impairment rating of 20 or more points according to the Impairment Tables – whether the Applicant has a continuing inability to work – spinal condition – decision under review affirmed

[Fuda and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1290 (15 April 2020); Brigadier A G Warner, Member

SOCIAL SECURITY – disability support pension – whether Applicant's impairments were fully diagnosed, fully treated and fully stabilised at the qualification period – whether Applicant's impairments attract 20 points under Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

[Harris and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1304 (12 May 2020); R West, Member

Disability Support Pension – cancellation – spinal condition – urinary continence –

whether fully diagnosed, fully treated and fully stabilised – impairment ratings under Tables 3, 4 and 13 of the Impairment Tables – Applicant has a continuing inability to work – Applicant eligible at cancellation date – decision under review set aside and substituted

[Kumar and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1248 (8 May 2020); Senior Member P J Clauson AM and 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 – impairments not more than 20 points – whether program of support requirements have been met – program of support not completed – no exemption to participation – whether there is a continuing inability to work – no continuing inability to work – decisions under review set aside

[Lambe; Secretary, Department of Social Services and](#) (Social services second review) [2020]  
AATA 1254 (11 May 2020); I Thompson, Member

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

[McKenzie and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1120 (1 May 2020); Senior Member B Stefaniak AM RFD

SOCIAL SECURITY – Disability Support Pension – psychiatric impairment suffered by applicant – qualification period for Disability Support Pension – incorrect advice from Department considered – whether the psychiatric impairment met the threshold of 20 points under the Impairment Tables – whether condition was fully treated, fully diagnosed and fully stabilised as at claim period – whether applicant had a continuing inability to work – program of support not relevant – decision under review affirmed

[Newman and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1259 (11 May 2020); D K Grigg, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions permanent – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

[Pratt and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1245 (7 May 2020); Deputy President Boyle

SOCIAL SECURITY – pensioner education supplement – full-time study – concessional student – qualifying study – normal amount of full-time study – decision affirmed

[Schurmann and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1247 (8 May 2020); 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

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1161 (6 May 2020); Senior Member D O'Donovan

SOCIAL SECURITY – Disability Support Pension – multiple impairments suffered by the applicant – whether the impairments together form an impairment rating of 20 points under the Impairment Tables – Table 7 considered – Table 9 considered – confidence intervals on IQ testing – only the cognitive impairment able to be assigned an impairment rating – applicant does not meet the threshold of 20 points under the impairment tables – decision under review affirmed

[Tilbrook and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1158 (6 May 2020); Mr G Hallwood, Member

SOCIAL SECURITY – Disability support pension – Permanent impairment – Sufficient points on impairment tables – Continuing inability to work – Decision under review is affirmed

## Transport

[Howard and Minister for Infrastructure, Transport and Regional Development](#) [2020] AATA 1262 (12 May 2020); L M Gallagher, Member

TRANSPORT – motor vehicles – importation of nonstandard motor vehicle – whether vehicle manufactured ‘before 1 January 1989’ – meaning of ‘manufactured’ – consideration of relevant factors for the exercise of the general discretion to approve the import – no grounds for exercise of discretion – decision to refuse application to import motor vehicle affirmed

## Veterans' Affairs

[Forrest and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 1308 (14 May 2020); Deputy President Britten-Jones

VETERANS' AFFAIRS – claim for increase in disability pension – seeking extreme disablement adjustment – dispute as to lifestyle rating – question of causation where impairment results from accepted conditions and non-accepted conditions – whether there is a disadvantage resulting from an accepted condition – calculation of lifestyle rating – decision set aside and substituted with a decision that the Applicant is entitled to the extreme disablement adjustment



# Appeals

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

## Appeals lodged

CASE NAME	AAT REFERENCE
<b>Australia Institute of Business &amp; Technology – International Pty Ltd and Australian Skills Quality Authority</b>	<a href="#">[2020] AATA 737</a>
<b>Kelekci and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 254</a>
<b>Say and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 694</a>
<b>Tohi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 495</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Australian Skills Quality Authority v Brighton Pacific Pty Ltd</b>	<a href="#">[2019] AATA 3645</a>	<a href="#">[2020] FCA 617</a>
<b>Kim v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4895</a>	<a href="#">[2020] FCA 583</a>
<b>Mullen v Aged Care Quality and Safety Commissioner</b>	<a href="#">[2017] AATA 1805</a> <a href="#">[2017] AATA 2556</a>	<a href="#">[2020] FCAFC 78</a> <a href="#">[2019] FCA 1726</a>
<b>National Disability Insurance Agency v WRMF</b>	<a href="#">[2019] AATA 1771</a>	<a href="#">[2020] FCAFC 79</a>
<b>Tuioti v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4423</a>	<a href="#">[2020] FCA 606</a>
<b>Wonson v Comcare</b>	<a href="#">[2019] AATA 2779</a>	<a href="#">[2020] FCAFC 76</a>

# Statements of Principles

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

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

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

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

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **25 May 2020**:

Coeliac disease (Reasonable Hypothesis) - No. 29 of 2020

<https://www.legislation.gov.au/Details/F2020L00489>

Coeliac disease (Balance of Probabilities) (No. 30 of 2020)

<https://www.legislation.gov.au/Details/F2020L00498>

Explosive blast injury (Reasonable Hypothesis) - No. 25 of 2020

<https://www.legislation.gov.au/Details/F2020L00485>

Explosive blast injury (Balance of Probabilities) – No. 26 of 2020

<https://www.legislation.gov.au/Details/F2020L00487>

Gunshot injury (Reasonable Hypothesis) - No. 23 of 2020

<https://www.legislation.gov.au/Details/F2020L00495>

Gunshot injury (Balance of Probabilities) - No. 24 of 2020

<https://www.legislation.gov.au/Details/F2020L00491>

Malignant neoplasm of the liver (Reasonable Hypothesis) - No. 31 of 2020

<https://www.legislation.gov.au/Details/F2020L00493>

Malignant neoplasm of the liver (Balance of Probabilities) - No. 32 of 2020

<https://www.legislation.gov.au/Details/F2020L00502>

Patellar tendinopathy (Reasonable Hypothesis) – No. 21 of 2020

<https://www.legislation.gov.au/Details/F2020L00494>

Patellar tendinopathy (Balance of Probabilities) - No. 22 of 2020

<https://www.legislation.gov.au/Details/F2020L00499>

Polyarteritis nodosa (Reasonable Hypothesis) - No. 33 of 2020

<https://www.legislation.gov.au/Details/F2020L00500>

Polyarteritis nodosa (Balance of Probabilities) - No. 34 of 2020

<https://www.legislation.gov.au/Details/F2020L00501>

Sprain and strain (Reasonable Hypothesis) - No. 27 of 2020

<https://www.legislation.gov.au/Details/F2020L00482>

Sprain and strain (Balance of Probabilities) - No. 28 of 2020

<https://www.legislation.gov.au/Details/F2020L00483>

## 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 **25 May 2020**:

Diverticular disease of the colon (Reasonable Hypothesis) - No. 35 of 2020

<https://www.legislation.gov.au/Details/F2020L00481>

Diverticular disease of the colon (Balance of Probabilities) - No. 36 of 2020

<https://www.legislation.gov.au/Details/F2020L00486>

Ganglion (Reasonable Hypothesis) - No. 37 of 2020

<https://www.legislation.gov.au/Details/F2020L00484>

Intervertebral disc prolapse (Reasonable Hypothesis) - No. 38 of 2020

<https://www.legislation.gov.au/Details/F2020L00492>

Intervertebral disc prolapse (Balance of Probabilities) - No. 39 of 2020

<https://www.legislation.gov.au/Details/F2020L00497>

Osteoarthritis (Reasonable Hypothesis) - No. 40 of 2020

<https://www.legislation.gov.au/Details/F2020L00496>

Osteoarthritis (Balance of Probabilities) - No. 41 of 2020

<https://www.legislation.gov.au/Details/F2020L00503>

Temporomandibular disorder (Reasonable Hypothesis) - No. 42 of 2020

<https://www.legislation.gov.au/Details/F2020L00506>

Temporomandibular disorder (Balance of Probabilities) - No. 43 of 2020

<https://www.legislation.gov.au/Details/F2020L00507>

Ulnar neuropathy at the elbow (Reasonable Hypothesis) - No. 44 of 2020

<https://www.legislation.gov.au/Details/F2020L00505>

Ulnar neuropathy at the elbow (Balance of Probabilities) - No. 45 of 2020

<https://www.legislation.gov.au/Details/F2020L00508>

### **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 **25 May 2020**

Coeliac disease No. 1 of 2011

<https://www.legislation.gov.au/Details/F2010L03248>

Coeliac disease No. 2 of 2011

<https://www.legislation.gov.au/Details/F2010L03249>

Malignant neoplasm of the liver No. 21 of 2011

<https://www.legislation.gov.au/Details/F2017C00839>

Malignant neoplasm of the liver No. 22 of 2011

<https://www.legislation.gov.au/Details/F2017C00830>

Patellar tendinopathy - No. 114 of 2011

<https://www.legislation.gov.au/Details/F2011L01743>

Patellar tendinopathy - No. 115 of 2011

<https://www.legislation.gov.au/Details/F2011L01745>

Physical injury due to munitions discharge - No. 48 of 2012

<https://www.legislation.gov.au/Details/F2012L01789>

Physical injury due to munitions discharge - No. 49 of 2012

<https://www.legislation.gov.au/Details/F2012L01790>

Polyarteritis nodosa - No. 11 of 2011

<https://www.legislation.gov.au/Details/F2010L03258>

Polyarteritis nodosa No. 12 of 2011

<https://www.legislation.gov.au/Details/F2010L03259>

Sprain and strain - No. 94 of 2011

<https://www.legislation.gov.au/Details/F2011L01726>

Sprain and strain - No. 95 of 2011

<https://www.legislation.gov.au/Details/F2011L01727>



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