



AAT Bulletin

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

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

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Contents

Recent news.....	3
AAT fact sheets translated into frequently used languages.....	3
AAT Recent Decisions.....	4
Child Support.....	4
Citizenship.....	5
Compensation.....	7
Corporations.....	8
Education and Research.....	9
Migration.....	9
National Disability Insurance Scheme.....	12
Practice and Procedure.....	12
Refugee.....	15
Social Services.....	16
Taxation.....	18
Trade and Commerce.....	18
Veterans' Affairs.....	18
Appeals	20
Appeals lodged	20
Appeals finalised	20

Recent news

AAT fact sheets translated into frequently used languages

We have translated some of our migration and refugee review and Centrelink review fact sheets into frequently used languages.

[Visit our website](#) for more information.

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

[RNJN and Child Support Registrar](#) (Child support second review) [2021] AATA 2361 (14 July 2021); Senior Member B J Illingworth

CHILD SUPPORT – Whether there was a change in the care percentage of the child – Assessment of actual care – Whether changes to care arrangement – The father's evidence preferred – Decision under review affirmed

[Carell and Rawding](#) (Child support) [2021] AATA 1985 (12 May 2021); M Baulch, Member

CHILD SUPPORT – non-agency payment – prescribed payment for school fees – whether enforceable maintenance liability existed when payment made – decision to credit fees paid after assessment registered for collection – decision under review set aside and substituted

[Charman and Charman](#) (Child support) [2021] AATA 1983 (25 May 2021); P Jensen, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income accepted – decision under review set aside and substituted

[Chesney and Adlard](#) (Child support) [2021] AATA 2423 (11 June 2021); P Jensen, Member

CHILD SUPPORT – opt-in arrears – whether there were unpaid amounts – application for collection of unpaid amounts should be not accepted – decision under review set aside and substituted

[Ewell and Hargrove](#) (Child support) [2021] AATA 2424 (18 June 2021); P Jensen, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – income derived from business – nominal child support rate – separate departure for orthodontic expenses – decision under review set aside and substituted

[Kolberg and Kolberg](#) (Child support) [2021] AATA 2433 (21 June 2021); P Sperling, 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 affirmed

Citizenship

[Al-Gburi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 2248 (9 June 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship test – eligibility requirements for citizenship – permanent or enduring physical or mental incapacity – consideration of medical evidence – PTSD - depression in remission - decision set aside

[Bongely and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 2360 (15 July 2021); Dr J Henderson, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant's identity – three pillars of identity – inconsistencies in Applicant's date of birth – application of Citizenship Procedural Instructions - application refused on character grounds – documents assessed as non-authentic – false or misleading declaration – character references – whether Tribunal satisfied of Applicant's good character - decision affirmed

[Dawlatshahi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 2437 (22 July 2021); A Maryniak QC, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether Applicant has satisfied paragraph 21(2)(h) of Australian Citizenship Act – whether the Applicant is of good character – decision set aside and remitted to the Respondent – Tribunal satisfied that the Applicant is of good character

[Dudinski and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2438 (22 July 2021); R West, Member

SOCIAL SECURITY – Newstart Allowance – failure to enter into a new job plan – cancellation – decision affirmed

[Hammad and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 2249 (13 July 2021); Mr S Evans, Member

CITIZENSHIP – application for citizenship by conferral – issue to be determined: whether the Applicant had a close and continuing association with Australia such that the discretion in subsection 22(9) of the Australian Citizenship Act 2007 may be exercised – legislation and relevant policy considered – Applicant's background and relevant circumstances considered – relevant cases considered – decision under review affirmed

[Hasan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 2457 (23 July 2021); M East, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – character test – failure to disclose criminal conviction – whether Tribunal is satisfied applicant was of good character – misleading conduct – wilfully providing false declaration – reviewable decision affirmed

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

(Citizenship) [2021] AATA 2405 (20 July 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – Rohingya persons – applicant is a minor child – identity of the father – identity of the mother – biometric – reliability of fingerprint evidence – documentary – life story – meaning of identity – application of Citizenship Procedural Instructions – decision set aside and remitted

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

(Citizenship) [2021] AATA 2358 (16 July 2021); R Maguire, Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Applicant's identity satisfied under s 24 of the Australian Citizenship Act 2007 (Cth) – meaning of identity – application of Citizenship Procedural Instructions – decision under review affirmed

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

(Citizenship) [2021] AATA 2278 (14 July 2021); K Parker, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Applicant meets the general eligibility requirement under subsection 21(2)(c) of the Australian Citizenship Act 2007 – Applicant impacted by COVID-19-related international travel bans – whether Applicant met general residence requirement or either of the special residence requirements – whether any basis to exempt applicant from meeting the general eligibility requirement under subsection 21(2)(c) – decision under review affirmed

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

(Citizenship) [2021] AATA 2435 (1 June 2021); Dr P McDermott RFD, Deputy President

CITIZENSHIP – application for Australian citizenship – refusal of application – Australian Citizenship Act 2007 (Cth) paragraph 21(2)(h) – whether satisfied that the applicant is of good character at the time of the decision on the application – domestic violence – decision under review affirmed

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

(Citizenship) [2021] AATA 2441 (22 July 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – does not have a permanent or enduring physical or mental incapacity – application of Citizenship Procedural Instructions – suffers from Major Depressive Disorder – incapacity not a direct cause – minor children do not have Australian-citizen resident parent with whom they are usually resident – decisions affirmed

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

(Citizenship) [2021] AATA 2354 (16 July 2021); Senior Member M Griffin QC

CITIZENSHIP - application for Australian citizenship by conferral - eligibility - refusal of citizenship - whether Applicant satisfies requirement of suffering from a permanent or enduring physical or mental incapacity - whether there is sufficient connection between permanent or enduring physical or mental incapacity and required incapacities at the time of application – Tribunal is satisfied that Applicant suffers from permanent incapacity and as a result suffered the relevant incapacities at the time of application – Reviewable Decision set aside and substituted

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

(Citizenship) [2021] AATA 2443 (22 July 2021); Senior Member P J Clauson AM

CITIZENSHIP – Australian Citizenship by Conferral – Where Applicant has been rejected for previous visas – Where Applicant has a protection visa – Good character – Unauthorised Arrival – Sponsored Family Visa – false or misleading information – decision affirmed

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

(Citizenship) [2021] AATA 2238 (12 July 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – where applicants are claiming to be stateless Palestinians – meaning of identity – application of Citizenship Procedural Instructions – decision affirmed

Compensation

CXFD and Comcare (Compensation) [2021] AATA 2377 (19 July 2021); Senior Member J C Kelly

COMPENSATION – workers compensation – Major Depressive Disorder with Anxious Distress and Hypertension – administrative action – where injury was contributed to, to a significant degree, by the employment – whether injury was suffered as a result of reasonable administrative action taken in a reasonable manner – decision under review set aside and substituted – Tinnitus – Applicant claimed to suffer tinnitus as a result of noise emitted by air conditioners – whether tinnitus was contributed to, to a significant degree, by the employment – decision under review affirmed

MacFarlane and TNT Australia Pty Ltd (Compensation) [2021] AATA 2239 (12 July 2021); Dr P McDermott RFD, Deputy President

COMPENSATION – claim for medical treatment under section 16 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – L4/5 total disc replacement and L5/S1 anterior lumbar interbody fusion surgery – aggravation of pre existing degeneration within lumbar spine – whether medical treatment obtained in relation to injury – whether treatment reasonable is reasonable in the circumstances – decision under review affirmed

Martin and Comcare (Compensation) [2021] AATA 2455 (23 July 2021); Senior Member D O'Donovan

Workers compensation – initial liability – chronic forearm pain associated with typing – chronic exertional compartment syndrome – whether Comcare is liable to pay under section 14 of the Safety, Rehabilitation and Compensation Act 1988 - decision under review set aside

[Michelle and National Australia Bank Limited](#) (Compensation) [2021] AATA 2356 (16 July 2021); Dr S Fenwick, Senior Member

COMPENSATION – psychological condition – ailment is a disease – whether contributed to, to a significant degree, by employment – whether reasonable administrative action exclusion applies – decision affirmed

PRACTICE AND PROCEDURE – late application for adjournment – General Practice Direction considered – procedural history of the application considered – no compelling or exceptional reason advanced for adjournment

[Upston and Comcare](#) (Compensation) [2021] AATA 2378 (19 July 2021); S Webb, Member

WORKERS' COMPENSATION – knee injury claim – threshold liability – scope of claim – left knee osteoarthritis – alleged historical incidents in previous employment – nature and conditions of previous employment – factual basis of claim – credit – applicable legislation – notice – meaning of 'injury' for purposes of 'notice' provision – when alleged ailment claimed as an injury first suffered – when applicant became aware of alleged injury – consideration of prejudice and reasonable cause – consideration of 'injury' and 'disease' provisions – 'ailment' – material contribution by nature and conditions of previous employment not established – factual basis of alleged injuries in 1981 and 1986 – significance of missing documents – corroboration – expert opinion – material contribution to ailment – decision affirmed

PROCEDURE – objection to expert opinion evidence – opinion in respect of assumed facts – Tribunal not strictly bound by rules of evidence - basis rule not applicable – applicability of opinion rule – assumption of facts distinguished from ambulatory assumption – assessment of relevance – extent to which assumed facts are directed to findings sought – requirement for opinion to be based on specialist knowledge – meaning of specialist knowledge – no breach of procedural fairness – basis of objection not made out – objection overruled

[ZJQL and Comcare](#) (Compensation) [2021] AATA 2229 (30 June 2021); The Hon. M Groom, Senior Member

COMPENSATION – entitlement to compensation – review of determinations of entitlement to compensation relating to accepted work sustained injury – consideration of capacity to work during the relevant periods – consideration of normal weekly hours and normal weekly earnings – decisions under review set aside and remitted for reconsideration

Corporations

[O'Dwyer and Secretary, Attorney-General's Department](#) [2021] AATA 2346 (15 July 2021); Emeritus Professor P A Fairall, Senior Member

FAIR ENTITLEMENTS GUARANTEE – whether the applicant has a statutory entitlement to a FEG advance in respect of redundancy pay – whether excluded employee – whether relative or employee/director – multifactorial test of employment – whether carrying on a business – decision under review set aside and remitted

Education and Research

[Heath and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 2280 (14 July 2021); Senior Member B Pola

HIGHER EDUCATION – Higher Education Contribution Scheme – application for remission of HECS-HELP debt – withdrawal from units of study after census date – exacerbation of mental health condition – whether special circumstances existed – whether circumstances beyond Applicant's control – whether circumstances made full impact on or after the census date – whether circumstances made it impracticable for the Applicant to complete requirements for the unit of study – decision affirmed

Migration

[Batson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2343 (29 June 2021); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class VE subclass 176 visa (Skilled Sponsored) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review affirmed

[BFYD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2237 (9 July 2021); Senior Member D J Morris

MIGRATION – mandatory cancellation of a subclass 801 (partner) visa – where applicant is a citizen of the People's Republic of China – where visa cancelled because applicant has substantial criminal record and thereby fails character test – consideration of the ministerial direction, Direction No. 90 – relevant primary considerations – protection of Australian community from criminal or other serious conduct – attempted importation of ingredients to manufacture large amount of an illicit drug – expectations of Australian community – best interests of affected minor children in Australia – other considerations – international non-refoulement obligations – extent of impediments if removed – links to Australian community – decision under review is affirmed

[Chiagozie and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2380 (8 July 2021); R Maguire, Member

MIGRATION – non-revocation of mandatory cancellation – Class BS Subclass 801 – Partner Visa – where the Applicant does not pass the character test – whether there is another reason to revoke the cancellation – consideration of Minister Direction No 90 – consideration of Australia's non-refoulement obligations – decision under review affirmed

[CRNL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2382 (21 June 2021); Deputy President A G Melick AO SC

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 the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – domestic violence – decision under review affirmed

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

(Migration) [2021] AATA 2408 (21 July 2021); Senior Member T Tavoularis

MIGRATION – refusal of application for Return (Residence) (Class BB) visa – where Applicant does not pass the character test – whether the discretion in section 501(1) should be exercised – consideration of Ministerial Direction No. 90 – decision under review affirmed

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

(Migration) [2021] AATA 2232 (7 July 2021); R Reitano, Member

VISA CANCELLATION – previous visa cancellation revoked – protection of the Australian community – family violence – the best interests of minor children – international non-refoulement obligations – difficulties if relocated to South Sudan – ties to the Australian community – decision under review is set aside and substituted

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

(Migration) [2021] AATA 2227 (9 July 2021); Deputy President S Boyle

MIGRATION – decision of a delegate of the Minister not to revoke mandatory cancellation of a temporary student visa – Applicant fails the character test – whether there is “another reason” to revoke the mandatory cancellation – Direction 90 applied – Applicant made no written submissions before the Tribunal – Applicant only disclosed relevant minor children at the hearing – prohibition under ss 500(6H) and 500(6J) of the Migration Act – Applicant’s temporary student visa will expire in approximately 8 months – reviewable decision affirmed

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

(Migration) [2021] AATA 2251 (12 July 2021); Senior Member B Pola

MIGRATION – Non-revocation of mandatory cancellation of a Class BS Subclass 801 Spouse visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration and application of Ministerial Direction No. 90 – decision under review affirmed

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

(Migration) [2021] AATA 2362 (16 July 2021); R Bellamy, Member

MIGRATION – refusal to grant a Protection visa – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review set aside

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

(Migration) [2021] AATA 2357 (15 July 2021); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – exercise of discretion to refuse to grant protection visa – failure to pass the character test – Ministerial Direction No. 90 applied – nature and seriousness of offending conduct – risk of reoffending – where offending very serious – protection of the Australian community – family violence committed by the non-citizen – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – where non-refoulement obligations applied – where prospect of indefinite detention – ties to Australia – impediments to removal – decision affirmed

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

(Migration) [2021] AATA 2228 (9 July 2021); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – offences of money laundering and possession of stolen/unlawfully obtained property – Direction No 90 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 37-year-old man who arrived in Australia as a 16-year-old – extent of impediments if returned to China – reviewable decision affirmed

2004699 (Migration) [2021] AATA 2071 (26 March 2021); F Simmons, Member

MIGRATION – cancellation – Refugee and Humanitarian (Class XB) – Subclass 200 (Refugee) visa – incorrect information in application – fraudulent identity documents – citizenship – race – Hazara – religion – Shia – Pakistani passport – claims to be citizen of Afghanistan – fraudulently obtained genuine identity documents – ability of children of Afghan father and Pakistani mother to acquire citizenship in Pakistan – decision under review set aside

Ridley (Migration) [2021] AATA 2213 (13 May 2021); J Pennell, Senior Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – ground for cancellation – fact or circumstance no longer exist – secondary criteria – member of family unit – relationship with primary visa holder ceased – consideration of discretion – purpose of visa grant no longer exist – legal consequences of visa cancellation – well-being of current de-facto partner – extraordinary circumstances of the pandemic – decision under review set aside

Brennan (Migration) [2021] AATA 2040 (20 May 2021); A M Williams, Member

MIGRATION – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – false or misleading information in visa application – applicant convicted of offences in Ireland – disclosing convictions on his juvenile record – compassionate or compelling circumstances – job skills hard to replace – impact on employer – decision under review remitted

Weng (Migration) [2021] AATA 2048 (9 June 2021); H Claringbold, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – orphan relative of Australian relative – cannot be cared for by either parent – applicant's mother died and father serving lengthy prison term – 'permanently incapacitated' – documentary and DNA evidence of aunt/nephew relationship – grandparents' old age and poor health – civil judgement of legal guardianship in home country – decision under review remitted

[Ma](#) (Migration) [2021] AATA 2352 (11 June 2021); J L Redfern PSM, Deputy President

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – sponsor’s need for assistance in daily life – consideration of sponsor’s capacity to understand sponsorship obligations – circumstances where the carer visa assessment certificate is two or more years old and an updated medical report has been provided by the general practitioner who is treating the sponsor – whether sponsor’s needs cannot reasonably be provided by another Australian relative – whether the assistance cannot reasonably be obtained from welfare, hospital, nursing or community services – whether the applicant is willing and able to provide the sponsor substantial and continuing care of the kind needed – applicant found to be the carer of the Australian relative sponsor – decision under review remitted with direction

National Disability Insurance Scheme

[Dunstan and National Disability Insurance Agency](#) [2021] AATA 2406 (16 July 2021); Senior Member D O'Donovan

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – statement of participant supports – whether Tribunal has jurisdiction to review supports not included in original request for review – Tribunal has jurisdiction – whether identified supports should be included in statement of participant supports – decision under review set aside

Practice and Procedure

[Courtney and Civil Aviation Safety Authority](#) [2021] AATA 2447 (18 June 2021); Senior Member C J Furnell and Dr S Lewinsky, Member

CIVIL AVIATION – Interlocutory – Practice and procedure – Refusal to issue a class 2 medical certificate – Dismissal of application on basis that it is frivolous, vexatious, vexatious, misconceived or lacking in substance – No utility in review – Application dismissed

[Downs and Maersk Supply Service](#) (Compensation) [2021] AATA 2445 (19 July 2021); Deputy President S Boyle

PRACTICE AND PROCEDURE – application to dismiss an application under s 42A(4) of the AAT Act – application for review of a reconsideration of a determination under the Seafarers Act – Respondent concedes that it had reconsidered the deemed declination – decision is reviewable by the Tribunal – application dismissed

[Flahive and Comcare](#) (Compensation) [2021] AATA 2444 (22 July 2021); Deputy President S Boyle

PRACTICE AND PROCEDURE – application for dismissal – whether application is frivolous, vexatious, misconceived or lacking in substance or otherwise an abuse of process – Comcare has accepted liability by reconsiderations on its own motion – no practical purpose would be served by a successful review of the decisions the subject of the applications – applications dismissed

Gaynor; Secretary, Department of Social Services and (Social services second review) [2021] AATA 2379 (19 July 2021); The Hon J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Stay application – Whether the Tribunal should exercise its discretion to grant a stay – Factors in favour of granting a stay – Prospect of overpayment – Factors against granting a stay – Public Interest – Merits of the Applicant’s Claim – Interests of the parties – Stay refused

Grice and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 2436 (21 July 2021); Deputy President S Boyle

PRACTICE AND PROCEDURE – application for reinstatement of an application for review – decision of a delegate not to revoke the cancellation of the Applicant’s visa pursuant to s 501CA(4) of the Migration Act – Applicant withdrew application for review – Applicant alleged mistaken belief that he was unable to represent himself in the Tribunal proceedings – alleged error not of the type that applies in relation to s 42A(10) of the AAT Act – application destined to fail because it was not lodged within the time required by s 500(6B) of the Migration Act – application refused

Hosking and Secretary, Department of Social Services (Social services second review) [2021] AATA 2453 (22 July 2021); Dr C Huntly, Member

PRACTICE AND PROCEDURE – extension of time application – length of delay – awareness of appeal rights – explanation for delay – prejudice to Respondent or the general public – merits of substantive application – alternative avenues of relief – extension of time application refused

Macdonald and National Disability Insurance Agency [2021] AATA 2459 (23 July 2021); Deputy President F Meagher

PRACTICE AND PROCEDURE – application for extension of time – application for review filed out of time – whether reasonable in circumstances to grant extension of time – length of delay in making the application – explanation for delay and awareness of appeal rights – prospects of success – alternative avenues for relief – extension of time application refused

PRACTICE AND PROCEDURE – National Disability Insurance Agency declined to conduct a review pursuant to section 48 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) – participant may seek internal review of the decision not to conduct a section 48 review pursuant to section 100 of the NDIS Act – internal review decision limited to question of whether un scheduled plan review should have been conducted – reasonable and necessary supports not in question – no prospects of success – matter dismissed

Napper; National Disability Insurance Agency and [2021] AATA 2363 (16 July 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – where application to the Tribunal to review a decision not to approve certain supports – whether certain supports were put before the internal reviewer – jurisdiction of the Tribunal – Tribunal has no jurisdiction to consider certain supports

[Noronha and Comcare](#) (Compensation) [2021] AATA 2456 (23 July 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Compensation – Attendance at required medical examination – Whether Applicant had a “reasonable excuse” not to attend under subsection 57(2) of the Safety, Rehabilitation and Compensation Act 1988 – Applicant did not have a reasonable excuse not to attend

[Parker and Comcare](#) (Compensation) [2021] AATA 2350 (15 July 2021); S Webb, Member

PRACTICE & PROCEDURE – application for review of reconsideration decision – Tribunal’s jurisdiction - scope of reconsideration decision and primary determination – decision not to deal is a decision nonetheless – jurisdiction conferred

[Parr and Commissioner of Taxation](#) (Taxation) [2021] AATA 2240 (7 July 2021); Deputy President B J McCabe

Application for reinstatement – where applications were dismissed under s 42A(2) for failure to appear – whether discretion to reinstate should be exercised under s 42A(9) – where the applicant has been in non-compliance on multiple occasions – where the material provided by the applicant indicates little prospect of success in the substantive matters – application for reinstatement refused

[Phillips and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 2276 (21 June 2021); Mrs J C Kelly, Senior Member

PRACTICE AND PROCEDURE – review of decision of the Veterans’ Review Board – scope of review – whether the Tribunal has jurisdiction to calculate the overall impairment rating for the purposes of Chapter 25 of GARP M – Tribunal has jurisdiction to calculate overall impairment rating

[Simonsen and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2442 (22 July 2021); L M Gallagher, Member

PRACTICE AND PROCEDURE – extension of time application – income reporting – debt recovery – length of delay – awareness of appeal rights – explanation for delay – prejudice to Respondent or the general public – merits of substantive application – alternative avenues of relief – extension of time application refused

[Spielvogel and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2404 (20 July 2021); R West, Member

SOCIAL SECURITY – Jobseeker payments – cancellation – assets exceed assets value limit – unrealisable assets – lack of jurisdiction to consider whether hardship rules apply – no reasonable prospect of success – application dismissed

[Stekovic and Comcare](#) (Compensation) [2021] AATA 2230 (9 July 2021); Mr S Webb, Member

PRACTICE AND PROCEDURE – summons to produce – claim for recovery of costs of complying with summons – dispute over quantum – applicable principles – determination of allowance payable

XGBR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 2407 (21 July 2021); Deputy President J W Constance

PRACTICE AND PROCEDURE – JURISDICTION – where Applicant approved to become an Australian citizen by descent – where Department later identified the Applicant did not have a parent who was an Australian citizen at the time of her birth – where annotation made pursuant to s 19A that the Applicant did not become an Australian citizen by descent – powers of Tribunal – whether a decision has been made in relation to the Applicant which the Tribunal has jurisdiction to review – no jurisdiction – application dismissed

Refugee

2013444 (Refugee) [2021] AATA 2451 (23 April 2021); M Sripathy, Member

REFUGEE – protection visa – Vietnam – ‘receiving country’ – nationality – claimed statelessness – born in the Republic of Vietnam – departed Socialist Republic of Vietnam before its first nationality laws were enacted – subject to compulsory military conscription – political opinion – son of a South Vietnamese soldier – anti-communist and anti-government sentiments – past political activities in Vietnam – role in filtering out communists in a refugee camp – voluntary returns on 10 occasions with no harm – political activities in Australia – departed the country unlawfully – failed asylum seeker – decision under review affirmed

1833543 (Refugee) [2021] AATA 2450 (12 May 2021); J Cipolla, Senior Member

REFUGEE – protection visa – cancellation – incorrect information – Federal Circuit Court remittal – stateless Arab Iraq – Iranian ancestry – expelled to Iran in 1980 – Iraqi identity card and passport fraudulently obtained – Australian citizen wife and children – best interests of children – no non-compliance – discretionary factors favour non-cancellation – decision under review set aside

1725373 (Refugee) [2021] AATA 2091 (14 May 2021); N Goetz, Member

REFUGEE – protection visa – Kenya – political opinion – testimony against government official – fear of killing – state protection – internal relocation – delay in applying for protection – credibility issues – decision under review affirmed

1725349 (Refugee) [2021] AATA 2241 (18 May 2021); P Vlahos, Member

REFUGEE – protection visa – Pakistan – particular social group – gay Pakistani males – same-sex relationship with an older Australian male for the last three years – fear of ‘vendetta’ by former criminal and child abuser – sexually abused as a child – perpetrator now released from jail and political figure locally – credibility issues – inconsistencies in recollection – delay in seeking protection – decision under review remitted

1915584 (Refugee) [2021] AATA 2244 (21 May 2021); K Raif, Senior Member

REFUGEE – protection visa – cancellation – Iran – incorrect information – false claims of being stateless Faili Kurd – Iranian citizen since birth – Australian citizen children – husband’s visa cancellation – medical condition – deliberate and intentional breach – decision under review affirmed

[1712719](#) (Refugee) [2021] AATA 2243 (27 May 2021); L Hardy, Member

REFUGEE – protection visa – Venezuela – political opinion – involvement in anti-Chávez student protest activities – threatened by members of the left-wing Tupamaro movement – delay in seeking protection – recent developments – particular social group – returnees to Venezuela – quarantine centers – Puntos de Atención Social Integral (PASI) – decision under review remitted

[1835594](#) (Refugee) [2021] AATA 2449 (28 May 2021); L Hardy, Member

REFUGEE – protection visa – Venezuela – political opinion – anti-government opinions – petition critical of the government – particular social group – returnees – women – stigmatizing returnees – arbitrary detention – impact of the COVID-19 pandemic – bioterrorist labelling – fear of torture – decision under review remitted

[1620379](#) (Refugee) [2021] AATA 2242 (3 June 2021); P Vlahos, Member

REFUGEE – protection visa – Turkey – fear of harm from criminal group after father challenged group leader – violent altercations and blood feud – corrupt police protected group and targeted applicant – imputed political opinion – false accusations of being member of outlawed political party/terrorist organisation – religion – moderate/liberal Muslim pressured by strict Muslim father – delay in applying for protection – attempt to apply for skilled visa mishandled by agent – low intelligence and mental health displayed in hearing – country information about police corruption and government anti-terrorist actions – decision under review remitted

Social Services

[Barker and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2123 (6 July 2021); Senior Member J C Kelly

SOCIAL SECURITY – Applicant was in receipt of compensation affected payments – Payment made in settlement of claim brought under Workers Compensation Act 1987 (NSW) – Recovery of social security payments – Whether payment “lump sum compensation payment” for purposes of Social Security Act 1991 (Cth) s 17 – Discretion to treat all or part of compensation payment as not having been made – Whether special circumstances exist – Reviewable decision affirmed – Reviewable decision set aside to take into account corrections to payment periods and amounts

[David and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2440 (22 July 2021); Senior Member C Puplick AM

COMPENSATION PRECLUSION PERIOD – Disability Support Pension – Newstart Allowance – calculation of preclusion period – preclusion period calculated correctly – special circumstances to disregard preclusion period – no special circumstances exist – decision affirmed

[Gombos and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2454 (23 July 2021); Senior Member C Puplick AM

SOCIAL SECURITY – entitlement to disability support pension – whether conditions fully treated and stabilised during the qualification period – whether impairment was of 20 points or more under s 94(1)(b) – decision under review affirmed

[Gunn and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2275 (14 July 2021); Senior Member R Cameron

SOCIAL SECURITY – parenting payment – Centrelink underpaid Applicant – review not sought within 13 weeks – no discretion for payment of arrears – decision under review is affirmed

[Guse and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2403 (20 July 2021); Dr L Bygrave, Member

SOCIAL SECURITY – parenting payment single – payment cancelled – whether applicant committed a parenting payment participation failure – where applicant failed to attend appointment – decision under review affirmed

[Kisielewicz and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2277 (14 July 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – aged pension – asset test – gifting provisions – valuation of share in unit trust – reviewable decision set aside and remitted

[Milic and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2381 (20 July 2021); S Evans, Member

SOCIAL SECURITY – disability support pension (“DSP”) – Applicant seeking review of decision by Social Services and Child Support Division – issue to be determined: whether the Applicant meets the criteria to be eligible for DSP according to subsection 94(1) of the Social Security Act 1991 (Cth) (“the Act”) – provisions of the Act considered – provisions of the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 considered – medical evidence and other materials and records considered – decision under review affirmed

[Perosh and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2439 (23 July 2021); Mr S Evans, Member

SOCIAL SECURITY – age pension – issue: whether arrears can be paid to the applicant – applicant’s circumstances considered – section 110 of the Social Security (Administration) Act 1999 (Cth) considered – decision under review affirmed

[Peters and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2250 (13 July 2021); A E Burke AO, Member

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

[Scott and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2246 (2 July 2021); Dr L Bygrave, Member

SOCIAL SECURITY – lump sum compensation preclusion period – disability support pension – whether special circumstances exist to waive the compensation preclusion period – special circumstances exist – decision set aside and substituted

[Semmler and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2359 (16 July 2021); P Ranson, Member

SOCIAL SECURITY – Disability Support Pension – overpayment – income reporting – whether there is a debt – whether debt should be recovered – whether debt should be written off debt or waived – whether there are special circumstances – reviewable decision is affirmed

[Warrell and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2353 (15 July 2021); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – age pension – decision to recover quantum of age pension as a debt – preclusion period – whether there are special circumstances that would allow part or all of the compensation payment to be treated as not having been made — whether there are special circumstances that make it desirable to waive the debt – constellation of factors – decision under review set aside and remitted

Taxation

[Clark and Commissioner of Taxation](#) (Taxation) [2021] AATA 2446 (22 July 2021); Senior Member R Olding

TAXATION – income tax – requests for extensions of time to object – travel allowance expenses – where submissions indicate taxpayer unable to prove expenses exceeded travel allowances received – where prospects of objections being allowed poor – decision refusing requests for extensions affirmed

Trade and Commerce

[Ryan and Registrar of Personal Property Securities](#) [2021] AATA 2348 (15 July 2021); Senior Member D O'Donovan

PERSONAL PROPERTY SECURITIES REGISTER – register amendment – costs agreement – whether decision of Registrar not to remove the registration in accordance with the registration demand was the correct decision – decision affirmed

Veterans' Affairs

[Clearihan and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 2384 (20 July 2021); Senior Member R Cameron

VETERANS' ENTITLEMENTS – special rate of pension – relevant period – war-caused conditions – whether applicant satisfies requirement of s 24(2A)(d) of the Veterans' Entitlements Act 1986 (Cth) – alone test – consideration of non-war-caused spinal condition, voluntary redundancy package – whether applicant satisfies requirement of s 24(2A)(e) – loss of earnings test – consideration of age, voluntary redundancy package – eligibility criteria met – eligibility for special rate of pension in relevant period – decision varied

[O'Donnell and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 2355 (9 July 2021); Deputy President B Rayment OAM QC

VETERAN'S AFFAIRS – disability pension – whether applicant entitled to special rate – Veterans' Entitlements Act 1986 (Cth) – relevant date of consideration of claim – which remunerative work was relied upon by the applicant – meaning of remunerative work – whether eligibility depends upon substantial or trivial losses – assessment period – whether applicant incapable of remunerative work by reason of war-caused incapacity alone – whether other factors contributed to cessation of work – matters to be considered – decision set aside and substituted

[Stevenson and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 2297 (15 July 2021); Senior Member R Cameron

VETERANS' AFFAIRS – benefits and entitlements – rate of service pension – Veterans' Review Board – Applicant is redundant – capacity to work – various health conditions – war-caused – whether Applicant satisfies “all alone” test – decision under review set aside and substituted

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
Campbell and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1879
DBWG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4800
Nahi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 209
Ngatoko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1039
SBMZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1409

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
FHMM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 760	[2021] FCA 775
Shrestha v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4511	[2021] FCA 802
Tohi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 495	[2021] FCAFC 125 [2020] FCA 1223



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