



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 16/2022**

**8 August 2022**

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

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

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

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Child Support.....	3
Citizenship.....	4
Compensation .....	5
Freedom of Information .....	5
Migration.....	6
Practice and Procedure.....	9
Professions and Trades .....	10
Refugee.....	11
Social Services.....	12
Taxation.....	13
Veterans' Affairs .....	14
<b>Appeals .....</b>	<b>15</b>
Appeals lodged.....	15
Appeals finalised .....	15

# 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

[YXVZ and Child Support Registrar](#) (Child support second review) [2022] AATA 2387 (25 July 2022); D O'Donovan, Senior Member

SOCIAL SECURITY – Family Tax Benefit – percentage of care – whether living arrangements changed – where Centrelink attempted to contact Applicant – whether care percentage should be revoked – where conflicting evidence – where Applicant's evidence unreliable – decision set aside

[Hadcock and Yonge](#) (Child support) [2022] AATA 2366 (19 May 2022); D Cox, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – court orders not complied with – whether reasonable action taken – interim period applied – decision under review set aside and substituted

[Haselhurst and Haley](#) (Child support) [2022] AATA 2098 (17 May 2022); R Anderson, Member

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

[Kinchen and Child Support Registrar](#) (Child support) [2022] AATA 2374 (25 May 2022); M Baulch, Member

CHILD SUPPORT – refusal to grant an extension of time to object – satisfactory explanation for the delay in lodging the objection late – some merit – no prejudice to the other parent – the extension of time should have been granted - decision under review set aside and substituted

[Merriman and Allsebrook](#) (Child support) [2022] AATA 2376 (10 May 2022); R Ellis, Senior Member

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

[Taylor and Tuckey](#) (Child support) [2022] AATA 2107 (25 May 2022); R Ellis, Senior Member

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

## **Citizenship**

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

(Citizenship) [2022] AATA 2485 (5 August 2022); R Maguire, Member

Citizenship – refusal of application – special residence – requirements not met – review of decision – affirmed

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

[2022] AATA 2473 (4 August 2022); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – by conferral – delegate not satisfied of likelihood to reside or of close and continuing association – applicant not in Australia at time of delegate’s decision – dependent applicant – under the age of 18 – not a permanent resident at the time of the delegate’s decision – decisions under review affirmed

[Morris and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022]

AATA 2463 (3 August 2022); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether Tribunal satisfied of Applicant’s identity – insufficient evidence regarding the identity of the Applicant – lack of documents – inconsistencies in the Applicant’s life story – Reviewable Decision affirmed

[Zaidi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022]

AATA 2474 (3 August 2022); D J Morris, Senior Member

CITIZENSHIP – Afghan applicant – application for citizenship by conferral – delegate of the minister refuses citizenship as not satisfied of applicant’s identity – applicant failed to respond to requests from Department – applicant has now provided certain documents – chain of provenance – whether applicant has ability to obtain further identity documents – obligation on an applicant to obtain documents that are readily available – reviewable decision is affirmed

## Compensation

[Barnes and Australian Postal Corporation](#) (Compensation) [2022] AATA 2413 (22 July 2022); The Hon. J Pascoe AC CVO, Deputy President

WORKERS COMPENSATION – failure to attend a rehabilitative assessment as directed under s 36 of the *Safety, Rehabilitation and Compensation Act 1988* – where the applicant’s rights to compensation were suspended - whether the applicant had a ‘reasonable excuse’ under s 36(4) not to undergo an examination in accordance with a requirement – where the applicant objected to the assessment occurring through videolink – limitations of an assessment by videolink – whether s 36 of the SRC Act can require someone to attend an assessment through videolink – excuse not reasonable – decision under review affirmed

[Colusso and Comcare](#) (Compensation) [2022] AATA 2464 (19 July 2022); M Griffin QC, Senior Member

COMPENSATION – whether Applicant is entitled to compensation under ss 16 and 19 of the SRC Act from 18 March 2020 – where injury sustained on 17 July 2014 – whether Applicant’s injury has developed into a chronic condition requiring ongoing, reasonably required treatment – whether there is any connection with the original injury – injury found to have resolved as at 18 March 2020 – reviewable decision affirmed

[Constantinou and Comcare](#) (Compensation) [2022] AATA 2380 (26 July 2022); A E Burke AO, Member

COMPENSATION – accepted psychological ailment contributed to a significant degree by employment – whether reasonable administrative action exclusion applies – condition arose from reasonable administrative action undertaken reasonably – decision affirmed

[Selman and TNT Australia Pty Ltd](#) (Compensation) [2022] AATA 2386 (28 July 2022); M East, Member

COMPENSATION – worker compensation – left shoulder tear on tendon – whether applicant suffered an injury – whether the injury was suffered in the workplace – reporting of the injury to the employer – conflicting medical expert opinion – Reviewable Decision affirmed

## Freedom of Information

[Palmer Leisure Coolum Pty Ltd and The Treasury](#) (Freedom of information) [2022] AATA 2475 (4 August 2022); Dr P McDermott RFD, Deputy President

Freedom of Information – Freedom of Information requests – adequacy of searches – whether all reasonable steps undertaken – methodology of searches – whether search terms relevant to request – where Office of Australia Information Commissioner declined review – where searches adequate – where all reasonable steps taken – decision under review affirmed

## Migration

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

(Migration) [2022] AATA 2477 (4 August 2022); K Millar, Senior Member

MIGRATION – mandatory revocation of Class TY Subclass 444 Special Category (temporary) visa under section 501(3A) – where Applicant does not pass the character test – whether the discretion to revoke the visa cancellation should be exercised – consideration on Ministerial Direction. 90 – decision under review is affirmed

### [FHXX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 2383 (4 July 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa under s 501CA(4) – character test – substantial criminal record – exercise of discretion to revoke cancellation of visa – Ministerial Direction No. 90 – primary and other considerations – the strength, nature and duration of ties to Australia – impediments to removal – effect of mental illness – mandatory cancellation of visa revoked – decision under review set aside and substituted

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

(Migration) [2022] AATA 2397 (15 July 2022); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class WC Subclass 030 Bridging Visa C 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 – serious – claimed to be victim of domestic violence in receiving country – decision under review affirmed

### [James and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 2390 (29 July 2022); S Boyle, Deputy President

MIGRATION – *Migration Act* s 501CA(4) – decision of a delegate of the Minister not to revoke the mandatory cancellation of the applicant’s visa – whether there is “another reason” to revoke the cancellation of the applicant’s visa – nine year gap in episodes of offending – applicant a 46-year-old man who arrived in Australia as a six-year-old child – extent of impediments if removed where applicant already returned to New Zealand – strong links to the Australian community – there is another reason to revoke the mandatory cancellation of the applicant’s visa – reviewable decision set aside and substituted

[\*\*KKFD and Minister for Immigration, Citizenship, and Multicultural Affairs\*\*](#) (Migration) [2022]  
AATA 2462 (21 July 2022); B W Rayment OAM QC, Deputy President

MIGRATION – refusal to grant visa on character grounds – whether the applicant passes the character test – whether there is a risk that the applicant would engage in criminal conduct – Direction No. 90 considered – where risk of reoffending is low – whether Tribunal can look behind facts of offence found in court where conviction is quashed – where applicant is owed protection obligations – where applicant has links to Australian community in church and support groups – decision set aside and remitted

[\*\*KYMM and Minister for Immigration, Citizenship, and Multicultural Affairs\*\*](#) (Migration) [2022]  
AATA 2388 (29 July 2022); Dr S Fenwick, Senior Member

MIGRATION – refusal to grant protection visa – whether convicted of particularly serious crime – whether a danger to the Australian community – seriousness and nature of offending – majority of offending as a minor – diagnosis of schizophrenia and expert medical opinion considered – decision set aside and remitted

[\*\*LVMF and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2022]  
AATA 2471 (3 August 2022); D J Morris, Senior Member

MIGRATION – applicant was born in Iraq – not in contention that applicant is stateless – applicant held Class XB Subclass 202 Global Special Humanitarian visa – visa cancelled – applicant made representations that cancellation be revoked – delegate decided not to revoke cancellation – review by Tribunal – ministerial Direction No. 90 – primary considerations – sexual offending including sexual offending against a child – other considerations – protection finding in relation to applicant – effect of prolonged detention – extent of impediments if applicant removed to a third country – applicant has protection visa application on foot – decision under review is affirmed

[\*\*Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2022]  
AATA 2357 (26 July 2022); M Griffin QC, Senior Member

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

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

(Migration) [2022] AATA 2384 (28 July 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – two convictions for serious offending over a 12 year period – whether discretion to revoke mandatory cancellation should be exercised – applicant suffers from mental health issues and would face significant impediments and serious risk of harm if returned to Burundi – other considerations outweigh the primary considerations – the decision under review is set aside and substituted by a decision revoking the cancellation

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

(Migration) [2022] AATA 2484 (4 August 2022); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category Temporary visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – breach of domestic violence orders – decision under review affirmed

**Zheng and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2022]

AATA 2465 (3 August 2022); M East, Member

IMMIGRATION – cancellation of business visa – the applicant was a dependent on the primary visa holder – whether the applicant would suffer any extreme hardship if the visa is cancelled – whether not finishing a degree is an extreme hardship – adjustment disorder with mixed anxiety and depressed mood – insufficient medical evidence – reviewable decision affirmed

**1812789** (Migration) [2022] AATA 2252 (29 March 2022); J Clarke, Member

MIGRATION – Cancellation – Subclass 100 (Spouse) visa – applicant provided incorrect information – criminal conviction – non-compliance in connection with a previous visa – applicant had provided a bogus document to the Department – applicant's past offences in the FYROM were not as extensive as the delegate had stated – strong evidence of the applicant's contribution to the Australian community – consistent and persistent claim to fear returning to Macedonia – applicant was genuinely unaware of the Australian charges – decision under review set aside

**1817836** (Migration) [2022] AATA 2264 (3 June 2022); M Bourke, Member

MIGRATION – (Residence) (Class BS) visa – Subclass 820 (Spouse) – genuine and ongoing relationship – applicant's partner did not undertake the role of sponsor – partner's employment records – residential history – limited time of application evidence – decision under review affirmed



[1828473](#) (Migration) [2022] AATA 2291 (3 June 2022); M Cooke, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – passport renewal – unreasonable to require the applicant to hold a passport – attempts to acquire a valid passport – no travel documents – no right of return to Australia – certificate of identity – financial hardship – Angolan diplomatic representation – decision under review set aside

[1915727](#) (Migration) [2022] AATA 2195 (16 June 2022); A Mercer, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 Regional Sponsored Migration Scheme – Direct Entry stream – position of Cook – applicant obtained the necessary qualification in Australia – Recognition of Prior Learning used for the whole achievement of the qualification – delegate's reliance on Departmental policy – decision under review remitted

[2200544](#) (Migration) [2022] AATA 2247 (1 July 2022); K Raif, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information and bogus documents provided in visa application – de facto partner of primary applicant – bank statements, mobile phone bills and personal statement – departmental investigation – claim that documents altered by agent – limited evidence of relationship – timing and circumstances of start and end dates with respect to visa requirements – relationship ceased and relationship with previous partner recommenced – application for citizenship withdrawn – discretion to cancel visa – long residence – younger child an Australian citizen – decision under review affirmed

[1830988](#) (Migration) [2022] AATA 2199 (8 July 2022); J.L Redfern PSM, Deputy President

MIGRATION – temporary skill shortage (class GK) visa – subclass 482 – short-term stream – genuine position – approved nomination – decision under review remit with direction

## **Practice and Procedure**

[Wall and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 2391 (29 July 2022); J Sosso, Deputy President

PRACTICE AND PROCEDURE – application for review – re-creditation of VET FEE-HELP fees – whether the unit requirements of the course were completed – whether VET provider engaged in inappropriate conduct – whether there are any reasonable prospects of success – application for dismissal granted

[Witsen and National Disability Insurance Agency](#) [2022] AATA 2205 (7 July 2022); P Smith, Member

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – request for order under s 38 of the AAT Act for additional statement of – obligations of administrative decision-maker under section 28(1) and subsection 37(1)(a) of the AAT Act – whether the Tribunal should exercise its discretion under section 38(1) – whether there is any utility in the Tribunal exercising its discretion – whether an additional statement would advance the fairness and justice of the case – where reviewer did not consider evidence or information as part of internal review – limited evidence or information considered by the reviewer as part of the internal review – function of the Tribunal on a review de novo considered – function of the Tribunal not to scrutinize reviewable decisions for error – public confidence in the exercise of power – statement of issues lodged not a substitute for a statement of reasons or an additional statement of reasons – discretion to make the order refused

[Zaiter and Comcare](#) (Compensation) [2022] AATA 2353 (19 July 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – Comcare declined liability for psychological treatment under section 16 of the SRC Act – 28-day period to seek review has elapsed – where applicant’s solicitors were instructed but failed to lodge an application – reasons for delay – whether applicant rested on their rights – prejudice to a respondent – prospects of success – prejudice to general public and fairness between applicants – extension of time granted

## **Professions and Trades**

[Douglas and Australian Securities and Investments Commission](#) [2022] AATA 2415 (1 August 2022); P W Taylor SC, Senior Member

Self Managed Superannuation Fund – non-compliance with relevant standards – disqualification as approved Self Managed Superannuation Fund auditor – stay of disqualification decision pending appeal

[Tran and Migration Agents Registration Authority](#) [2022] AATA 2470 (1 August 2022); C Puplick AM, Senior Member

Regulatory – alleged breaches of code of conduct by migration agent – whether clients’ affairs managed negligently – whether financial arrangements were satisfactory, whether files and applications were properly completed – whether record keeping was up to standard – whether response to MARA was satisfactory – whether migration agent is a person of integrity – whether migration agent is a fit and proper person – consequences of adverse findings – decision set aside and substituted

## Refugee

[1621944](#) (Refugee) [2022] AATA 2224 (2 May 2022); J Marquard, Member

REFUGEE – protection visa – Bangladesh – political opinion – Bangladesh National Party (BNP) – anti-Awami League party – family involvement in BNP – perception of wealth – beaten and injured by Awami League members – attempted extortion – relocation – decision under review affirmed

[1807136](#) (Refugee) [2022] AATA 2321 (3 May 2022); C Packer, Member

REFUGEE – protection visa – Ethiopia – political opinion – Oromo Liberation Front Party member/activist – past political activities – anti-government political profile – mental health issues – political situation and security conditions in Ethiopia – race – Oromo and Amhara ethnicity – religion – Orthodox Christianity – particular social group – failed asylum seeker from the West – decision under review remitted

[1725964](#) (Refugee) [2022] AATA 2287 (11 May 2022); M McAdam, Member

REFUGEE – protection visa – Iraq – particular social group – homosexual men – fear of harm by community and authorities – originally identified as homosexual but now identifies as heterosexual – fathered a child – no longer fears harm in Iraq – lack of detailed evidence – credibility issues – separation of family – compassionate circumstances – best interests of the child – Ministerial intervention requested – decision under review affirmed

[2115955](#) (Refugee) [2022] AATA 2254 (12 May 2022); J Henderson, Member

REFUGEE – protection visa – Vietnam – race – Chinese heritage – rescission of Vietnamese citizenship – alleged statelessness – whether entitled to Chinese citizenship or a right of abode – particular social group – drug addicts in Vietnam who have been convicted of trafficking related offences – risk of relapse into substance abuse – social stigma – compulsory drug rehabilitation centres/ 06 Centres – capacity to subsist – serious psychological harm – decision under review remitted

[1906390](#) (Refugee) [2022] AATA 2392 (18 May 2022); L Mojsin, Member

REFUGEE – Protection visa – Venezuela – decision made on paper – political opinion – opposition to government – no Homeland Card – opposition members denied card – unable to access subsidised food and medicine – membership with Primero Justicia – name on Tascon List – position of Health and Safety at workplace – applicant was attacked – threats to returnees due to pandemic – decision under review remitted

[1935068](#) (Refugee) [2022] AATA 2451 (28 May 2022); S Baker, Member

REFUGEE – protection visa – Afghanistan – imputed political opinion – anti-Taliban – race – mixed Hazara/Qizibash ethnicity – religion – Shia – particular social group – people who worked for and are associated with Western NGOs/Western governments – human rights violations by Taliban – risk of mass casualty attacks – Islamic State in Khorasan Province (ISKP) – evidence of ethnic cleansing – decision under review remitted

[1919013](#) (Refugee) [2022] AATA 2398 (9 June 2022); D Dragovic, Senior Member

REFUGEE – cancellation – protection visa – stateless/Iran – incorrect information given in visa application – name, date of birth and citizenship – passport cut into pieces found on vessel and reconstructed – department’s notice referred only to statelessness/citizenship so no consideration of name and date of birth – difficulty of stateless persons accessing official documentation – country information – no education and limited informal work opportunities more consistent with being stateless Faili Kurd – availability of non-genuine passports and departure procedures – consistent and credible evidence – real state of satisfaction required for cancellation – decision under review set aside

[1621951](#) (Refugee) [2022] AATA 2147 (27 June 2022); J.L Redfern PSM, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Bangladesh – application for protection on basis of the refugee and complementary protection criterion – Bangladesh Nationalist Party (BNP) supporter – involvement with BNP Australia – political opinion based on profile as a supporter of the BNP – political activities outside Bangladesh including academic writing and social media profile – claims applicant will be targeted by the Awami League, supporters of Awami League and government officials – whether the applicant faces a real chance of serious harm on return to Bangladesh – whether conduct in Australia should be disregarded – applicant found to be a refugee – decision under review remitted with directions

## Social Services

[Al Sultan and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2381 (27 July 2022); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – cancellation of pension – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables at date of cancellation – decision under review affirmed

[Busch and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2355 (26 July 2022); D Mitchell, Member

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

[Kovacevich and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2385 (28 July 2022); S Evans, Member

SOCIAL SECURITY – application for disability support pension – interaction between *Social Security Act 1991* (Cth) and *Social Security (International Agreements) Act 1999* (Cth) – issue: whether the applicant was qualified to receive DSP – where applicant has multiple conditions – where some conditions are fully diagnosed but not fully treated or stabilised during relevant period – where some conditions are neither fully diagnosed nor treated – applicant does not meet the requirements of the Impairments Table – decision under review affirmed

[SPWX and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2486 (11 July 2022); A E Burke AO, Member

SOCIAL SECURITY – Child Care Rebate – overpayment – member of a couple – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – whether special circumstances – with the application made in a reasonable time – jurisdictional question – determination no jurisdiction as no determination was made by the AAT1

[Visvalingam and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2346 (20 July 2022); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the qualification period – decision under review affirmed

## Taxation

[Goldsworthy and Commissioner of Taxation](#) (Taxation) [2022] AATA 2472 (4 August 2022); R Olding, Senior Member

TAXATION – INCOME TAX – where Commissioner of Taxation assessed applicant's taxable income on the basis that certain bank account deposits were assessable income – where applicant maintained the deposits were loans – where Commissioner did not confine issues in dispute – where applicant did not adduce evidence or make submissions to discharge the burden of proving his actual taxable income – burden of proof not discharged – decision affirmed

[Prescott and Commissioner of Taxation](#) (Taxation) [2022] AATA 2478 (4 August 2022); K James, Senior Member

TAXATION – Superannuation Lump Sum – Election – Where a taxpayer is required to elect to receive a partial commutation as a superannuation lump sum, election must be made in accordance with regulatory requirements – The common law doctrine of election has no application – Objection decision affirmed

[The Trustee for JC Mobile Sharpening Discretionary Trust](#) (Taxation) [2022] AATA 2482 (5 August 2022); Dr L Kirk, Senior Member

TAXATION – Coronavirus Economic Response Package – Entitlement to Cash Flow Boost – Where entity is a trust – Whether the entity satisfied the ‘payment and withholding in the period’ requirement – Whether the entity entered into or carried out a scheme or part of a scheme for the sole or dominant purpose of making the entity entitled to the cash flow boost – Decision affirmed

[TOC Processing Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 2479 (4 August 2022); R Olding, Senior Member

TAXATION – INCOME TAX – where Commissioner of Taxation treated ‘unexplained deposits’ as assessable income – where applicant claimed the deposits were credit card deposits processed for an overseas company – where minimal contemporaneous records available to support the applicant’s claims – where applicant’s director provided witness statements but for health reasons not available for cross examination – burden of proof not discharged – decision affirmed

[YDXM and Commissioner of Taxation](#) (Taxation) [2022] AATA 2382 (27 July 2022); Dr M Evans-Bonner, Senior Member

INCOME TAX – whether allowable deduction – self-education expenses for tertiary tuition fees in the income years ended 2018 and 2019 – whether self-education expenses incurred in gaining or producing assessable income – whether self-education improved the Applicant’s skills necessary to perform his role – whether self-education could have led to an increase in income – Applicant sought to claim the cost of units studied in Juris Doctor law degree as a tax deduction – there is not a sufficient enough connection between the Applicant’s expenses incurred in the completion of the units of study and his income earning activities – Reviewable Decisions affirmed

## **Veterans' Affairs**

[James and Repatriation Commission](#) (Veterans’ entitlements) [2022] AATA 2476 (4 August 2022); B W Rayment OAM QC, Deputy President

VETERANS’ AND MILITARY COMPENSATION – whether the Applicant is entitled to the special rate of pension – provisions of the *Veterans’ Entitlements Act 1986* (Cth) considered – relevant cases considered – relevant material considered – 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
<b>BCDC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2054</a>
<b>Gruszka and Migration Agents Registration Authority</b>	<a href="#">[2022] AATA 2128</a>
<b>GSMY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 263</a>
<b>Jadidi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2217</a>
<b>Rukuwai and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2201</a>
<b>SDCS and Comcare</b>	<a href="#">[2022] AATA 1327</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Au v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 372</a>	<a href="#">[2022] FCAFC 125</a> <a href="#">[2022] FCA 1240</a>
<b>CKT20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 910</a>	<a href="#">[2022] FCAFC 124</a> <a href="#">[2020] FCA 1546</a>
<b>Commissioner of Taxation v Carter</b>	<a href="#">[2019] AATA 5637</a>	<a href="#">[2022] HCA 10</a> <a href="#">[2021] HCATrans 72</a> <a href="#">[2020] FCAFC 150</a>
<b>HWLJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 860</a>	<a href="#">[2022] FCA 882</a>
<b>Parr v Commissioner of Taxation (No 2)</b>	<a href="#">[2021] AATA 2240</a>	<a href="#">[2022] FCA 868</a> <a href="#">[2022] FCA 678</a>



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <https://www.pmc.gov.au/government/commonwealth-coat-arms>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).

