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

It is recommended that the Bulletin be read 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.

Bankruptcy

[Wortman and Inspector-General in Bankruptcy](#) [2021] AATA 2919 (18 August 2021); Senior Member K James

BANKRUPTCY – whether trustee was entitled to issue a notice of objection - statutory powers of trustee – special ground of objection – if trustee excused the bankrupt – whether the bankrupt had reasonable excuse for non-compliance with the trustee's statutory power – decision affirmed

Child Support

[GFSG and Child Support Registrar](#) (Child support second review) [2021] AATA 2765 (9 August 2021); K Parker, Member

CHILD SUPPORT – care percentage determinations – meaning of “care” – child lived separately from both parents at certain times – provision of other types of care and support – new evidence presented to the Tribunal - decision under review varied

[Burney and Burney](#) (Child support) [2021] AATA 2902 (1 July 2021); A Ducrou, Member

CHILD SUPPORT – date of effect of care percentage decision – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist – decision under review set aside and substituted

[Derick and Derick](#) (Child support) [2021] AATA 2905 (1 July 2021); Y Webb, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business and trust – decision under review affirmed

[Inskip and Souttar](#) (Child support) [2021] AATA 2908 (16 July 2021); S Brakespeare, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable income for past period for the liable parent should be changed – conditions for changing the income to lower amount are not met – decision under review affirmed

[McMillan and McMillan](#) (Child support) [2021] AATA 2901 (13 July 2021); P Jensen, Member

CHILD SUPPORT – child support agreement – interpretation of binding child support agreement – whether periodic rate ought to reduce once child turned 18 – decision under review affirmed

[Whiteway and Child Support Registrar](#) (Child support) [2021] AATA 2913 (7 July 2021); K Dordevic, 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 – care other than in nights – decision under review set aside and substituted

Citizenship

[Dib and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2807 (13 August 2021); Senior Member J C Kelly

CITIZENSHIP – application for Australian citizenship by conferral – whether Applicant successfully completed a test approved in a determination under s23A of the Australian Citizenship Act 2007 (Cth) – Ministerial Determination LIN 20/085 – decision under review affirmed

[Emenogu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2880 (16 August 2021); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – Application for Australian citizenship by conferral – Good character requirement – Whether the Applicant is of good character under section 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – Where the Applicant had been convicted of criminal offences – Where the Applicant failed to disclose criminal convictions on his citizenship application – Good character requirement not satisfied – Decision affirmed

[Encarnacion and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2885 (17 August 2021); Mr S Evans, Member

CITIZENSHIP – by descent – issue to determine: whether the Applicant is eligible to become an Australian citizen by descent in accordance with subsection 16(2) of the Australian Citizenship Act 2007 (Cth) – whether a parent of the person was an Australian citizen at the time of the birth – sibship testing inconclusive – decision under review set aside and remitted.

[Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2805 (9 Aug 2021); Senior Member C Puplick AM

CITIZENSHIP – by conferral – where the applicants are under 18 – where the applicants are overseas – Citizenship Procedural Instructions – CPI 4 – person under 18 – CPI 13 – best interests of the child – decision under review is affirmed

[NKMR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2845 (12 Aug 2021); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is a person of good character – Australian Citizenship [Policy Statement] – Citizenship Procedural Instruction 15 – applicant living unlawfully in the community – charged with criminal conduct – decision under review affirmed

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

(Citizenship) [2021] AATA 2804 (6 August 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – application form – citizenship test – substantial compliance – permanent or enduring physical or mental incapacity – causation – link between physical condition and knowledge elements not established – medical evidence – decision affirmed

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

(Citizenship) [2021] AATA 2764 (9 August 2021); Dr S Fenwick, Senior Member

CITIZENSHIP – refusals of Australian citizenship by conferral – eligibility of persons aged under 18 – exercise of discretion to refuse citizenship approval – Citizenship Policy – children under the age of 16 – Convention on the Rights of the Child – best interests of the child – whether significant hardship or disadvantage – reviewable decisions affirmed

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

(Citizenship) [2021] AATA 2763 (9 August 2021); R Bellamy, Member

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – section 21(3)(d) of Australian Citizenship Act 2007 – whether Applicant had relevant permanent or enduring physical or mental incapacity at the time of application – decision under review affirmed

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

(Citizenship) [2021] AATA 2883 (3 August 2021); Dr N A Manetta, Senior Member

CITIZENSHIP – applicant refused citizenship – applicant has mental incapacity - whether incapacity was permanent or enduring at the time she made her application for citizenship under s 21(3)(d) of the Australian Citizenship Act 2007- whether “permanent or enduring physical or mental incapacity” is confined to an incapacity that cannot be alleviated by treatment – applicant has not sought treatment – applicant is unlikely to seek treatment in the future – incapacity considered to be permanent or enduring – decision set aside and new decision substituted that the applicant met the eligibility criteria in s 21(3)(d) at the time of application

Compensation

Bryant and National Australia Bank Limited (Compensation) [2021] AATA 2769 (30 July 2021); Dr

P McDermott RFD, Deputy President

COMPENSATION – claim for compensation for psychiatric disease under section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – adjustment disorder with depressed and anxious mood – disease contributed to, to a significant degree, by employment – whether administrative action – whether reasonable administrative action – whether taken reasonably – decision under review affirmed

[Chambers and Comcare](#) (Compensation) [2021] AATA 2870 (16 August 2021); Senior Member D O'Donovan

WORKERS' COMPENSATION – whether Applicant suffered from a 'disease' or 'injury' within the meaning of the Safety, Rehabilitation and Compensation Act 1988 – whether applicant suffered a work-related aggravation of an underlying condition – whether the respondent is liable to pay compensation in respect of claimed condition – decision under review affirmed.

WORKERS' COMPENSATION – where the Respondent refused a request for an extension of time to seek review – application for extension of time two years after determination – explanation for the delay – where claim has no merit – decision under review affirmed

[Joseph and Comcare](#) (Compensation) [2021] AATA 2897 (17 August 2021); The Hon. D Cowdroy AO QC, Deputy President

WORKERS' COMPENSATION – prior medical history – expert evidence – causation – pre-existing and later aggravating injuries – Tribunal not satisfied that the applicant's symptoms of pain and stress were caused by the subject incident – decisions under review are affirmed

[TRGD and Comcare](#) (Compensation) [2021] AATA 2949 (12 August 2021); Dr M Evans-Bonner, Senior Member

COMPENSATION – Workers' Compensation – Commonwealth employee – whether liability should be accepted under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether an ailment – whether a disease – causation – whether ailments contributed to, to a significant degree, by employment – factors that are not “employment”, including the stress of the claims process and “litigation stress” – Applicant worked for a Commonwealth agency in a remote region of Western Australia – whether Applicant contracted infectious and parasitic diseases and sequelae from attending a cross-cultural program run at a remote Indigenous community – bartonella, strongyloides, Murray Valley encephalitis, Kunjin/West Nile virus, Ross River virus reinfection, post-infectious irritable bowel syndrome, chronic fatigue syndrome/fibromyalgia, post-infectious reactive spondyloarthritis with enthesitis, stress and anxiety and low testosterone (hypogonadism) and sexual dysfunction – whether conditions which have a collection of subjectively experienced symptoms, including chronic fatigue syndrome and fibromyalgia, are ailments – incapacity or impairment – First Reviewable Decision set aside and substituted to accept liability for strongyloides between 16 July 2010 and 5 November 2015 and to accept liability for post-infectious irritable bowel syndrome from 16 July 2010 onwards – Second, Third and Fourth Reviewable Decisions affirmed

PROCEDURE – expert medical opinion – concurrent evidence – Applicant unrepresented at hearing (and assisted by his mother and brother) but retained counsel to prepare written closing submissions – where Applicant's new counsel sought to reformulate Applicant's claim to expand the timing, location and nature of the injury – where written closing submissions made new submissions that were not advanced at or before the hearing – where no claim made under s 16, but Applicant's counsel requested Tribunal make an order that Comcare should pay the Applicant's medical expenses under s 16 – the scope of the Tribunal's review – whether Tribunal has jurisdiction to determine certain conditions not specified in initial claim – additional conditions claimed in the Applicant's reconsideration request – whether the scope of the Applicant's claim included the conditions of insomnia, headaches, vitamin D deficiency and somatoform/somatisation disorder – the degree to which the Tribunal can rely on medical literature – whether Tribunal should exercise its discretion to award costs under s 67(8) of the SRC Act – Tribunal declines to exercise discretion to make costs order

[Turner and Comcare](#) (Compensation) [2021] AATA 2844 (13 August 2021); W Frost, Member

WORKERS' COMPENSATION – where the Respondent refused a request for an extension of time – application for extension of time two years after determination – explanation for the delay - whether the Respondent is prejudiced by delay – decision under review affirmed

Customs

[Ceramic Oxide Fabricators Pty Limited and Comptroller-General of Customs](#) [2021] AATA 2770 (9 August 2021); Senior Member A Poljak

CUSTOMS – application for tariff concession order – whether the applicant discharged its responsibility under s.269FA – whether the tariff application contains a full description of the subject goods – whether the tariff application has described the subject goods in terms of their intended end use – decision under review affirmed

Defence

[Concerted Pty Ltd and Minister for Defence](#) [2021] AATA 2950 (19 August 2021); Deputy President J W Constance

DEFENCE REGULATIONS – use of prohibited words – Defence Force – whether the Applicant should be granted consent to use the words “Defence Force” in conducting its business of providing a corporate risk management service, including the registration and use of the domain name – matters to be considered – where likelihood that use of the words Defence Force will be confusing for members of the public – decision affirmed

Migration

[Cockin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2802 (10 August 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – Partner (Permanent) (Class BS) (Subclass 801) visa – where visa was cancelled under section 501(1) because applicant did not pass character test – substantial criminal record – domestic violence offences – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – choking to unconsciousness – family violence – best interests of minor children – expectations of the Australian community – other considerations – extent of impediments if removed – impact on victims – links to the Australian community – strength, nature and duration of ties to Australia – Impact on Australian business interests – decision under review affirmed

[DCWM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2846 (23 July 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return 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 – domestic violence and stalking – best interests of minor children where other parent suffering fatal illness – decision under review affirmed

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

(Migration) [2021] AATA 2803 (10 August 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – refusal to grant a protection visa – whether Tribunal satisfied there are serious reasons to consider that the Applicant committed a serious non-political crime before entering Australia – non-political crime – serious non-political crime – serious Australian offence – serious foreign offence – serious reasons for considering – Applicant served two prison sentences in Mongolia – Applicant convicted of “hooliganism” offence, for which he served approximately three years’ imprisonment in Mongolia – Applicant convicted of “murder without aggravating circumstances” for which he served approximately 11 years’ imprisonment in Mongolia – prior to leaving Mongolia Applicant charged with contracting with a third party to kill an associate who owed him money – reviewable decision affirmed

PRACTICE AND PROCEDURE – Applicant self-represented – first hearing by videoconference vacated due to sound quality issues – Applicant ready to proceed at first hearing – second hearing was arranged to be conducted in person – Applicant refused to be transported to attend second hearing in person – Applicant claims he was not notified of second hearing and was not ready to proceed – Tribunal refused to grant adjournment – Applicant made written request for a re-hearing approximately six weeks after the hearing had concluded – procedural fairness implications of a re-hearing – objectives in s 2A of the Administrative Appeals Tribunal Act 1975 (Cth) considered – Tribunal refused to grant re-hearing

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

(Migration) [2021] AATA 2917 (16 August 2021); Senior Member L Kirk

REFUSAL OF VISA – application for Safe Haven visa – protection obligations owed to applicant – applicant convicted by final judgment of a particularly serious crime – seriousness and nature of crimes – length of sentence imposed – mitigating and aggravating circumstances - prospects of rehabilitation – likelihood of reoffending – decision under review affirmed

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

(Social services second review) [2021] AATA 2947 (19 August 2021); Deputy President S Boyle

MIGRATION – s 501CA(4) of the Migration Act – decision of a delegate of the Respondent not to revoke the mandatory cancellation of the Applicant’s visa – Applicant fails the character test – Direction 90 considered – drug related offending – Applicant is a citizen of Vietnam – Applicant convicted of 28 offences between 2008 and 2015 – requirements for SFIC – Tribunal finds there is “another reason to revoke the mandatory cancellation” – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 2980 (12 August 2021); Deputy President S Boyle

MIGRATION – s 36(1C) of the Migration Act – refusal to grant a protection visa – Australia owes the Applicant protection obligations – Applicant concedes that he has been convicted by final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – Applicant sentenced to six years and 10 months’ imprisonment for grievous bodily harm – violent offending – alcohol-related offending – Applicant an unacceptable risk of reoffending – reviewable decision affirmed

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

(Migration) [2021] AATA 2875 (16 August 2021); Senior Member C J Furnell

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – Migration Act 1958 (Cth) s 501(3A) – Applicant does not pass character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 90 – primary and other considerations – decision under review set aside and substituted

XDJD and Minister for Immigration and Border Protection (Migration) [2021] AATA 2882 (17 August 2021); Deputy President P Britten-Jones

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – serious offending involving domestic violence – whether discretion to revoke mandatory cancellation should be exercised – consideration of amendments introduced by the Migration Amendment (Clarifying International Obligations for Removal) Act 2021 (Cth) - primary considerations – applicant poses unacceptable risk of reoffending – other considerations – the seriousness of the criminal offending outweighs non-refoulement obligations – whether indefinite detention is a legal consequence of a finding of non-refoulement obligations – risk of harm if returned – decision under review affirmed

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

(Migration) [2021] AATA 2948 (12 August 2021); Senior Member D J Morris

MIGRATION – where applicant has been refused a protection (class XA subclass 866) visa – applicant is citizen of Afghanistan – where the delegate of Minister accepts applicant engages Australia’s protection obligations – criminal record – has the applicant been convicted by a final judgment of a particularly serious crime – what is a ‘particularly serious crime’ – if so, is applicant a ‘danger to the community’ – consideration of relevant factors – seriousness and nature of offending – mitigating or aggravating circumstances – the period of offending – risk of re-offending – decision under review is affirmed

PRACTICE AND PROCEDURE – where applicant unable to give evidence owing to mental health conditions – where Federal Court has appointed litigation representative of applicant in separate contemporary proceedings – where applicant’s legal representatives request Tribunal to appoint guardian ad litem – consideration of request – Tribunal asks psychiatrist or clinical psychologist to provide written answers to stipulated questions – where response indicates lack of ability of applicant to instruct, to understand nature of proceedings and to provide factual and rational responses to questions – inquiry as to whether applicant has guardian appointed under state legislation – Tribunal decides not necessary to appoint guardian ad litem – sufficient that litigation representative in separate proceedings able to make representations direct to Tribunal and for applicant to be represented provided Tribunal satisfied they acting in interests of applicant

1921349 (Migration) [2021] AATA 2873 (12 May 2021); S Roushan, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – ground for cancellation – incorrect information in previous protection visa application – claimed adverse profile – Sunni Muslim – family’s connection with American forces – voluntarily returned to Iraq on two separate occasions – non-state actors of persecution – Al Mahdi army – not necessarily inconsistent with the information provided – decision under review set aside

[Bakhsh](#) (Migration) [2021] AATA 2981 (29 June 2021); D Dragovic, Senior Member

MIGRATION – Refugee and Humanitarian (Class XB) visa – Subclass 202 (Global Special Humanitarian) – Federal Circuit Court remittal – incorrect information given in visa application and failure to notify of changed circumstances – member of family unit – dependent child of primary applicant mother – applicant’s child born after application approved and before arriving in Australia – short, secret relationship with young woman in shared accommodation – woman died in childbirth and child now in care of relative – marriage and partner visa application by that relative – discretion to cancel visa – birth of child does not necessarily establish relevant relationship, or that applicant was not dependant on primary applicant – non-refoulement – Afghani Hazara Shia living in Pakistan with no immediate family in Afghanistan – decision under review set aside

[Ghabrial](#) (Migration) [2021] AATA 2838 (23 June 2021); R Gagliardi, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 838 (Aged Dependent Relative) – applicant wholly or substantially reliant on sponsor for financial support – incapacitated for work due to total or partial loss of bodily or mental functions – aged dependent relative of sister – reliant on the sponsor since 2011 – decision under review remitted

[Somal](#) (Migration) [2021] AATA 2822 (25 June 2021); N Hossen, Member

MIGRATION – cancellation – Subclass 482 – Temporary Skill Shortage visa – ceased employment with her approved sponsor – period of 60 consecutive days – second sponsorship after first sponsor ceased trading – applicant unaware of change of ownership – second sponsor ineligible to sponsor applicants – applicant awaiting nomination approval from Department of Training and Workforce Development (state Migration Western Australia) – circumstances beyond applicant’s control – decision under review set aside

[Thaker](#) (Migration) [2021] AATA 2640 (2 July 2021); P Dunn, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – position of Cook – no approved nomination – sponsoring business ceased operating – applicant’s wife’s successful business employing Australian residents – applicant’s son granted Australian citizenship – impact of the COVID-19 pandemic – referral for Ministerial Intervention – decision under review affirmed

National Disability Insurance Scheme

[Hollis and National Disability Insurance Agency](#) [2021] AATA 2888 (17 August 2021); Deputy President J W Constance and Mr S Evans, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – funding for Support Workers – funding for counselling services – funding for assessment by an Occupational Therapist – renewal of registration and consumables for dog – consideration of sections 33 and 34 – whether supports represent value for money – whether the support will be or is likely to be effective and beneficial for the participant having regard to current good practice – decision set aside and remitted

Practice and Procedure

[Clifton and Australian Postal Corporation](#) (Compensation) [2021] AATA 2886 (20 July 2021); Senior Member C J Furnell

PRACTICE AND PROCEDURE – application for extension of time within which to lodge application for review – principles regarding whether extension should be granted – length of delay – explanation for delay – prejudice to Respondent or to public interest – merits of underlying application – extension of time application refused

[DVFW and Comcare](#) (Compensation) [2021] AATA 2801 (11 August 2021); Senior Member A Poljak

PRACTICE AND PROCEDURE – application for a stay order – reviewable decision by Comcare in relation to psychotherapy treatment – whether a stay order is appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review – practical effect of granting a stay – application refused

[Furgan and Secretary, Department of Education, Skills and Employment](#) (Social services second review) [2021] AATA 2916 (12 August 2021); R West, Member

CHILD CARE SUBSIDY – appeal lodged out of time – application for extension of time under s 29(7) of the AAT Act – application not opposed – arguable ground of appeal – no prejudice to the Respondent – extension of time granted

[Kadadi and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2762 (9 August 2021); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – interlocutory application for an extension of time to lodge an application for review – objection to the granting of an extension of time – basis of Applicant's appeal – reasons for Applicant's delay – prejudice to the Respondent or any other party – prospects of success – application for an extension of time granted

[Pearson and National Disability Insurance Agency](#) [2021] AATA 2843 (13 August 2021); K Buxton, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – application for review of decision to approve statement of supports in participant plan – interlocutory application for direction that Applicant participate in an assessment with an occupational therapist – mode of assessment - direction for in-person occupational therapy assessment not made

[Petrovski and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2800 (11 August 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Jurisdiction – Application for citizenship by conferral – Whether the Tribunal has jurisdiction to review the decision of the delegate – Where the Applicant applied to the Department using the incorrect form – Whether the Tribunal is precluded by section 46(1) of the Australian Citizenship Act 2007 from considering the application – No jurisdiction – Application dismissed

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

(Citizenship) [2021] AATA 2889 (17 August 2021); Mr S Webb, Member

AUSTRALIAN CITIZENSHIP – application for conferral – good character requirement – good behaviour bond – bar on conferral – no discretion – consideration of the Tribunal’s procedural power to adjourn – application dismissed

YLLJ and National Disability Insurance Agency

[2021] AATA 2780 (11 August 2021); Dr S Fenwick, Senior Member

PRACTICE AND PROCEDURE – jurisdiction of Tribunal under National Disability Insurance Scheme – application for review of decision to approve statement of supports – where additional supports advanced at the merits review stage – Tribunal has jurisdiction in respect of supports that were identifiable at the time of the decision under review

Professions and Trades

RKYP and Migration Agents Registration Authority

[2021] AATA 2871 (22 June 2021); Senior Member D Katter

MIGRATION – migration agent registration – refusing to renew migration agent’s registration – whether the Applicant is a fit and proper person to provide immigration assistance – whether the agent is a person of integrity – decision under review affirmed

Refugee

1705555 (Refugee) [2021] AATA 2829 (17 May 2021); Dr C Huntly, Member

REFUGEE – protection visa – Nigeria – political opinion – social activism – fear of harm from Baba Alado and the Alado boys – state protection – internal relocation – third country protection – Economic Community of West African States (ECOWAS) – serious, ongoing and irreversible harm and continuing hardship to an Australian citizen – applicant’s biological infant son – Ministerial intervention – decision under review affirmed

1710134 (Refugee) [2021] AATA 2784 (28 May 2021); D Connolly, Member

REFUGEE – protection visa – Lebanon – Religion – Jehovah’s Witness – denied official recognition – no state protection – self-imposed restrictions – applicant’s completion of degree – father’s employment – reasonable treatment shown to Jehovah’s Witnesses by the authorities – restrictions does not amount to torture, cruel and inhuman treatment or punishment, or degrading treatment or punishment – decision under review affirmed

1722826 (Refugee) [2021] AATA 2811 (19 May 2021); L Hardy, Member

REFUGEE – protection visa – Pakistan – religion – Sunni Muslim – authenticity of documents – has provided an abundance of false and fraudulent documents – substantive claims are all fabricated – claimed fear of being persecuted is not well founded – credibility concerns – decision under review affirmed

[1728579](#) (Refugee) [2021] AATA 2815 (3 May 2021); C Cody, Member

REFUGEE – protection visa – Philippines – Federal Circuit Court remittal – fears harm from creditors – applicant was properly invited to a hearing in accordance with s.441A(5) – failed to attend hearing – delay in applying for protection – inconsistent evidence – credibility concerns – decision under review affirmed

[1817726](#) (Refugee) [2021] AATA 2634 (20 May 2021); T Hamilton-Noy, Member

REFUGEE – protection visa – Iran – ethnicity and political opinion – Kurdish sportsman spoke against discriminatory and corrupt actions by sport official – detained and tortured and family harassed – religion – rejection of Islam and association with Christianity – member of a particular social group – failed Kurdish asylum seeker – media attention following a public incident – department's information breach – credibility – some late claims rejected – country information – decision under review remitted

Social Services

[Abberton and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2771 (10 August 2021); Senior Member P J Clauson AM

SOCIAL SECURITY – Hearing on papers by consent – Cancellation of carer payment and carer allowance – Where applicant given notice under section 68 of the Administration Act – Where payments cancelled under section 81 of the Administration Act for non-compliance with notice – Whether the Department was correct to cancel the applicant's carer payment and carer allowance – (CTH) Social Security Administration Act 1999 ss 68, 72, 81 – Decision under review affirmed

[Capric and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2761 (9 August 2021); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – major depressive disorder – panic disorder – unable to work – whether condition fully treated or stabilised – decision affirmed

[Catanzariti and Secretary, Department of Social Services Services](#) (Social services second review) [2021] AATA 2878 (12 August 2021); Dr N A Manetta, Senior Member

SOCIAL SECURITY – overpayment of social security benefits – income earned from betting activities – whether power to waive under section 1237AAD of the Social Security Act 1991 (Cth) should be exercised – whether special circumstances exist – practical unfairness in the operation of the Act – decision under review set aside - total overpayments owing to the respondent recalculated and partly waived

[Edwards and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2874 (16 August 2021); Senior Member D Katter

SOCIAL SECURITY – disability support pension – whether applicant has severe impairment – unlimited portability – decision under review affirmed

[Finch and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2808 (12 August 2021); D Mitchell, Member

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

[Finnigan and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2887 (17 August 2021); Brigadier AG Warner, AM LVO (Retd), Member

SOCIAL SECURITY – Newstart Allowance debt – whether Applicant was overpaid Newstart Allowance – whether debt due to Commonwealth – whether debt should be recovered – whether write off or waiver provisions available – sole administrative error – whether overpayment received in good faith – special circumstances – decision affirmed

[Gardner and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2945 (17 August 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension refused due to Compensation Preclusion Period – whether Compensation Preclusion Period was correctly cancelled – whether special circumstances exist – expenditures as proper and necessary for the Applicant to lead a life to minimise compromised health condition relating to compensation payment – decision set aside and remitted

[Kherani and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2849 (13 August 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Austudy payment cancellation – for what period was the Applicant eligible for Austudy payment – when was Austudy payment cancelled – whether Applicant owes a debt to the Commonwealth – no sole administrative error or special circumstances – decision set aside and remitted

[Lewis and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2946 (18 August 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffers from permanent impairment that attracts 20 points or more under the Impairment Tables – Impairment Table 3 – Lower Limb Function – knee condition – Reviewable Decision affirmed

[Pascoe and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2884 (17 August 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffers from permanent impairments that attract 20 points or more under the Impairment Tables – Impairment Table 4 – Spinal Function – Impairment Table 5 – Mental Health Function – spinal condition – mental health condition – Reviewable Decision affirmed

Pham and Secretary, Department of Social Services (Social services second review) [2021]
AATA 2772 (23 June 2021); Senior Member C J Furnell

SOCIAL SECURITY – application for disability support pension refused – whether conditions were fully diagnosed, treated and stabilised in the qualification period – whether Applicant's conditions attracted an impairment rating of at least 20 points – whether Applicant had a continuing inability to work – decision under review affirmed

Pierre and Secretary, Department of Social Services (Social services second review) [2021]
AATA 2931 (18 August 2021); Senior Member A Poljak

SOCIAL SECURITY – age pension – where the applicant's compensation payments increased three times during the relevant period – whether the payments are periodic compensation – whether special circumstances exist to treat the whole or part of the payments as not having been made – whether the applicant was overpaid age pension during the relevant period – whether the debt can be waived or written off – decision under review affirmed

RDBG and Secretary, Department of Social Services (Social services second review) [2021]
AATA 2943 (10 August 2021); K Parker, Member

DEBT – debts raised in respect of alleged overpayments of family tax benefits over two discrete periods – whether debts properly raised – whether debts should be waived or written off – decision under review affirmed

RDBG and Secretary, Department of Social Services (Social services second review) [2021]
AATA 2944 (10 August 2021); K Parker, Member

SOCIAL SECURITY ENTITLEMENTS – family tax benefit (FTB) – care percentage determinations for two discrete periods – child was based overseas during first period – meaning of “care” – whether father provided care for infant child from afar – decision under review affirmed

Saab and Secretary, Department of Social Services (Social services second review) [2021] AATA 2766 (9 August 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Child Care Benefit – Child Care Rebate – whether the Applicant applied for relevant benefits – whether Applicant was qualified for benefits – Applicant's children were not in care of provider – Applicant failed the work/training/study test – whether Applicant owes a debt to the Commonwealth – no sole administrative error or special circumstances – decision affirmed

VLYK; Secretary, Department of Social Services and (Social services second review) [2021]
AATA 2774 (14 July 2021); A E Burke AO, Member

SOCIAL SECURITY – oral decision – where conceded carer payment correctly cancelled – debt due to the Commonwealth – whether recovery of all or part of the debt should be written off or waived – debt in part attributable solely to error made by Centrelink – applicant did not knowingly make false statements or claims – applicant accepted payment in good faith – notional entitlement – whether special circumstances exist to waive recovery of all or part of the debt – decision under review affirmed

Taxation

[Allen and Commissioner of Taxation](#) (Taxation) [2021] AATA 2768 (6 August 2021); Senior Member K James

TAXATION – PRIVATE RULINGS – applicant applying for private ruling – applicant’s objection to private ruling decision – commissioner’s discretion to request for further/additional information – whether the applicant was carrying on a business at the relevant tax years – the power of the tribunal to make a decision in these matters

[Allzams Trust and Commissioner of Taxation](#) (Taxation) [2021] AATA 2767 (6 August 2021); Senior Member K James

TAXATION – PRIVATE RULING – trust account – sole trustee of a discretionary trust – whether the trust was carrying on a business for relevant years – decision under review remitted

[Hraichie and Commissioner of Taxation](#) (Taxation) [2021] AATA 2773 (10 August 2021); Deputy President I R Molloy and P Ranson, Member

TAXATION – income tax – objection to tax assessment – administrative penalties – shortfall interest charge – onus of proof on taxpayer – special circumstances – whether payments are loan or income – decisions affirmed

[Kahlon Estate Wines Pty Ltd as Trustee of the Kahlon Family Trust](#) (Taxation) [2021] AATA 2872 (12 August 2021); Dr N A Manetta, Senior Member

TAXATION – A New Tax System (Wine Equalisation Tax) Act 1999 - WET exemptions claimed – inadequate understanding of WET procedural requirements and documentation – penalties properly imposed - decision set aside and remitted for reconsideration to enable respondent to rectify certain errors

[Kong and Commissioner of Taxation](#) (Taxation) [2021] AATA 2775 (10 August 2021); D Mitchell, Member

TAXATION – income tax – default amended assessments – whether evasion – unexplained bank deposits – onus to prove assessment was excessive and what taxable income should have been – administrative penalty – whether reckless – whether administrative penalty should be remitted – whether shortfall interest charge should be remitted – decision under review affirmed

Veterans' Affairs

[Harper and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 2806 (10 August 2021); A Ward, Member and Ormston, Member

VETERANS' AFFAIRS – Reliability of evidence – contemporaneous documents – pre-existing use of tobacco – allegations of bullying – evidence as to use of tobacco for three years prior to diagnosis – 3 pack-years – inconsistencies in claim documentation – Intervening SOP – decision under review affirmed

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
Batson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2343
Chiagozie and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration)	[2021] AATA 2380
CZQL and Minister for Immigration and Border Protection	[2017] AATA 2715
Dayananda and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1370
Kumar and Secretary, Department of Social Services	[2021] AATA 1823
Nugawela and Commissioner of Taxation	[2021] AATA 1636

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
GNRK v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 250	[2021] FCA 932
Holloway v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4558	[2021] FCA 945
Ibrahim v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3822	[2021] FCA 914
Kadeh v Administrative Appeals Tribunal (No 3)	[2020] AATA 6020	[2021] FCA 965
Minister for Home Affairs v MQGT and Anor	[2019] AATA 874	[2021] HCATrans 130 [2020] FCAFC 215 [2020] FCA 520

Ngata v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 376	[2021] FCA 906
QJYD v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1	[2021] FCA 962
Uolilo v Minister for Home Affairs	[2019] AATA 5411	[2021] FCAFC 138 [2020] FCA 1135



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