



AAT Bulletin

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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

[Riaz and Inspector-General in Bankruptcy](#) [2021] AATA 3027 (24 August 2021); Senior Member D O'Donovan

TAXATION AND COMMERCIAL – Bankruptcy – notice of objection to discharge – decision by delegate refusing to undertake a review of a notice of objection to discharge – statutory question to be addressed when deciding whether to review – decision under review affirmed

Child Support

[TQMT and Child Support Registrar](#) (Child support second review) [2021] AATA 3052 (27 August 2021); Dr S Fenwick, Senior Member

CHILD SUPPORT – percentage of care – separation under the one roof – pattern of care – decision set aside and substituted

[Lister and Daubney](#) (Child support) [2021] AATA 2899 (28 June 2021); L Rieper, 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

[Carey and Ridge](#) (Child support) [2021] AATA 2915 (23 June 2021); P Jensen, Member

CHILD SUPPORT – non-agency payment – prescribed payment for school fees – whether discretion to refuse to credit should be applied – percentage of payment should be credited – decision under review varied

[Engman and Engman](#) (Child support) [2021] AATA 2910 (28 June 2021); M Baulch, Member

CHILD SUPPORT – non-agency payment – prescribed payment for school fees – payment not made prior to credit being applied for – decision under review affirmed

[Heidrich and Lavoie](#) (Child support) [2021] AATA 2903 (23 June 2021); J Thomson, 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

[Sammons and Child Support Registrar](#) (Child support) [2021] AATA 2912 (13 July 2021); P Sperling, Member

CHILD SUPPORT – percentage of care – what was the likely pattern of care from the start of the administrative assessment – decision under review set aside and substituted

Citizenship

[Al-Azooz and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3017 (23 August 2021); Senior Member C Puplick AM

CITIZENSHIP – citizenship by conferral – dismissal application – whether the application for review had reasonable prospects of success – prohibition on granting citizenship where applicant is subject to a conditional release order – dismissal application granted

[Beet Sayed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3018 (24 August 2021); A Maryniak QC, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Applicant has satisfied identity requirement under s. 24(3) of Australian Citizenship Act 2007 – identity documents contained inconsistent information about Applicant’s ‘life story’ – Respondent makes no challenge to identity on Biometrics or Documents pillars – Tribunal satisfied as to the Applicant’s identity – decision set aside and remitted

[Delawar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3092 (1 September 2021); Dr D Cremean, Senior Member

CITIZENSHIP – application for Australian citizenship refused – requirement of identity allegedly not satisfied – alleged lies by Applicant – use of other name – identity established – decision under review set aside

[PSMH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 2983 (20 August 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 affirmed – Tribunal not satisfied that the Applicant is of good character

[Razeghi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3113 (30 July 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – good character requirement – single offence – stalking or intimidation with intent to cause fear – plea of guilty – 15-month good behaviour bond – denial of guilt – decision set aside and remitted

[Reza Beygi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3080 (30 August 2021); Senior Member C J Furnell

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of Applicant’s identity under s 24 of the Australian Citizenship Act 2007 (Cth) – where Applicant claims to be stateless Faili Kurd – application of Australian Citizenship Policy Statement – biometrics – documents – life story – decision affirmed

Ruffin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 3145 (2 September 2021); R Maguire, Member

CITIZENSHIP – citizenship by conferral – character test – whether Applicant is of good character – prior traffic offences – Applicant not of good character – decision affirmed

Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 3122 (1 September 2021); R Maguire, Member

CITIZENSHIP – citizenship cancellation – character test – whether Applicant is of good character – existence of Domestic Violence Order by consent – independent evidence of multiple contraventions – insufficient evidence to formally charge – decision affirmed

Teklehaymanot and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 3055 (27 August 2021); Dr S Fenwick, Senior Member

CITIZENSHIP – refusal to approve Australian citizenship by conferral – whether the applicant is of good character – relevance of other alleged criminal behaviour – evidence of rehabilitation – whether sufficient time has elapsed since offending – decision set aside and remitted

VKLN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 3088 (27 August 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – by conferral – identity requirement satisfied – good character requirement not satisfied – the use of an alias to be granted a protection visa – decision under review affirmed

Wadamkhaung and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] ATA 3079 (27 August 2021); Senior Member Damien O'Donovan

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – whether Tribunal is satisfied of Applicant's identity for the purposes of subsection 24(3) – reliability of the Applicant's evidence – reviewable decision affirmed

WXNR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 3053 (26 August 2021); Senior Member D J Morris

CITIZENSHIP – where applicants seek Australian citizenship by conferral – where applicants are minor siblings – where delegate of minister exercised discretion under section 24(2) of Australian Citizenship Act 2007 to refuse applicants becoming Australian citizens – consideration of relevant policy – consideration of age of the applicants – where applicants are aged under 18 – consideration of the Convention on the Rights of the Child – alternative pathways available to applicants – certain policy does not apply after person attains age of 16 – where applicants may be included in responsible parent's future application for citizenship – whether an injustice or perverse result would result from applying policy in the specific circumstances – no injustice evident from consistent application of policy - decision under review is affirmed

Compensation

[QXQH and Comcare](#) (Compensation) [2021] AATA 3036 (25 August 2021); D Mitchell, Member

COMPENSATION – present entitlement – right shoulder condition – whether an injury or disease – whether a physiological change occurred from the incident – whether liability exists in respect of medical treatment, incapacity benefits and household and attendant care – decision under review affirmed

[Sula and K&S Freighters Pty Ltd](#) (Compensation) [2021] AATA 3058 (27 August 2021); Dr S Fenwick, Senior Member

COMPENSATION – decision not to accept liability for left elbow condition – nature of condition – nature of incident – credibility of Applicant – condition is an aggravation of a disease and so an injury – whether claim excluded for wilful and false representation – decision set aside and remitted

Migration

[Arachchi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3146 (2 September 2021); Deputy President Boyle

MIGRATION – s 501CA(4) of the Migration Act – decision of a delegate of the Minister not to revoke the mandatory cancellation of the Applicant’s visa – Applicant fails the character test – Direction 90 considered – Applicant is a citizen of Sri Lanka – Applicant convicted of 12 offences including weapon-related offences – there is not “another reason” to revoke the mandatory cancellation – allocating weight in assessing the expectations of the Australian community – analysis of the ‘double counting’ principle – reviewable decision affirmed

[Darnia-Wilson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3019 (20 August 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION – visa refusal – Migration Act 1958 (Cth), subsection 501(1) – character test – sentence imposed by foreign court – substantial criminal record – paragraph 501(6)(c) – Direction No. 90, Annex A, applied to character test – decision set aside and remitted

[Edwards and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 2985 (20 August 2021); Senior Member C Puplick AM

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – meaning of “nature” – risk of reoffending – expectations of the Australian community – impediments to removal – access to services and supports for mental health issues – strength, nature and duration of ties to Australia – consideration of cases involving schizophrenia before the Tribunal – decision set aside and substituted

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

(Migration) [2021] AATA 3040 (24 August 2021); R Reitano, Member

MIGRATION – mandatory cancellation of visa – where visa was cancelled under section 501(1) because applicant did not pass character test – substantial criminal record – drug related offences – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – supply of methamphetamine – consequence and risk of reoffending – network of support – best interests of minor children – expectations of the Australian community – ties to the Australian community – impediments if returned – decision set aside and substituted

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

(Migration) [2021] AATA 3035 (25 August 2021); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of visa – student (subclass 500) 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 – other considerations – extent of impediments if removed – links to the Australian community – decision under review affirmed

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

(Migration) [2021] AATA 3094 (1 September 2021); Senior Member B Pola

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

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

(Migration) [2021] AATA 3056 (26 August 2021); R Bellamy, 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 – alcohol related offending – decision under review affirmed

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

(Migration) [2021] AATA 3147 (2 September 2021); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of India – Class BB Subclass 155 Five Year Resident Return visa – persistent offending 1998 to 2019 – substantial criminal record – failure to pass good character test – whether another reason why the mandatory visa cancellation should be revoked – extent of impediments if removed – COVID-19 pandemic-Ministerial Direction No. 90 applied – decision affirmed

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

(Migration) [2021] AATA 3090 (27 August 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – primary considerations – protection of the Australian community – expectations of the Australian community – family violence – domestic violence offences – relationship violence – breach of AVO – links to the Australian community – other subjective factors – decision set aside

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

(Migration) [2021] AATA 3051 (26 August 2021); Senior Member A Nikolic AM CSC

MIGRATION – Visa refusal – citizen of Lebanon – Partner (Provisional) (Class UF) visa – family violence offending – failure to pass character test – whether discretion to refuse visa should be exercised – Ministerial Direction 90 applied – reviewable decision affirmed

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

(Migration) [2021] AATA 3037 (25 August 2021); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – offences of possession of stolen/unlawfully obtained property, possessed a quantity of substance exceeding the prescribed limit and possession of a prohibited drug with intent to sell or supply – 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 – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 29-year-old woman who settled in Australia as a 22-year-old – extent of impediments if removed to New Zealand – Reviewable Decision affirmed

NGUYEN (Migration) [2019] AATA 6937 (3 May 2019); K Malyon, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – graduate work stream – negative skill assessment for nominated skilled occupation and successful assessments for other occupations – intention to apply for post-study work stream and application for graduate work stream by mistake after informal advice from friend – skill assessment not required for post-study stream and applicant met other requirements – preferred occupation not applicable for graduate work stream and not on drop-down list on application – applicant selected closest occupation and answered that he had not applied for skill assessment for that occupation – regulations allow nomination and assessment for only one stream – unfair or unreasonable result – no warning to applicants about consequences of answering ‘no’ to any question – referred for ministerial consideration – decision under review affirmed

Sefat (Migration) [2021] AATA 2984 (19 July 2021); R Skaros, Senior Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 892 (State/Territory Business Owner) visa – Federal Circuit Court remittal – main business – ownership interest in the main business – co-trustee in a trust which operates the businesses – appointor, trustee and beneficiary – sole proprietor – consideration of the trust deed – appointor’s power to remove co-trustee – day-to-day management of the business – business was actively operating – business and personal assets – annual turnover – decision under review remitted

Thakur (Migration) [2021] AATA 2971 (22 July 2021); R Skaros, Senior Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 Regional Sponsored Migration Scheme – Federal Circuit Court remittal – position of Cook – no approved nomination – sponsor’s business closed – false IELTS test report – compassionate or compelling circumstances to waive public interest criteria – Australian citizen child – family circumstances and health – impact of the COVID-19 pandemic – decision under review affirmed

[Sitthiprasert](#) (Migration) [2021] AATA 3031 (4 August 2021); W Shum, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Australian study requirement – date of study completion – completion in the 6 months before the visa application – course completed one day outside the period – date of meeting the academic requirements – second qualification completed after the visa application – decision under review affirmed

[Angelina](#) (Migration) [2021] AATA 3048 (2 August 2021); K Raif, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect answers in the visa application – unregistered birth certificate – applicant's former husband changed her name – sole caregiver to Australian citizen children – best interests of the children – difficulties obtaining Indonesian citizenship – bogus document did not undermine visa grant – decision under review set aside

National Disability Insurance Scheme

[Isherwood and National Disability Insurance Agency](#) [2021] AATA 3061 (27 August 2021); Senior Member B J Illingworth and G Hallwood, Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant with Dravet syndrome, epilepsy, intellectual disabilities, autism spectrum disorder – Reasonable and necessary supports – Home modification and repairs – Vehicle purchase and modification – Funding for current dog – Funding of a future seizure alert dog – Whether plan to be fully self-managed – Decision under review affirmed

[Timofticiuc and National Disability Insurance Agency](#) [2021] AATA 3015 (23 August 2021); K Buxton, Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether applicant meets disability requirement – whether applicant meets early intervention requirements – total sensorineural hearing loss in right ear – tinnitus – adjustment disorder – whether impairments are, or are likely to be, permanent – whether impairments substantially reduce functional capacity – whether applicant likely to require support under the National Disability Insurance Scheme for lifetime – decision under review affirmed

Practice and Procedure

[Al Sadek and National Disability Insurance Agency](#) [2021] AATA 3081 (27 August 2021); The Hon. Deputy President J Pascoe AC CVO

PRACTICE AND PROCEDURE – Dismissal application – Whether the application should be dismissed under s 42A of the Administrative Appeals Tribunal Act 1975 – Where Public Guardian appointed to the Applicant – Where Public Guardian has no authority to instruct the proceedings on the Applicant’s behalf – Where Applicant has failed within a reasonable time to proceed with the Application – Application dismissed

[Boardman and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3144 (2 September 2021); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – interlocutory application for confidentiality order over documents before the Tribunal – general principle of public hearing – whether any harm or disadvantage would be suffered by the applicant – application for confidentiality order refused

[Parker and Comcare](#) (Compensation) [2021] AATA 3021 (23 August 2021); Mr S Webb, Member

PRACTICE & PROCEDURE – application for review of reconsideration decision – Tribunal’s jurisdiction – allegation of injury resulting from medical treatment – operation of deeming provision – requirements for notice ‘of an injury’ – compensation not payable unless claim for compensation made – meaning of ‘substantial compliance’ – notice not given – no claim made – no jurisdiction

[PRLT and National Disability Insurance Agency](#) [2021] AATA 3148 (2 September 2021); Deputy President F Meagher

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – application for review of decision to approve statement of supports – interlocutory application to revoke direction involving Applicant undertaking clinical psychologist assessment – risk of harm to the Applicant – direction revoked – application granted

[McKiterick and National Disability Insurance Scheme Division](#) [2021] AATA 3059 (30 August 2021); Deputy President F Meagher

PRACTICE AND PROCEDURE – jurisdiction – whether jurisdiction to review a decision – what decision constitutes decision capable of review by the Tribunal – internal review decision made in two parts – Tribunal has jurisdiction to review the decision under review

[Redman and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3064 (30 August 2021); A E Burke AO, Member

PRACTICE AND PROCEDURE – Extension of time for applicant to lodge statement of issues facts and contentions

Professions and Trades

[Sahai and Australian Securities and Investments Commission](#) [2021] AATA 3041 (24 August 2021); Deputy President B J McCabe

Banning order under the National Consumer Credit Protection Act 2009 (Cth) – whether discretion to impose a banning order is enlivened under s 80(1) – whether the applicant was involved in another’s contravention of a banning order – whether the applicant is likely to contravene credit legislation in the future – whether the applicant is a fit and proper person in the context of the legislation – whether there is reason to believe that the applicant is not adequately trained or competent in the context of the legislation – grounds so made out – discretion to impose a banning order is enlivened – whether a seven-year banning order is appropriate and proportionate – the length of such a banning order is correct – decision under review affirmed

Refugee

[1605338](#) (Refugee) [2021] AATA 2930 (6 May 2021); R Gagliardi, Member

REFUGEE – protection visa – Burma (Myanmar) – no personal political profile – credibility concerns – 2007 Saffron Revolution – forcible land acquisition – warrant for the applicant – political activities in Australia – particular social group – a family member of a political dissident – returned asylum-seekers from Myanmar – imputed political opinion – anti-military/pro-democracy opinions – decision under review remitted

[1932624](#) (Refugee) [2021] AATA 3074 (18 May 2021); F Simmons, Member

REFUGEE – cancellation – protection visa – Afghanistan – ethnicity and religion – Hazara Shia – incorrect information in visa application – two previous applications on his behalf not declared – different names, dates of birth and family members in each application – forensic facial image comparison – resident return visa granted and cancelled, with separate application for review decided together – discretion to cancel visa – born to refugees in third country and never lived in parents’ country – previous applications as minor – incorrect information conceded and credible evidence establishing identity provided – reasons for giving incorrect information – understated age to gain better treatment as minor – education, work and community activities in Australia – family’s status as refugees in third country and applicant’s loss of refugee status on departing – westernised returnee – country information – non-refoulement – decision under review set aside

[1717371](#) (Refugee) [2021] AATA 2982 (21 May 2021); P Noonan, Member

REFUGEE – Protection Visa – Cameroon – feared harm from a wealthy political influential landowner – imputed political opinion – a supporter of pro-Ambazonia factions – membership of a particular social group – member of the Cameroon Anglophone diaspora – relocation is not possible or reasonable – fear of persecution from the authorities is well-founded – decision under review remitted

[1731667](#) (Refugee) [2021] AATA 2894 (2 June 2021); M Hawkins AM, Member

REFUGEE – protection visa – Kenya – religion – Sufi Islam – race – Hawiye tribe – particular social group – Silcis Gorgaate clan – fear of harm from extremist militias – attacks and threats, family members killed – fabricated identity, false or misleading information and bogus documents – no reasonable explanation – born in one country, citizen of another, permanent resident of third – concession of some information and some parts of claims – denial of identity established by document check and continued assertion of fabricated identity – right of return to permanent residence country – refoulement to birth or citizenship countries – COVID-19 travel restrictions – decision under review affirmed

[1701552](#) (Refugee) [2021] AATA 2893 (4 June 2021); J Pennell, Senior Member

REFUGEE – protection visa – Uganda – member of a particular social group – homosexual man – orientation, activities and relationships – role as counsellor for community organisation – accusations of encouraging homosexual activities among youths – associate convicted under homosexuality laws – country information – laws, government policies and societal attitudes – decision under review remitted

[1912576](#) (Refugee) [2021] AATA 3083 (4 June 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Afghanistan – Federal Court remittal – mental health issues – purpose of a Tribunal hearing – inquisitorial nature of the Tribunal – race – Tajik ethnicity – particular social group – returnee from the West – divorcee – alcohol consumption – witness testimony to a murder – fear of revenge killing – security situation in Afghanistan – state protection – internal relocation – decision under review remitted

[1710719](#) (Refugee) [2021] AATA 3025 (7 June 2021); G Cullen, Member

REFUGEE – protection visa – Pakistan – particular social group – failed asylum seekers – selling Western style clothes to women – members of the family unit – children in institutional care – fear of arrest – Sharia Court trial – bribery for release – passport renewal – cruel or inhuman treatment – credibility issues – decision under review affirmed

[1713285](#) (Refugee) [2021] AATA 2952 (25 June 2021); J Silva, Member

REFUGEE – protection visa – Myanmar – race – Rohingya – Bamar – religion – Muslim – political opinion – opposition to the government – political protests – detention – employment – disappearance of husband – accessing identity documents – fundraising for refugees – illegal departure – protests in Australia – decision under review remitted

Social Services

[Balcha and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3087 (30 July 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – Carer pension constant care requirement not satisfied – indebtedness – whether waiver or special circumstances apply – decision affirmed

[Griffiths and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3016 (20 August 2021); Senior Member J Rau SC and M Kennedy, Member

SOCIAL SECURITY – aged pension – members of a couple – whether joint claim was made – effective date of claim – Applicant did not complete declaration – decision affirmed

[JQGF and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 2989 (17 August 2021); G Hallwood, Member

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

[Lewis-Taylor and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3054 (26 August 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – whether the applicant should have been paid DSP at the single or partnered rate – when was the applicant considered a “member of a couple” for the purposes of the Act – whether the applicant is living separately and apart on a permanent and indefinite basis – decision set aside and substituted

[Reiter and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3066 (21 August 2021); R West, Member

SOCIAL SECURITY – Disability Support Pension – depression and post-traumatic stress disorder (PTSD) – whether conditions fully diagnosed, treated and stabilised in the qualification period – not diagnosed by an appropriately qualified medical practitioner – decision affirmed

[Roberts and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3062 (30 August 2021); Dr D Cremean, Member

SOCIAL SECURITY – Alleged overpayment – whether “special circumstances” exist – Physical and mental health conditions of Applicant – decision set aside

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3091 (30 August 2021); A Durkin, Member

SOCIAL SECURITY – disability support pension – whether medical conditions diagnosed, treated and stabilised during the qualification period – whether an impairment rating of 20 points or more existed under the Impairment Tables – decision under review set aside and substituted with a decision that the applicant qualifies for the DSP as at 22 November 2019

[Taylor and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3130 (31 August 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Special Benefit Payment – where mother has applied on behalf of her children – whether applicants are eligible for special benefit payment – social security pension or other social security benefit is payable – applicant’s mother not unable to earn a sufficient livelihood due to age, physical or mental disability or domestic circumstance or any other reason – not suffering financial hardship through circumstances beyond applicants’ mother’s control – whether applicant is a full time student and not a SpB homeless person – decision affirmed

[Young and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3065 (27 August 2021); S Barton, Member

SOCIAL SECURITY – 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 – back pain – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

Taxation

[Ballintine and Commissioner of Taxation](#) (Taxation) [2021] AATA 3089 (29 July 2021); The Hon. Senior Member M Groom

TAXATION – taxation liability – release from liability – whether payment of tax liability would cause serious hardship – consideration of factors relevant to exercise of discretion – consideration of circumstances that led to the taxation liability – decision under review affirmed

[Royal Lion Capital Pty Ltd and Commissioner of Taxation](#) (Taxation) [2021] AATA 3049 (25 August 2021); D Mitchell, Member

TAXATION – goods and services tax – bank account methodology audit – was the Applicant required to be registered for GST – did the Applicant make taxable supplies – Applicant’s burden to prove assessment excessive or otherwise incorrect – which assessments were the subject of the objection decision – decision under review affirmed

[Mfula and Commissioner of Taxation](#) (Taxation) [2021] AATA 3067 (30 August 2021); Senior Member L Kirk

TAXATION – Applicant’s income and deductions claimed as locum medical doctor and assistant surgeon – whether claims for work-related car expenses are deductible – whether other work-related expenses are deductible – whether shortfall interest charge be remitted in whole or part – whether section 8-1 applicable to car expenses incurred by Applicant – car expenses incurred by Applicant not incurred for gaining or producing assessable income – car expenses incurred by Applicant not necessarily incurred in carrying on a business for the purpose of gaining or producing assessable income – section 25-100 not applicable for any travel undertaken – Applicant has not substantiated claims for other work-related expenses – Tribunal unable to review Respondent’s decision not to remit shortfall interest charge – decision affirmed

[WYPF and Commissioner of Taxation](#) (Taxation) [2021] AATA 3050 (25 August 2021); Senior Member R Olding

TAXATION – GOODS AND SERVICES TAX – margin scheme – whether construction of apartments is non-monetary consideration for acquisition of 99-year leases from Australian Capital Territory development authority – whether excess GST passed on – held building works not consideration for acquisition of leases – held excess GST not passed on

Veterans' Affairs

[Cove and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 3095 (1 September 2021); Deputy President Britten-Jones

VETERANS' AFFAIRS – Veterans' Entitlements Act 1986 (Cth) – claim for pension – claim for compensation for PTSD and irritable bowel syndrome – applicant experienced Category 1A Stressor – whole of material points to a reasonable hypothesis connecting injuries with operational service – hypothesis not disproved beyond reasonable doubt – four steps of Deledio satisfied – applicant’s PTSD is war-caused resulting from traumatic events while rendering operational service – decision is set aside and substituted

[ZHVP and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 3020 (24 August 2021);
Senior Member C J Furnell

VETERANS' AFFAIRS – Veterans' Entitlements – claim for disability pension – claims for PTSD and ischaemic heart disease – whether conditions defence-caused – conditions not defence-caused – 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
Deng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2097
Fonoti and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 866
Jabari and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1492
Kalubuth De Silva and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1848
KXXH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5313
Sexton and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 320
XTLP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2357

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ahmad v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2882	[2021] FCA 1028
He v Secretary, Department of Social Services	[2020] AATA 1491	[2021] FCCA 2035
He v Secretary, Department of Social Services	[2020] AATA 1848	[2021] FCCA 2036
Matson v Secretary, Attorney-General's Department	[2021] AATA 788	[2021] FCA 1027
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v FAK19	[2019] AATA 4622	[2021] FCAFC 153 [2020] FCA 1124

NLHN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 502	[2021] FCA 1001
Waraich v Minister for Home Affairs	[2018] AATA 4524	[2021] FCAFC 155 [2020] FCA 1513
Qalovaki v Minister for Immigration and Border Protection	[2017] AATA 2582	[2021] FCA 1058
PYDZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1138	[2021] FCA 1050
XXBN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4238	[2021] FCA 1047



Statements of Principles

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

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

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

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

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **20 September 2021**:

Carpal tunnel syndrome (Balance of Probabilities) - No. 94 of 2021

<https://www.legislation.gov.au/Details/F2021L01169>

Carpal tunnel syndrome (Reasonable Hypothesis) - No. 93 of 2021

<https://www.legislation.gov.au/Details/F2021L01167>

Essential thrombocythaemia (Balance of Probabilities) - No. 92 of 2021

<https://www.legislation.gov.au/Details/F2021L01173>

Essential thrombocythaemia (Reasonable Hypothesis) - No. 91 of 2021

<https://www.legislation.gov.au/Details/F2021L01172>

Fibrosing interstitial lung disease (Balance of Probabilities) - No. 86 of 2021

<https://www.legislation.gov.au/Details/F2021L01163>

Fibrosing interstitial lung disease (Reasonable Hypothesis) - No. 85 of 2021

<https://www.legislation.gov.au/Details/F2021L01162>

Myeloma (Balance of Probabilities) - No. 96 of 2021

<https://www.legislation.gov.au/Details/F2021L01183>

Myeloma (Reasonable Hypothesis) - No. 95 of 2021

<https://www.legislation.gov.au/Details/F2021L01182>

Polycythaemia vera (Balance of Probabilities) - No. 88 of 2021
<https://www.legislation.gov.au/Details/F2021L01171>

Polycythaemia vera (Reasonable Hypothesis) - No. 87 of 2021
<https://www.legislation.gov.au/Details/F2021L01164>

Primary myelofibrosis (Balance of Probabilities) - No. 90 of 2021
<https://www.legislation.gov.au/Details/F2021L01166>

Primary myelofibrosis (Reasonable Hypothesis) - No. 89 of 2021
<https://www.legislation.gov.au/Details/F2021L01165>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from **20 September 2021**:

Ischaemic heart disease (Balance of Probabilities) - No. 98 of 2021
<https://www.legislation.gov.au/Details/F2021L01168>

ischaemic heart disease (Reasonable Hypothesis) - No. 97 of 2021
<https://www.legislation.gov.au/Details/F2021L01170>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA will be revoked on **20 September 2021**:

Carpal tunnel syndrome - No. 8 of 2013
<https://www.legislation.gov.au/Details/F2013L00023>

Carpal tunnel syndrome - No. 7 of 2013
<https://www.legislation.gov.au/Details/F2013L00022>

Essential thrombocythaemia - No. 16 of 2013
<https://www.legislation.gov.au/Details/F2013L00411>

Essential thrombocythaemia - No. 15 of 2013
<https://www.legislation.gov.au/Details/F2013L00409>

Fibrosing interstitial lung disease - No. 54 of 2013
<https://www.legislation.gov.au/Details/F2017C00759>

Fibrosing interstitial lung disease - No. 53 of 2013
<https://www.legislation.gov.au/Details/F2017C00760>

Myeloma - No. 70 of 2012
<https://www.legislation.gov.au/Details/F2014C00882>

Myeloma - No. 69 of 2012
<https://www.legislation.gov.au/Details/F2017C00803>

Polycythaemia vera - No. 12 of 2013

<https://www.legislation.gov.au/Details/F2013L00406>

Polycythaemia vera - No. 11 of 2013

<https://www.legislation.gov.au/Details/F2013L00404>

Primary myelofibrosis - No. 18 of 2013

<https://www.legislation.gov.au/Details/F2013L00412>

Primary myelofibrosis - No. 17 of 2013

<https://www.legislation.gov.au/Details/F2013L00416>



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