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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 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.

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AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Aviation

[Bush and Civil Aviation Safety Authority](#) [2022] AATA 2821 (26 August 2022); J Sosso, Deputy President

CIVIL AVIATION – Class 1 and 2 medical certificates – Applicant born with and suffers from Ebstein's Anomaly – ablations to treat atrial flutter – no episodes of syncope – conflicting medical opinion – safety-relevant condition – whether Applicant should be issued a Class 2 medical certificate subject to conditions – decision under review set aside and substituted

Child Support

[Cleveland and Bridge](#) (Child support) [2022] AATA 2113 (22 May 2022); R Ellis, Senior Member

CHILD SUPPORT – non-agency payment – whether mortgage payments should be credited as prescribed payments – all conditions to credit are satisfied – discretion to refuse – decision under review set aside and substituted

[Bugden and Sarchet](#) (Child support) [2022] AATA 2120 (7 June 2022); T Bubutievski, Member

CHILD SUPPORT – registration details – application for collection of the maintenance liability – whether the application for collection and arrears should be accepted – the application for collection and arrears correctly accepted – decision under review affirmed

[Graves and Graves](#) (Child support) [2022] AATA 2379 (15 June 2022); J D'Arcy, 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

[Lyashenko and Siremevan](#) (Child support) [2022] AATA 2377 (16 June 2022); M Kennedy, Senior Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – costs of special needs significantly affect the cost of maintaining the child – income, property and financial resources of the parents – decision under review set aside and substituted

Citizenship

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

(Citizenship) [2022] AATA 2829 (26 August 2022); Dr L Kirk, Senior Member

CITIZENSHIP – whether Tribunal is satisfied of the identity of the Applicant – whether Applicant is of “good character” – Whether Applicant has provided misleading information to the Department – decision under review set aside and remitted

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

(Citizenship) [2022] AATA 2833 (25 August 2022); C Puplick AM, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – applicant claims to be a stateless person – documentary – biometric – life story – application of Citizenship Procedural Instructions – applicant request to extend scope of review to consider character issues – request refused – decision set aside and remitted

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

(Citizenship) [2022] AATA 2739 (12 August 2022); Dr P McDermott RFD, Deputy President

Application for Australian citizenship – character test – whether applicant of good character – where applicant not available for examination – fraud forgery and other serious offences – outstanding arrest warrant – where extradition process not commenced – where false or misleading statements – where decision under review affirmed

Compensation

[Moussavi and Comcare](#)

(Compensation) [2022] AATA 2838 (1 September 2022); R Cameron, Senior Member

COMPENSATION – two applications – accepted that claimed condition outside boundaries of normal mental functioning – accepted that claimed condition was contributed to by employment – issues for determination – whether condition suffered resulted from reasonable administrative action – whether condition suffered is permanent – if permanent, to what degree – deployment to Nauru – working as a translator – claimed condition found to be adjustment disorder – applicant likely to remain significantly psychiatrically impaired – impairment not resolved and considered permanent – decisions set aside and substituted

[WQCL and Comcare](#)

(Compensation) [2022] AATA 2808 (25 August 2022); R Reitano, Member

WORKER'S COMPENSATION – neck, shoulder, arm and hand pain – where Applicant has a pre-existing condition – whether Applicant has a disease – whether Applicant has an injury – whether there was an ailment suffered by an employee – whether the ailment was contributed to, to a significant degree, by the employee's employment – whether Applicant is entitled to compensation – decision set aside and substituted

Migration

[Aljorani and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2811 (25 July 2022); T Tavoularis, Senior Member and D Cosgrave, Member

MIGRATION – Cancellation of Applicant's visa under s 501(2) of the Migration Act 1958 (Cth) – where Applicant does not pass the character test – substantial criminal record – consideration of Ministerial Direction No. 90 – decision under review affirmed

[BKTS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2733 (11 August 2022); C J Furnell, Senior Member

MIGRATION – refusal to grant Protection (Class XA) visa – Migration Act 1958 (Cth) s 501(1) – applicant does not pass character test – substantial criminal record – whether to exercise discretion to refuse to grant the applicant the visa – Direction 90 – South Sudan – indefinite detention – primary and other considerations – decision under review affirmed

[Canepa Uranga and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2815 (26 August 2022); D J Morris, Senior Member

MIGRATION – where applicant is a citizen of the Oriental Republic of Uruguay – where applicant held Partner (subclass 100) visa – visa cancelled – where delegate of minister decided not to revoke the cancellation – review by Tribunal – ministerial Direction – primary considerations – protection of Australian community from criminal or other serious conduct – where applicant has been convicted of several armed robberies – where applicant also convicted of fraud – best interests of minor children in Australia – expectations of Australian community – extent of impediments if removed – links to the Australian community – decision under review is affirmed

[Chand and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2752 (26 July 2022); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of a Special Category (Subclass 444) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

[CRFF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2750 (19 August 2022); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of visa – Class TY Subclass 444 Special Category (temporary) visa – visa cancelled under s 501(3A) of the Migration Act 1958 (Cth) – 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 – family violence committed by the Applicant – best interests of minor children – other considerations – extent of impediments if removed – links to the Australian community – strength, nature and duration of ties to Australia – decision under set aside and substituted

[**GVTK and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2022]
AATA 2751 (28 July 2022); R Bellamy, Senior Member and A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class EN Subclass 186 Employer Nomination (permanent) 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 – drug trafficking – mental illness – decision under review affirmed

[**Hanna and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2022]
AATA 2753 (23 August 2022); R Cameron, Senior Member

MIGRATION – mandatory cancellation of visa – Class XB Subclass 200 Refugee Visa – applicant non-citizen born in Iraq – sexual offending against a child – contents of Direction 90 – risk of re-offending – rehabilitation and remorse – expectations of the Australian community – international non-refoulement obligations – decision affirmed

[**HBMH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#)
(Migration) [2022] AATA 2825 (4 August 2022); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – criminal record – sexual offence against a child – Direction No. 90 – primary and other considerations – protection of the Australian community – family violence – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 70-year-old man who came to Australia as a 9-year-old – reviewable decision affirmed

[**HQNW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#)
(Migration) [2022] AATA 2754 (19 July 2022); T Tavoularis, Senior Member

MIGRATION – refusal of application for Protection (Class XA) visa – where Applicant does not pass the character test – whether the discretion in section 501(1) should be exercised – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

[**JJRB and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2022]
AATA 2734 (12 August 2022); W Frost, Member

MIGRATION – decision of delegate of the Minister to refuse application for a Class XA Protection Visa – failure to pass the character test – violent and sexually based offences – Direction 90 – primary and other considerations – protection of the Australian community – expectations of the Australian community – Australia's non-refoulement obligations – consideration of the interests of minor children – weight to be given to the primary and other considerations – decision under review affirmed

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

AATA 2830 (30 August 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – Applicant is a 28-year-old man who arrived in Australia when he was a 12-year-old child as the holder of a Class XB Subclass 202 Global Special Humanitarian visa – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – offences involving family violence – best interests of Applicant’s minor daughter and siblings – minimal information about siblings – expectations of the Australian community – Australia’s international non-refoulement obligations – Applicant born in Ethiopia to parents who were citizens of Sudan – Country of reference is Sudan – Applicant previously found by AAT to be owed protection obligations – impact on victims – links to the Australian community – strength, nature and duration of ties to Australia – prospect of indefinite or prolonged detention – Reviewable Decision affirmed

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

AATA 2749 (18 August 2022); C Puplick AM, Senior Member

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 – risk of reoffending – family violence – expectations of the Australian community – non-refoulement – impediments to removal – links to the Australian community – decision affirmed

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

AATA 2748 (23 August 2022); R Cameron, Senior Member

MIGRATION – Mandatory visa cancellation – Class XB Subclass 200 Refugee Visa — failure to pass character test – substantial criminal record – people smuggling – assault in company – destroy or damage property – driving offences – Ministerial Direction No. 90 applied – primary and other considerations – reviewable decision affirmed

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

(Migration) [2022] AATA 2835 (9 August 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of a mandatory cancellation of a Class BS Subclass 801 Partner 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 – family / domestic violence – indecent treatment of children – non-refoulement obligations (Fiji) – decision under review affirmed

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

AATA 2731 (19 August 2022); D J Morris, Senior Member

MIGRATION – where applicant held Refugee (Class XB)(Subclass 200) visa – where visa cancelled mandatorily under provisions of Migration Act relating to substantial criminal record – where applicant sought revocation of mandatory cancellation – where delegate of Minister refused – where applicant sought review by Tribunal – where decision of Tribunal quashed and matter remitted for fresh consideration – is there another reason to revoke mandatory cancellation – threshold question – what is applicant’s country of citizenship – applicant entitled to citizenship of Ethiopia – ministerial Direction No. 90 – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of minor children in Australia – expectations of Australian community – international non-refoulement obligations – what is the country of reference – extent of impediments if removed – links to Australian community – decision under review is affirmed

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

AATA 2828 (1 August 2022); Dr L Kirk, Senior Member

MIGRATION – refusal to grant visa on character grounds – whether the applicant passes the character test – where applicant has a sentence of imprisonment of twelve months or greater – Direction No. 90 considered – where risk of reoffending is low – where offending is very serious – domestic violence – best interests of minor children – where applicant is owed protection obligations – where applicant has links to Australian community through friends and family – where applicant faces indefinite detention – decision set aside and remitted

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

AATA 2738 (22 August 2022); J C Kelly, Senior Member

MIGRATION – visa cancellation under s 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under s 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – Direction No. 90 considered – primary and other considerations considered – Applicant’s criminal history and background considered – reviewable decision affirmed

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

(Migration) [2022] AATA 2827 (29 August 2022); B J Illingworth, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 200 Refugee visa – where Applicant does not pass the character test – serious criminal record – whether “another reason” to revoke visa cancellation – Ministerial Direction 90 – decision under review is set aside

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

(Migration) [2022] AATA 2810 (28 July 2022); D O'Donovan, Senior Member

MIGRATION – Discretion to refuse a Protection (Class XA) (Subclass 866) Visa – where Applicant does not pass the character test – significant criminal record – whether discretion to refuse the visa should be exercised – Decision under review set aside

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

AATA 2820 (22 August 2022); A Nikolic AM CSC, Senior Member

MIGRATION – mandatory visa cancellation – citizen of [redacted] – fraudulent passport on entry to Australia – where Applicant granted Protection Class AZ (Subclass 866) visa – convicted of murder – failure to pass good character test – substantial criminal record – where Applicant disputes jury conviction for murder – mandatory visa cancellation – non-revocation – violent offending – family violence – new evidence suggesting possible breach of Article 1F of Refugees Convention – misconduct in custodial settings – where Applicant owed non-refoulement obligations – prospect of indefinite detention – whether another reason to revoke the mandatory cancellation – Ministerial Direction no. 90 applied – decision affirmed

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

AATA 2732 (11 August 2022); R West, Member

MIGRATION – refugee – application for Protection Visa – applicant has substantial criminal record and does not pass the character test – whether discretion not to refuse visa should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of a minor child – expectations of the Australian community – non-refoulement obligations – extent of impediments if removed – links to the Australian community – other considerations – decision set aside

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

(Migration) [2022] AATA 2747 (23 August 2022); K Raif, Senior Member

MIGRATION – refusal to grant a Class WE Bridging E visa (BVE) – where visa was refused under s 501(1) 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 – expectations of the Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – links to the Australian community – the strength, nature and duration of ties to Australia – refusal of visa is not revoked – decision under review affirmed

[Anguralia](#) (Migration) [2022] AATA 2568 (29 April 2022); L Hawas, Member

MIGRATION – cancellation – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – ground for cancellation – employment terminated within 2 years – genuine effort to engage in the employment – demotion – pay reduction – increased workload – mistreatment – contemporaneous communication with migration agent – employment history – decision under review set aside

[Fernando](#) (Migration) [2022] AATA 2569 (2 May 2022); M Brophy, Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 802 (Child) – adopted child – dependent child of the sponsor – not holder of substantive visa at time of visa application – section 48(1A) applies – time of application criteria – whether became dependent child since last visa application – compassionate circumstances of hardship and distress – unfair or unreasonable result – Ministerial Intervention requested – decision under review affirmed

[Punjabi By Nature Pty Ltd](#) (Migration) [2022] AATA 2565 (16 June 2022); A Mendes Da Costa, Member

MIGRATION – approval of a nomination – occupation of Cook – genuine position – nominee’s employment had ceased – updated financial information – discrepancies between organisational charts – wage and salaries expenditure – financial capacity to employ the nominee – decision under review affirmed

[Coates](#) (Migration) [2022] AATA 2588 (27 July 2022); M Bishop, Member

MIGRATION – cancellation – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – incorrect information provided in second extension application – six months of specified work in regional area while holding first extension – verification checks – discretion to cancel visa – physical and mental health – COVID restrictions and concern for family and returning to home country – paid third party to complete and lodge application – unaware of contents of application – acknowledgment of responsibility – current work on major infrastructure project and employer’s interest in sponsoring him – relationship with visa holder from another country – hardship if visa cancelled – decision under review set aside

[Mc Kenna Cronin](#) (Migration) [2022] AATA 2582 (29 July 2022); M Bishop, Member

MIGRATION – cancellation – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – incorrect information provided in second extension application – six months of specified work in regional area while holding first extension – verification checks – discretion to cancel visa – paid third party to complete and lodge application – acknowledgement of responsibility – COVID restrictions and prevalence in home country – mental health and death of relative – no health reports provided – work on major infrastructure project – relationship with visa holder from another country – hardship if visa cancelled – decision under review affirmed

National Disability Insurance Scheme

[HGLS and National Disability Insurance Agency](#) [2022] AATA 2766 (27 July 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – request for statement of reasons under s 38 AAT Act – whether the basis for the decision is adequate – request refused

[HGLS and National Disability Insurance Agency](#) [2022] AATA 2774 (25 August 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – request for statement of reasons under s 28 AAT Act – whether the basis for the decision is adequate – request refused

[Medovarski and National Disability Insurance Agency](#) [2022] AATA 2737 (19 August 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision by NDIA not to grant the Applicant’s request to access the NDIS – whether Applicant meets access criteria – whether Applicant meets “disability requirements” or “early intervention requirements” under ss 24 and 25 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) respectively – Applicant has long-standing multimorbidity including morbid obesity, type 2 diabetes, osteoarthritis, obstructive sleep apnoea, vision problems, and other conditions – consideration of socioeconomic factors, personality traits and level of Applicant’s comprehension, when assessing history of non-compliance with treatment recommendations and whether appropriate evidence-based treatments are “available” to him – whether impairments are, or likely to be, permanent – whether Applicant’s permanent sensory impairment from problems with his vision has resulted in substantially reduced functional capacity in any one of the prescribed six activities in s 24(1)(c) of the NDIS Act – Decision Under Review affirmed – access to the NDIS not granted – non-binding observations made

[VWBX and National Disability Insurance Agency](#) [2022] AATA 2736 (19 August 2022); R Reitano, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – whether Applicant meets NDIS access criteria – whether Applicant meets the disability or early intervention requirements – Child Applicant – whether impairments are permanent- whether impairment results in substantially reduced functional capacity – whether provision of early intervention supports is likely to reduce the Applicant’s future needs for supports in relation to disability Social Anxiety Disorder – Generalised Anxiety Disorder – Hypermobility Spectrum Disorder – Dysgraphia – Attention Deficit Hyperactivity Disorder – Early Intervention Supports – Specific Learning Disorder – decision under review affirmed

Practice and Procedure

[Carroll and National Disability Insurance Agency](#) [2022] AATA 2822 (29 August 2022); K Buxton, Senior Member

PRACTICE AND PROCEDURE – Jurisdiction – National Disability Insurance Scheme – Death of applicant – whether Tribunal has jurisdiction to review decision when applicant is deceased – application dismissed

[CGXH and National Disability Insurance Agency](#) [2022] AATA 2836 (30 August 2022); K Buxton, Senior Member

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE AGENCY – summons – objection to inspection of summons documents – whether the documents produced under summons fall outside the scope of the summons request – whether the documents produced under summons are immaterial and irrelevant – Applicant’s objection upheld

[Rogers and National Disability Insurance Agency](#) [2022] AATA 2809 (26 August 2022); K Buxton, Senior Member

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where Applicant applied to Tribunal to review a decision to approve the statement of participant supports in the Applicant’s plan – where subsequent decisions made about participant supports – jurisdiction of the Tribunal – Tribunal has jurisdiction to consider whether Specialist Disability Accommodation should be specified as a reasonable and necessary support - Tribunal does not have jurisdiction to consider subsequent decisions made under section 33(2) of the NDIS Act

[TQNC and National Disability Insurance Agency](#) [2022] AATA 2735 (19 August 2022); P Smith, Member

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – application for review – two decisions made by the Respondent – internal review decision made by a reviewer in respect of a decision to approve a statement of participants support in the Applicant’s Plan – no application for review made to the Tribunal within the prescribed time and no application for an extension of time made – no internal review decision made by a reviewer in relation to a decision not to conduct an unscheduled review of the decision on the basis of a change to the Applicant’s circumstances – request to the Tribunal to give the Applicant written reasons for its decision to dismiss the application for review

Professions and Trades

[Alan Gough and Vision Business Group Pty Ltd and Tax Practitioners Board](#) [2022] AATA 2757 (23 August 2022); Dr L Kirk, Senior Member

TAX AGENTS – termination of registration as tax agent – whether individual applicant is a fit and proper person – good fame, integrity and character – where individual applicant is sole director of corporate applicant – where individual applicant has lodged income tax returns late or not at all – where corporate applicant has lodged income tax returns and BAS late or not at all – alleged breaches of Code of Professional Conduct – whether applicant has failed to comply with taxation laws in the conduct of his personal affairs – whether applicant failed to respond to direction of Board in timely manner – decision affirmed

[Forever Family Day Care Pty Ltd and Secretary, Department of Education](#) [2022] AATA 2755 (24 August 2022); B W Rayment OAM QC, Deputy President

CHILDCARE – Family assistance law – child care benefit – cancellation of approval as an approved child care service – breach of conditions of provider approval – overseas educators – children overseas – exceeding educator to child ratios – decisions affirmed – decision set aside and remitted

Refugee

[1812585](#) (Refugee) [2022] AATA 2481 (27 May 2022); S Lee, Member

REFUGEE – protection visa – Iraq – a particular social group or groups – a single woman without male protection – single mothers, female academics and Sunni women in Iraq – membership of the same family unit as the first named applicant – decision under review remitted

[1818991](#) (Refugee) [2022] AATA 2456 (3 June 2022); T Flood, Member

REFUGEE – protection visa – Ghana – member of a particular social group – homosexual man – pressure from family to marry – fear of harm from family of partner, who committed suicide, and people in community – credibility – consistent and plausible claims and evidence despite reticent presentation – no relationship and limited activity in Australia for personal reasons – country information – laws and societal attitudes – state protection not obtainable – treaty right to enter and stay in neighbouring countries limited in practice – decision under review remitted

[1726249](#) (Refugee) [2022] AATA 2625 (9 June 2022); D McCulloch, Member

REFUGEE – protection visa – Sri Lanka – race – young man of Tamil ethnicity – fear of persecution by the Sri Lankan Army – young Tamil male with suspected LTTE associations – membership of the particular social groups – people who have fled Sri Lanka illegally – low-level involvement with the LTTE – failed asylum seeker returning from a western country – compassionate circumstances – Ministerial intervention requested – decision under review affirmed

[2014139](#) (Refugee) [2022] AATA 2508 (15 June 2022); M Sripathy, Member

REFUGEE – cancellation – protection visa – Iran – Federal Court remittal – incorrect information provided in protection visa application – citizenship and fear of harm – not stateless but Iranian citizen – passports and voluntary returns after protection visa granted – late concession of non-compliance – wife and older child's protection visas cancelled, with application for review in progress – younger child an Australian citizen – best interests of children as primary consideration – mental health – non-refoulement – protection finding not quashed or set aside – possibility of prolonged detention – decision made without hearing – decision under review set aside

[2117946](#) (Refugee) [2022] AATA 2513 (15 June 2022); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Iran – ground for cancellation – convicted of an offence – contravening an Apprehended Violence Order (AVO) – stalk/intimidate – driving while licence application refused – consideration of discretion – compelling need to remain in Australia – Australia’s protection obligations – degree of hardship – successful rehabilitation – Convention on the Rights of the Child (CROC) – best interests of the child – decision under review set aside

[2202501](#) (Refugee) [2022] AATA 2515 (16 June 2022); L Hardy, Member

REFUGEE – protection visa – Afghanistan – race – ethnic Tajik – imputed political opinion – links to the US military – particular social group – returnee from the West – attacks by extremist Islamic groups – fear of killing – fear of kidnapping – Taliban takeover of the country – hostilities with Tajik militias – state protection – decision under review remitted

[1832430](#) (Refugee) [2022] AATA 2759 (21 June 2022); T Flood, Member

REFUGEE – protection visa – Ghana – political opinion – opposition to the Fulani – member of the New Patriotic Party (NPP) – activist and advocate against the presence and practices of the Fulani herdsmen – no past harm suffered – ongoing tensions between the Fulani and farmers in Ghana – right to enter and reside in a third country – ECOWAS (Economic Community of West African States) member state – decision under review remitted

[2202545](#) (Refugee) [2022] AATA 2531 (23 June 2022); M O’Loughlin, Member

REFUGEE – protection visa – Kenya – particular social group – bisexual – gay – LGBTQIA+ – fear of harm by community – applicant has never lived openly as gay or bisexual – applicant’s choice to practice bisexuality discreetly not based on fear of persecution – inconsistent evidence – decision under review affirmed

[1931275](#) (Refugee) [2022] AATA 2662 (30 June 2022); A Murphy, Member

REFUGEE – protection visa – Pakistan – Federal Court remittal – religion – converting between religious sects – particular social group – women in Pakistan – fear attacks by family – fear of honour killing – mental health issues – gender-based violence – state protection – decision under review remitted

Social Services

[Chandler and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2834 (31 August 2022); P Ranson, Member and L Benjamin, Member

SOCIAL SERVICES – debt – family tax benefit – overpayment of benefit – whether correct reporting – whether was overpaid – whether grounds for debt to be waived or written off – error in reporting by the applicant – was overpaid – no grounds – decision affirmed

[Christoforou and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2837 (19 August 2022); D J Morris, Senior Member

PRACTICE AND PROCEDURE – application made on behalf of applicant by her representative – applicant dies after lodging application but before hearing – consideration of nature of decision – distinction between matter which extinguishes on death of an applicant and matter which may devolve – matter does not extinguish on death of applicant – potential relief or remedy available – proof of standing of affected party and fresh application required – information sought by Tribunal not provided – applicant’s representative unlikely now to proceed – provisions of AAT Act considered

SOCIAL SECURITY – where applicant was on carer payment and age pension – where applicant also in receipt of spouse benefit superannuation pension – where superannuation income not taken into account in calculating rate of payments – where debt arose – where steps taken to recover debt – where applicant sought review by authorised review officer – where applicant sought further review by Social Services and Child Support Division of Tribunal – where Tribunal affirmed authorised review officer’s decision – where applicant’s son sought review by General Division of Tribunal on behalf of applicant – where applicant died – where applicant’s son sought to continue the proceeding – standing as personal representative ceases on death of person represented – where executor of estate could be joined as affected party – where proof not provided that applicant’s son is executor of estate – where now likely applicant’s son cannot pursue matter – application dismissed as Tribunal satisfied decision not reviewable – written reasons provided

[Grech and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2831 (31 August 2022); D Mitchell, Member

SOCIAL SECURITY – rate of age pension – where value of assets exceed minimum threshold – where Centrelink made an error in calculating rate of pension which was subsequently corrected – decision under review affirmed

[Sim and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2807 (26 August 2022) Dr S Fenwick, Senior Member

SOCIAL SECURITY – disability support pension – member of a couple – reporting of spouse earnings – prior adjustment after long period of overpayment – decision affirmed

Superannuation

[Signium Pty Limited and Commissioner of Taxation](#) (Taxation) [2022] AATA 2824 (5 August 2022); B J McCabe, Deputy President

SUPERANNUATION guarantee charge assessments – penalty assessments – whether penalty assessments excessive – nominal interest of superannuation guarantee charge – superannuation shortfall assessments – decision under review varied

Taxation

[Robis Consulting Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 2832 (25 August 2022); R Olding, Senior Member

TAXATION – CASH FLOW BOOST – whether wages constructively paid – whether scheme for sole or dominant purpose of obtaining or increasing Cash Flow Boost – decision set aside

[Trustee for The Lubiana Family Trust and Commissioner of Taxation](#) (Taxation) [2022] AATA 2826 (30 August 2022); B J McCabe, Deputy President and R J Olding, Senior Member

TAXATION – WINE EQUALISATION TAX – where wine sold for single undissected amount – whether amounts said to be attributed to containers, delivery and “goodwill, reputation and romance” of ultra-premium wine products excluded from taxable value – held no exclusion of these amounts – decision 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
McPartland and Commissioner of Taxation	[2022] AATA 686

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ali v Minister for Immigration, Citizenship and Multicultural Affairs	[2020] AATA 5232	[2022] FCAFC 140 [2022] FCA 174
Doves v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 367	[2022] FCAFC 134 [2021] FCA 1281
El Khoueiry v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 3577	[2022] FCAFC 136 [2022] FCA 247
Maryvan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2502	[2022] FCA 977
Ngata v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 376	[2022] FCAFC 139 [2021] FCA 906
NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 378	[2022] FCA 976
QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2020] AATA 2161	[2022] HCATrans 130 [2021] FCAFC 166 [2020] FCA 1810
Taylor v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 19	[2022] FCAFC 144 [2022] FCA 309

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 commence on **19 September 2022**:

Creutzfeldt-Jakob disease (Balance of Probabilities) - No. 81 of 2022

<https://www.legislation.gov.au/Details/F2022L01109>

Creutzfeldt-Jakob disease (Reasonable Hypothesis) - No. 80 of 2022

<https://www.legislation.gov.au/Details/F2022L01108>

Epilepsy (Balance of Probabilities) - No. 85 of 2022

<https://www.legislation.gov.au/Details/F2022L01133>

Epilepsy (Reasonable Hypothesis) - No. 84 of 2022

<https://www.legislation.gov.au/Details/F2022L01132>

Malignant neoplasm of the anus and anal canal (Balance of Probabilities) - No. 83 of 2022

<https://www.legislation.gov.au/Details/F2022L01127>

Malignant neoplasm of the anus and anal canal (Reasonable Hypothesis) - No. 82 of 2022

<https://www.legislation.gov.au/Details/F2022L01126>

Mature B-cell lymphoid leukaemia and small lymphocytic lymphoma (Balance of Probabilities) - No. 79 of 2022

<https://www.legislation.gov.au/Details/F2022L01117>

Mature B-cell lymphoid leukaemia and small lymphocytic lymphoma (Reasonable Hypothesis) - No. 78 of 2022

<https://www.legislation.gov.au/Details/F2022L01113>

Steatohepatitis (Balance of Probabilities) - No. 87 of 2022

<https://www.legislation.gov.au/Details/F2022L01121>

Steatohepatitis (Reasonable Hypothesis) - No. 86 of 2022

<https://www.legislation.gov.au/Details/F2022L01120>

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 **commence** on **19 September 2022**:

Allergic contact dermatitis (Balance of Probabilities) - No. 89 of 2022

<https://www.legislation.gov.au/Details/F2022L01114>

Allergic contact dermatitis (Reasonable Hypothesis) - No. 88 of 2022

<https://www.legislation.gov.au/Details/F2022L01112>

Asthma (Balance of Probabilities) - No. 93 of 2022

<https://www.legislation.gov.au/Details/F2022L01123>

Asthma (Reasonable Hypothesis) - No. 92 of 2022

<https://www.legislation.gov.au/Details/F2022L01122>

Conjunctivitis (Balance of Probabilities) - No. 91 of 2022

<https://www.legislation.gov.au/Details/F2022L01131>

Conjunctivitis (Reasonable Hypothesis) - No. 90 of 2022

<https://www.legislation.gov.au/Details/F2022L01130>

Veterans' Entitlements (Statements of Principles—definition of "one pack-year") Amendment Determination 2022 - No. 94 of 2022

<https://www.legislation.gov.au/Details/F2022L01128>

This instrument amends the following Statements of Principles, to omit the definition of "pack-year" and substitute it with a new definition of "one pack-year":

- Ankylosing spondylitis (Reasonable Hypothesis) - No. 39 of 2021
- Ankylosing spondylitis (Balance of Probabilities) - No. 40 of 2021
- Anosmia (Reasonable Hypothesis) - No. 19 of 2021
- Anosmia (Balance of Probabilities) - No. 20 of 2021
- Aortic aneurysm and aortic wall disorders (Reasonable Hypothesis) - No. 21 of 2021
- Aortic aneurysm and aortic wall disorders (Balance of Probabilities) - No. 22 of 2021

- Asthma (Reasonable Hypothesis) - No. 31 of 2021
- Asthma (Balance of Probabilities) - No. 32 of 2021
- Carotid artery disease (Reasonable Hypothesis) - No. 54 of 2020
- Carotid artery disease (Balance of Probabilities) - No. 55 of 2020
- Chronic pancreatitis (Reasonable Hypothesis) - No. 64 of 2020
- Chronic pancreatitis (Balance of Probabilities) - No. 65 of 2020
- Deep vein thrombosis (Reasonable Hypothesis) - No. 35 of 2021
- Deep vein thrombosis (Balance of Probabilities) - No. 36 of 2021
- Diabetes mellitus (Reasonable Hypothesis) - No. 48 of 2020
- Diabetes mellitus (Balance of Probabilities) - No. 49 of 2020
- Giant cell arteritis (Reasonable Hypothesis) - No. 11 of 2021
- Giant cell arteritis (Balance of Probabilities) - No. 12 of 2021
- Inflammatory bowel disease (Reasonable Hypothesis) - No. 90 of 2020
- Inflammatory bowel disease (Balance of Probabilities) - No. 91 of 2020
- Malignant neoplasm of the cervix (Reasonable Hypothesis) - No. 80 of 2020
- Malignant neoplasm of the cervix (Balance of Probabilities) - No. 81 of 2020
- Malignant neoplasm of the kidney (Reasonable Hypothesis) - No. 41 of 2021
- Malignant neoplasm of the kidney (Balance of Probabilities) - No. 42 of 2021
- Non-aneurysmal aortic atherosclerotic disease (Reasonable Hypothesis) - No. 52 of 2020
- Non-aneurysmal aortic atherosclerotic disease (Balance of Probabilities) - No. 53 of 2020
- Peripheral artery disease (Reasonable Hypothesis) - No. 70 of 2020
- Peripheral artery disease (Balance of Probabilities) - No. 71 of 2020
- Psoriasis (Reasonable Hypothesis) - No. 13 of 2021
- Psoriasis (Balance of Probabilities) - No. 14 of 2021
- Pulmonary thromboembolism (Reasonable Hypothesis) - No. 37 of 2021
- Pulmonary thromboembolism (Balance of Probabilities) - No. 38 of 2021
- Renal artery atherosclerotic disease (Reasonable Hypothesis) - No. 56 of 2020
- Renal artery atherosclerotic disease (Balance of Probabilities) - No. 57 of 2020
- Retinal vascular occlusion (Reasonable Hypothesis) - No. 50 of 2020
- Retinal vascular occlusion (Balance of Probabilities) - No. 51 of 2020
- Tinnitus (Reasonable Hypothesis) - No. 84 of 2022

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be repealed on 19 September 2022**:

Creutzfeldt-Jakob disease - No. 77 of 2014

<https://www.legislation.gov.au/Details/F2014L01139>

Creutzfeldt-Jakob disease - No. 76 of 2014

<https://www.legislation.gov.au/Details/F2014L01138>

Epilepsy - No. 76 of 2013

<https://www.legislation.gov.au/Details/F2013L01895>

Epilepsy - No. 75 of 2013

<https://www.legislation.gov.au/Details/F2013L01894>

Malignant neoplasm of the anus and anal canal - No. 52 of 2013

<https://www.legislation.gov.au/Details/F2013L01639>

Malignant neoplasm of the anus and anal canal - No. 51 of 2013

<https://www.legislation.gov.au/Details/F2013L01638>

Chronic lymphocytic leukaemia/small lymphocytic lymphoma - No. 85 of 2014

<https://www.legislation.gov.au/Details/F2014L01147>

Chronic lymphocytic leukaemia and small lymphocytic lymphoma - No. 84 of 2014

<https://www.legislation.gov.au/Details/F2014L01146>

Steatohepatitis - No. 80 of 2013

<https://www.legislation.gov.au/Details/F2013L01900>

Steatohepatitis - No. 79 of 2013

<https://www.legislation.gov.au/Details/F2013L01898>



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