



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.

Child Support

[RYKB and Child Support Registrar](#) (Child support second review) [2021] AATA 3219 (7 September 2021); A E Burke AO, Member

CHILD SUPPORT – review of care percentage determinations – actual care varied from arrangements as provided for in Court orders – whether payee was providing actual care – whether payer had obligation to pay child support – whether care is able to be provided when the payee is hospitalised – whether no parent was providing actual care for the child – conflicting evidence of extent of actual care – decision under review affirmed

[XWTH and Child Support Registrar](#) (Child support second review) [2021] AATA 3240 (9 September 2021); Senior Member A Poljak

CHILD SUPPORT – percentage of care determination – date of effect of the determination – whether date of effect is date of notification or date of change of care – legal question about which version of s 54F of the Child Support (Assessment) Act 1989 (Cth) applies – two sets of amendments – found that second amendments apply – reviewable decision set aside and substituted

[Bostick and Chaucer](#) (Child support) [2021] AATA 3179 (26 July 2021); H Moreland, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – whether child living independently – whether a child support terminating event had occurred – decision under review affirmed

[Feasey and Riggs](#) (Child support) [2021] AATA 3181 (21 July 2021); S Brakespeare, Member

CHILD SUPPORT – percentage of care – whether there were changes to the likely pattern of care – existing percentage of care determinations revoked and new determinations made - decisions under review set aside and substituted

[Groover and Sheridan](#) (Child support) [2021] AATA 3174 (20 July 2021); F Staden, Member

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond child's eighteenth birthday – definition of secondary school year – application accepted – decision affirmed

[Spiering and Child Support Registrar](#) (Child support) [2021] AATA 3190 (22 July 2021); D Benk, Senior Member

CHILD SUPPORT – application for extension of time - no satisfactory explanation for the delay - no merit - extension of time refused

[Tuckey and Vince](#) (Child support) [2021] AATA 3186 (15 July 2021); Y Webb, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure - costs of meeting special needs significantly affect the cost of maintaining the child – costs of children include private education – manner expected by both parents – decision under review set aside and substituted

Citizenship

[Ahmad and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3244 (8 September 2021); Senior Member T Tavoularis

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether prohibition under subsection 24(3) of the Australian Citizenship Act 2007 (Cth) applies – satisfaction as to the identity of the Applicant – meaning of identity – pillars of identity – where Applicant possesses Qatari birth certificate – where Applicant citizen of Somalia – where Applicant a refugee – inconsistent evidence about aspects of life story – inconsistencies not critical to question of identity – decision under review set aside and remitted

[Kazim Hassan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3173 (3 September 2021); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – Application for citizenship by conferral – Issue of identity – Whether the Tribunal can be satisfied of the applicant’s identity under section 24(3) of the Citizenship Act 2007 – Where limited documentary or biometric evidence of identity provided – Where heavy reliance on applicant’s life story – Decision affirmed

[Khan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3289 (14 September 2021); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – where applicant subject to Conditional Release Order – Australian Citizenship [Policy Statement] – Citizenship Procedural Instruction 33 – Minister prohibited from approving application for citizenship – decision under review affirmed

[Mahdawi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3192 (27 August 2021); Senior Member D J Morris

CITIZENSHIP – where applicant applied for Australian citizenship by conferral – where delegate of Minister refused application as delegate not satisfied of applicant’s identity – migration and personal background of applicant – where applicant satisfies Tribunal of identity – decision set aside and matter remitted to respondent with direction

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

(Citizenship) [2021] AATA 3343 (15 September 2021); Senior Member D J Morris

CITIZENSHIP – citizenship by conferral – where applicant is citizen of Afghanistan – where applicant was an unregistered refugee in Iran – where delegate of Respondent refused application as not satisfied of applicant's identity – delegate also not satisfied applicant of good character – consideration of evidence – where Tribunal satisfied of applicant's identity – where applicant provided misleading and false information to Department – where opportunities given to correct incorrect information not taken – where additional false claims made – obligation to provide true and accurate information – decision under review varied but otherwise affirmed

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

(Citizenship) [2021] AATA 3316 (14 September 2021); Dr D Cremean, Senior Member

CITIZENSHIP – application for Australian citizenship refused – good character requirement allegedly not satisfied – Convictions of Applicant – Explanations given by Applicant – decision under review affirmed

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

(Citizenship) [2021] AATA 3215 (7 September 2021); Senior Member C Puplick AM

CITIZENSHIP – by conferral – where the applicant is under 18 – where the applicant is overseas – Citizenship Procedural Instructions – person under 18 – assessing likelihood to reside or continue to reside in, or maintain a close and continuing association with Australia – assessing significant hardship, disadvantage or detriment for the purposes of Australian citizenship – best interests of the child – purposes of citizenship - decision affirmed

Compensation

Boglari and Ron Finemore Transport Service Pty Ltd (Compensation) [2021] AATA 3320 (17

September 2021); Senior Member R Cameron

Depression – major depression – anxiety disorder – whether those conditions arose out of or during the course of employment – entitlement to compensation – whether injury significantly contributed to by employment – decision set aside and substituted

Cash and Australian Postal Corporation (Compensation) [2021] AATA 3323 (15 September

2021); Dr I Alexander, Senior Member

WORKERS' COMPENSATION – bilateral plantar fasciitis – regional pain syndrome – whether the effects of the injuries had ceased – secondary mild adjustment disorder with depressed mood – whether the Applicant suffered a psychiatric condition that was contributed to, to a significant degree, by her employment – decisions under review affirmed

Salehi and Comcare (Compensation) [2021] AATA 3294 (13 September 2021); Senior Member C J

Furnell

COMPENSATION – Commonwealth employee – low back condition – degenerative change in lumbar spine – whether applicant suffers from medical condition – whether disease or injury other than disease – applicant attributes condition to prolonged sitting at work – other work-related factors – employment did not contribute to disease to a degree that is substantially more than material – decision under review affirmed

Corporations

[Dunlop and Secretary, Attorney-General's Department](#) [2021] AATA 3150 (3 September 2021); Dr M Evans-Bonner, Senior Member

FAIR ENTITLEMENTS GUARANTEE – entitlement to redundancy payment – claim for advance on redundancy payment – whether Applicant entitled to an advance under the Fair Entitlements Guarantee Act 2012 (Cth) for redundancy pay – governing instrument for Applicant's redundancy pay is Fair Work Act 2009 (Cth) – when employment ceased – whether company had requisite number of employees – meaning of a “small business employer” – whether companies are “associated entities” – whether the employees of two companies with separate but interrelated statutory responsibilities for a floating production and storage offloading facility could be counted together – meaning of “control” in s 50AA of the Corporations Act 2001 (Cth) – whether an entity controls a second entity – Reviewable Decision affirmed

Migration

[Barsby and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3296 (14 September 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – Applicant's visa cancelled due to attempted possession of synthetic cannabis with intent to sell or supply – other minor drug offences – historical family violence offences – other general and driving offences – 15-year gap in offending prior to most recent offences – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – whether uncontested restraining orders are indicative of family violence – best interests of minor children – expectations of the Australian community – extent of impediments if removed – links to the Australian community – strength, nature and duration of ties to Australia – Applicant has three minor children and a minor granddaughter – Applicant is a 53-year-old man who arrived in Australia as a five-year-old child – extent of impediments if removed to United Kingdom – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted

[BYJB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3315 (17 September 2021); Deputy President J W Constance

MIGRATION – protection visa – refugee – where applicant was a member of the LTTE – whether the applicant committed war crimes – Rome Statute – decision affirmed

[CWGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3325 (13 September 2021); Deputy President B W Rayment OAM QC

MIGRATION – cancellation of visa on character grounds where substantial criminal record – request for revocation of cancellation decision – decision by Minister not to revoke cancellation decision – where review of decision by the Tribunal sought and decision affirmed – where Tribunal decision set aside on appeal and application remitted for fresh determination – where applicant does not satisfy the character test – whether there is another reason why the cancellation decision should be revoked under s 501CA(4) of the Migration Act 1958 – where Direction No. 90 mandatory considerations considered – where other relevant matters arising on the facts and circumstances considered – decision set aside and substituted

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

(Migration) [2021] AATA 3228 (6 September 2021); Senior Member L Kirk

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test - substantial criminal record under s 501(7) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – minor children – non-refoulement obligations and need to consider - strength nature and duration of ties – impediments to applicant if removed – giving meaningful consideration to risk of harm – first Tribunal decision found to contain jurisdictional error – decision remitted back to Tribunal from Federal Court of Australia – decision under review affirmed

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

(Migration) [2021] AATA 3249 (8 September 2021); R Maguire, Member

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

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

(Migration) [2021] AATA 3321 (17 September 2021); Senior Member T Tavoularis

MIGRATION – review of decision under s 501(1) of the Migration Act 1958 (Cth) refusing to grant a Class FA subclass 600 visitor visa – where the visa Applicant does not pass the character test – where there is a substantial criminal record – consideration of Ministerial Direction Number 90 – negligent driving – traffic offences – decision under review set aside and substituted

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

(Migration) [2021] AATA 3246 (8 September 2021); R Bellamy, Member

MIGRATION – refusal of application for a Resident Return (Class BB) visa under section 501(1) - where the visa Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – decision under review set-aside

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

(Migration) [2021] AATA (17 August 2021); Senior Member L Kirk

MIGRATION – mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – nature and seriousness of Applicant's conduct to date – risk of re-offending – the protection and expectations of Australian community – extent of impediments if removed from Australia – giving meaningful consideration to risk to Australian community – impact on victims – decision under review set aside and substituted

Mulholland and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] AATA 3236 (7 September 2021); The Hon. D Cowdroy AO QC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – best interests of minor child – expectations of the Australian community – impediments to removal – impact on victims – strength, nature and duration of ties to Australia – decision affirmed

NMHT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3284 (10 September 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa - Class TY Subclass 444 Special Category (Temporary) 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 – family violence - best interests of minor children – expectations of the Australian community - other considerations – extent of impediments if removed – impact on victims - links to the Australian community – decision under review affirmed

Nuuamoa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3295 (13 September 2021); Senior Member D J Morris

MIGRATION – mandatory cancellation of class CY Subclass 444 Special category visa – where applicant has substantial criminal record in terms of Migration Act provisions – where applicant concedes he fails character test – possible invalidity in mandatory cancellation of the visa – invalidity does not preclude review by Tribunal of whether there is another reason under s 501CA of Act to revoke mandatory cancellation of visa – where minister has made a direction – Direction No. 90 – primary considerations – protection of Australian community from criminal or other serious conduct – whether conduct engaged in constituted family violence – family violence affecting children – the best interests of minor children in Australia – expectations of Australian community – other relevant considerations – extent of impediments if applicant removed to New Zealand – impact on victims – links to the Australian community – any other relevant matter – decision under review affirmed

Sua and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3322 (10 September 2021); Senior Member J Rau SC

MIGRATION – mandatory cancellation of Special Category (Temporary) (Class TY) (Subclass 444) visa under section 501CA(4) - where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – domestic violence offences – decision under review affirmed

Telea and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 3283 (23 August 2021); Senior Member J C Kelly

MIGRATION – cancellation of Applicant's Class BC, Subclass 100 Partner visa – citizen of Samoa – failure to pass character test – whether there is another reason to revoke the visa cancellation – Direction No. 90 – protection of the Australian community – family violence committed by the non-citizen – best interests of minor children in Australia – expectations of the Australian community – extend of impediments if removed – impact on victims – links to the Australian community – decision under review set aside

[1908336](#) (Migration) [2021] AATA 3234 (12 August 2021); A Younes, Senior Member

MIGRATION – cancellation – Subclass 155 (Five Year Resident Return) visa – incorrect information – variations in names – Iraq – stateless Kuwaiti Bedoun – expelled to Iraq – obtained Iraqi passport via bribes – assisted western military with transport of supplies – threats from Al Mehdi’s Army – Sunni religion – tribunal received submissions from Secretary, Department of Home Affairs – tribunal not compelled to set aside delegate’s decision – case of Makasa – Makasa case cannot be directly applied to another of the powers in s 501 – High Court’s reasons in Makasa do not relate to any other cancellation power such as s 109 or s 116 – differences in structure and operation between s 501(2) and the other cancellation powers in the Act – 2012 delegate’s decision to not cancel protection visa – subsequent cancellation of applicant’s subclass 155 visa after protection visa ceased – Makasa case related to one visa – tribunal’s findings that incorrect information was provided – applicant is Bedoun of Iraqi nationality – however, cumulative effect of applicant’s claims gives rise to real chance of harm – applicant continues to be a refugee owed Australia’s protection obligations – cancellation would result in breach of Australia’s obligations under the Refugees Convention – decision under review set aside

[1920674](#) (Migration) [2021] AATA 3223 (15 July 2021); N McGowan, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – orphan relative of an Australian relative – death of the visa applicant’s mother – visa applicant’s father incapacitated – permanently incapacitated – ability to care for the child – decision under review remitted

[2000443](#) (Migration) [2021] AATA 3224 (14 July 2021); M Hawkins AM, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect answers in the visa application – Pakistan citizenship – race – Pashtun – fear of Sunni extremists – Pakistan passport – identity documents – return visits to Pakistan – people with disabilities – permanent incapacity – availability of medications – imputed pro-Western political opinion – non-refoulement obligations – decision under review set aside

[2107540](#) (Migration) [2021] AATA 3288 (18 August 2021); J Silva, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – applicant had not been interviewed by an authorised officer – applicant was not subject to the exceptions – an authorised officer attempted to contact the applicant – attempts failed – decision under review affirmed

[Wang](#) (Migration) [2021] AATA 3162 (11 August 2021); N Burns, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – no substantive visa at the time of application – relevant date of a valid application – earlier application using incorrect version of the form – valid application – substantial compliance – retrospective validation of an invalid application – decision under review affirmed

Practice and Procedure

[Benge and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3281 (10 September 2021); Senior Member A Poljak

PRACTICE AND PROCEDURE – jurisdiction – whether Tribunal can consider applicant’s medical eligibility for disability support pension (DSP) – considered by authorised review officer – not considered by SSCSD – SSCSD set aside decision under review and remitted with direction – Tribunal limited to reviewing direction – no jurisdiction to review applicant’s medical eligibility for disability support pension

[Collins and National Disability Insurance Agency](#) [2021] AATA 3245 (3 September 2021); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – internal review decision – additional supports not considered within internal review decision – whether Tribunal has jurisdiction – Tribunal does not have jurisdiction to consider additional supports

[Linck and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3298 (14 September 2021); Mr S Webb, Member

SOCIAL SERVICES – application for review of AAT Tier 1 decision – disability support pension – portability rules – applicant represented by his father – terminal illness and death of applicant – status of Tribunal proceedings - orders made

[Lupo Consultants Pty Ltd and National Disability Insurance Agency](#) [2021] AATA 3280 (8 September 2021); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – whether internal review conducted pursuant to subsection 100(6) of the National Disability Insurance Scheme Act 2013 (Cth) – Tribunal does not have jurisdiction – application dismissed

[McAuliffe and Commissioner of Taxation](#) (Taxation) [2021] AATA 3235 (18 August 2021); Deputy President B J McCabe

TAXATION – Interlocutory application – jurisdiction – dismissal under section 42B AAT Act – alleged maladministration – model litigant – no reasonable prospect of success – objection already allowed in full – application dismissed

[Van Der Zwart and Australian Capital Territory](#) (Compensation) [2021] AATA 3291 (14 September 2021); Mr S Webb, Member

PRACTICE AND PROCEDURE – application for review of no present liability compensation decision – application for operation of the decision to be stayed – discretion for the purposes of securing the effectiveness of the hearing - relevant principles and considerations – assertions of prejudice without probative material – stay refused

[XCFB and National Disability Insurance Agency](#) [2021] AATA 3285 (10 September 2021); K Parker, Member

PRACTICE AND PROCEDURE – request by expert witness to set aside Tribunal Direction requiring production of psychological testing materials – whether orders should be made under s 35(4) of Administrative Appeals Tribunal Act 1975 (Cth) – whether against public interest to allow disclosure and publication of psychological testing materials – consideration of principle that evidence should be made available to the public and to all parties – consideration of copyright protections and exemptions – Tribunal limited disclosure to any psychologist or psychiatrist to give evidence in the proceeding and relevant decision-makers – Tribunal restricted future publication of information contained in psychological testing materials to a confidential annexure to the Tribunal’s Reasons for Decision

Refugee

[1617260](#) (Refugee) [2021] AATA 3077 (27 May 2021); A Grant, Member

REFUGEE – protection visa – Ghana – bogus document – evidence of identity – passport under a different name – credibility concerns – religion – Christianity – tribal custom – Messenger of the gods – member of the Ananagya Aduana Royal Family – King 's stool – chieftaincy dispute – decision under review affirmed

[1707372](#) (Refugee) [2021] AATA 3248 (30 June 2021); J L Redfern PSM, Deputy President and J Silva, Member

REFUGEE – Protection (Class XA) (Subclass 866) visa – Bangladesh – application for protection on the basis of refugee and complimentary protection criterion – applicant claims to be a supporter and member of the BNP with a profile – claims to be convicted of politically motivated false charges – fabricated documents – credibility of the applicant – applicant found not to have a well-founded fear of persecution – not satisfied there is a real chance the applicant will suffer serious harm amounting to persecution – not satisfied there is a real risk the applicant will suffer significant harm – decision under review affirmed

[1709349](#) (Refugee) [2021] AATA 3166 (28 May 2021); D Connolly, Member

REFUGEE – protection visa – Lebanon – religion – Jehovah’s Witness – proselytising – modification to practice and self-imposed restrictions – proselytising female Jehovah’s Witness – verbal abuse, threats and intimidation – emotional abuse and bullying – sexual assault – not physically harmed or sexually assaulted in the past – low levels of societal discrimination and harassment – official discrimination – travels to Refugee Convention signatory countries and voluntary returns to Lebanon – decision under review affirmed

[1712198](#) (Refugee) [2021] AATA 3299 (9 June 2021); L Nicholls, Senior Member

REFUGEE – cancellation – protection visa – Stateless – Iran – incorrect information in application – evidence of applicant’s Iranian citizenship – daughter claimed Iranian citizenship – inconsistent evidence about applicant’s name and place of birth – doubts over true identity – implausible and confused evidence – decision under review set aside

[1811883](#) (Refugee) [2021] AATA 3043 (29 June 2021); P J Haag, Member

REFUGEE – protection visa – Ethiopia – political opinion – opposition to the government – race – Harar – physical violence – fear of detention – fear of killing – public employment – confiscation of land and bank account – evidence of land ownership – new reformist government – decision under review affirmed

[1813842](#) (Refugee) [2021] AATA 3307 (16 June 2021); M Sripathy, Member

REFUGEE – protection visa – Pakistan – Federal Court remittal – religion – Shia Muslim – imputed political opinion – anti-Taliban – opposed to Sunni extremist militia groups – pro-US – pro-Iran – race – Pashtun from Bangash tribe – mental illness – no family or tribe links outside Upper Kurram – harassed by Taliban – relatives killed and injured – current health and psychological state – reasonableness of internal relocation – decision under review remitted

[1901883](#) (Refugee) [2021] AATA 3216 (2 September 2021); J L Redfern PSM, Deputy President and D Dragovic, Senior Member

REFUGEE – Protection (Class XA) (Subclass 866) visa – cancellation under s 109 of the Migration Act – Iran – applicant claimed to be a stateless Faili Kurd – whether incorrect information provided – applicant conceded he was an Iranian citizen since birth – consideration of prescribed circumstances – best interests of Australian citizen children as primary consideration – consideration of amendments introduced by the Migration Amendment (Clarifying International Obligations for Removal) Act 2021 (Cth) – whether prolonged detention is a legal consequence in circumstances where a protection finding has previously been made – Australia's non-refoulement obligations – decision under review set aside and substituted for a decision not to cancel the visa

[1908781](#) (Refugee) [2021] AATA 3199 (23 June 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Afghanistan – Federal Circuit Court remittal – ethnicity and religion – Hazara Shia – imputed political opinion – considered to be supporter of Hazara religious/political militia – attacked, detained, interrogated and beaten by members of another militia – country information – imminent withdrawal of US troops – uncertain future security situation – decision under review remitted

[1935343](#) (Refugee) [2021] AATA 3282 (30 June 2021); C Packer, Member

REFUGEE – protection visa – Democratic Republic of Congo – race – Tutsi – imputed political opinion – relative and adopted son of known government agency worker – co-workers and family members killed – relative and other family members attacked – relative and surviving family members refugees in Australia or third country – applicant obtained Rwandan passport irregularly but not a citizen – country information – general socio-political conditions – targeted and general ethnic violence by state and non-state actors – status and documentation of Congolese refugees in Rwanda – decision under review remitted

[2003902](#) (Refugee) [2021] AATA 3197 (1 June 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – Federal Circuit Court remittal – overlooking or ignoring country information that was significant – consequence of having tattoos – low risk of official discrimination – religion – Christianity – initial engagement – changes to life – Bible reading and prayer – church attendance – proselytising – decision under review remitted

[2102559](#) (Refugee) [2021] AATA 3168 (25 May 2021); P Hunter, Member

REFUGEE – protection visa – South Sudan – imputed political opinion – supporter of President Kiir and Sudan People’s Liberation Movement (SPLM) – race – Dinka – left country of reference when an infant – limited language skills – limited knowledge of tribal or cultural heritage – lack of familial assistance – limited work experience – lack of accommodation – East African Community (EAC) – decision under review remitted

Social Services

[Ali and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3344 (17 September 2021); Senior Member B Pola

SOCIAL SECURITY – Disability Support Pension – Whether medical conditions fully diagnosed, fully treated and fully stabilised – Whether 20 points or more under the Impairment Tables during the Qualification Period – Decision under review affirmed

[Austin; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 3300 (14 September 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension overpayment – where the Department is the Applicant – correspondence and payment nominee joined as interested party – whether Respondent was overpaid DSP – whether Respondent owes a debt to the Commonwealth – whether Respondent obtained benefit of the debt – whether special circumstances exist to waive part or all of the debt – information exchange between NSW Department of Corrective Services and Centrelink – notification of imprisonment – decision set aside and remitted

[Cheadle and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3319 (16 September 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension refused due to Compensation Preclusion Period – whether Compensation Preclusion Period was correctly calculated – whether expenditures of compensation money where special circumstances exist – medical expenses – family loans – vehicle purchase – gambling – financial hardship – decision affirmed

[Cincotta and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3237 (8 September 2021); Dr I Alexander, Senior Member

SOCIAL SECURITY – Disability Support Pension – whether the applicant’s impairment was 20 points or more under the Impairment Tables – whether the applicant had a continuing inability to work – decision affirmed

[Fahy and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3258 (9 September 2021); K Parker, Member

SOCIAL SECURITY – parenting payment – Applicant seeks back payment to 2017 – consideration of when claim was made or deemed to have been made – Applicant asserts claim form posted in 2017 – no record held by Centrelink of claim form having been received – Tribunal found that claim form not sent in 2017 – Tribunal decided that parenting payments not to be back-dated to 2017 – Tribunal satisfied deeming provision under s 12 of the Social Security (Administration) Act 1999 (Cth) applies – Tribunal determined that claim taken to have been made on 4 February 2020 – decision set aside and remitted

[Farinaccio and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3292 (13 August 2021); L M Gallagher, Member

SOCIAL SECURITY – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – continuing inability to work – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

[Georgiou and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3317 (16 August 2021); Senior Member C J Furnell

SOCIAL SECURITY – application for Disability Support Pension refused – whether conditions were fully diagnosed, treated and stabilised in the qualification period – whether Applicant's conditions attracted an impairment rating of at least 20 points – Applicant did not actively participate in a program of support – Applicant did not have a continuing inability to work – decision under review affirmed

[GFFQ and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3254 (8 September 2021); A E Burke AO, Member

FAMILY TAX BENEFIT – whether applicant entitled to family tax benefit – late lodgement of income tax return – whether member of a couple during the period – whether special circumstances exist – decision under review set aside and substituted

[Haygarth and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3242 (9 September 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including cancer of the oesophagus – whether fully diagnosed, treated and stabilised – whether 20 points for depression and anxiety should be allocated – decision under review set aside and substituted

[Huggins and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3217 (16 August 2021); A E Burke AO, Member

SOCIAL SECURITY – pension bonus scheme – whether qualified for age pension – renovation on home and rental property does not constitute gainful work – Work test not satisfied – recordkeeping not maintained - 13 week limit – no special circumstances found - working past 75 years of age – age pension correctly cancelled – Decision affirmed

[Palmer and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3149 (3 September 2021); Brigadier A G Warner, AM, LVO (Retd), Member

SOCIAL SECURITY – family tax benefit – whether applicant was overpaid family tax benefit – whether debt due to commonwealth – whether debt should be recovered – whether write off or waiver provisions available – sole administrative error – special circumstances – whether debt can be written off – decision affirmed

[Predo and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3293 (14 September 2021); D Mitchell, Member

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

[Ram and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3238 (8 September 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Payments – Family Tax Benefit – Application for Family Tax Benefit made outside claim period – Whether “special circumstances” prevented the Respondent from making a claim for Family Tax Benefit within the claim period – Meaning of “prevented” Found that Applicant may have rights under Scheme for Compensation for Detriment Caused by Defective Administration – Decision under review affirmed

[Saffoury and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3259 (9 September 2021); A Maryniak QC, Member

SOCIAL SECURITY – disability support pension – overpayment – recovery – impact of bankruptcy – decision partially varied and otherwise affirmed

[Young and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3290 (13 September 2021); Mr S Evans, Member

SOCIAL SECURITY – age pension – issues to determine: was the decision to cancel the Applicants’ age pension and raise a debt correct and if so, can the debt be written off or waived – provisions of the Social Security Act 1991 (Cth) and Social Security (Administration) Act 1999 considered – provisions of the Social Security Guide considered – financial and other circumstances of the Applicants considered – decision under review affirmed

Taxation

[Global Citizen Ltd and Commissioner of the Australian Charities and Not-for-profits Commission](#) [2021] AATA 3313 (17 September 2021); Deputy President B J McCabe and Professor A O’Connell, Senior Member

REGISTRATION AS A PUBLIC BENEVOLENT INSTITUTION – whereas the applicant is registered as a charity under the subtype of advancing education - whether the applicant has a benevolent purpose - whether the applicant provides relief - the applicant satisfies the required criteria - decision under review set aside - the applicant is to be registered as a public benevolent institution

[MJ and IT Holdings Pty Ltd and Commissioner of Taxation](#) (Taxation) [2021] AATA 3250 (8 September 2021); Senior Member K James

TAXATION – Coronavirus Economic Response Package – Cash Flow Boost – whether Applicant entered into scheme for the sole or dominant purpose of obtaining a Cash Flow Boost – integrity provision issues raised – whether payments withheld was on constructive receipt – meaning of withholding – withholding tax – payments from which amounts are to be withheld – financial statements – financial records keeping – objection decision sets aside and substituted

[Nguyen and Inspector-General in Bankruptcy](#) (Taxation) [2021] AATA 3318 (1 September 2021); Deputy President B W Rayment OAM QC

Taxation and Commercial - bankruptcy – income contribution assessment – housing fringe benefit – market rental assessment – whether appraisals by local real estate agents or method adopted by the respondent is more satisfactory - where consensus among local real estate agents’ appraisals - where appraisals by local real estate agents accepted as accurate and reliable – decision set aside and remitted

Veterans' Affairs

[Fill and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 3326 (13 September 2021); Deputy President R I Hanger AM QC

VETERANS' AFFAIRS – remitted appeal – claim for service pension – rate calculator – irrecoverable loans – assets – unit trusts – trustee – 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
CWRG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2408
Hraichie and Commissioner of Taxation	[2021] AATA 2773
Zhang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2163

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
AIO21 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2018] AATA 457	[2021] FCA 1105
BCDC v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1424	[2021] FCA 1114
Coal of Queensland Pty Ltd v Innovation and Science Australia	[2020] AATA 126	[2021] HCASL 163 [2021] FCAFC 54
DTCB v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 833	[2021] FCA 1098
LRMM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 923	[2021] FCA 1039
QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2161	[2021] FCAFC 166 [2020] FCA 1810



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