



Administrative
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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.

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

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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Recent news

Changes to how you can apply for a review and submit documents to the General and Other Divisions

From 31 January 2022, for the General and Other Divisions, you should use the AAT's [online services portal](#) to lodge applications and submit documents.

Emails will be monitored intermittently, so there may be delays in the processing of applications and documents received via email from this point.

Similar changes will be made to other types of cases in the future.

For more information, see the [AAT website](#).

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

[Abrams and Odell](#) (Child support) [2021] AATA 5030 (11 November 2021); R Ellis, Senior Member

CHILD SUPPORT – non-agency payments – prescribed payments for school expenses – payments correctly credited – decision under review affirmed

[Boulding and Wrinch](#) (Child support) [2021] AATA 5036 (10 November 2021); S Cullimore, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable incomes for past periods for the liable parent should be changed – discretion to assess based on Male Total Average Weekly Earnings – conditions for changing the incomes to lower amounts are met – liable parent's imprisonment and health issues prevented lodgement of taxable income – decision under review set aside and substituted

[Hilliam and Hilliam](#) (Child support) [2021] AATA 5031 (17 November 2021); H Moreland, Member

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

[Quealy and Child Support Registrar](#) (Child support) [2021] AATA 5034 (19 November 2021); J Thomson, Member

CHILD SUPPORT – refusal to grant an extension of time to object – reasonable explanation for the delay in lodging the objection – arguable merit – prejudice to the other parent outweighed by interests of justice – extension of time granted – decision under review set aside and substituted

[Polmans and Polmans](#) (Child support) [2021] AATA 5037 (17 November 2021); P Jensen, Member

CHILD SUPPORT – departure determination – costs of education – manner expected by both parents – cost of maintaining the children are significantly affected – financial resources of parents – business income available to liable parent – decision under review set aside and substituted

[YWZC and Child Support Registrar](#) (Child support second review) [2022] AATA 14 (7 January 2022); R Cameron, Senior Member

CHILD SUPPORT – percentage of care – whether existing care determination should be revoked – deficiencies with documentary evidence – cannot accept mother's contentions - existing care percentages not revoked – decision affirmed

[ZSKL and Child Support Registrar](#) (Child support second review) [2022] AATA 32 (14 January 2022); Dr L Bygrave, Member

CHILD SUPPORT – percentage of care – whether existing care percentage arrangement determination should be revoked – actual care – date of effect of any new determination — decision under review set aside and substituted

Citizenship

[CFYJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 23 (12 January 2022); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral — undocumented stateless Feyli Kurd – whether satisfied of identity of applicant – whether documentation was sufficient – consideration of DFAT Country Information Report – whether satisfied of life story – incontinences in place of birth and family composition – whether the application for citizenship should be approved – Tribunal not satisfied of identity – decision under review affirmed

[Dhillon and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 18 (12 January 2022); L Kirk, Senior Member

CITIZENSHIP – whether Applicant satisfies general residence requirement – Applicant has significant periods of absence from Australia – Applicant unable to demonstrate general residence requirement – whether Ministerial discretion should be applied - whether the Applicant maintained a ‘close and continuing association to Australia’ during periods of absence from Australia – Tribunal not satisfied the Applicant’s association with Australia during the relevant period was ‘close and continuing’ – decision under review affirmed

[Khanum and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 15 (4 January 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – whether the Tribunal is satisfied of the Applicant’s good character – Australian Citizenship Act 2007 (Cth) – Applicant maintained fraudulent identity for over a decade – false information to Department – Tribunal not satisfied Applicant is of good character – decision affirmed

[MSLQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 46 (19 January 2022); A Poljak, Senior Member

CITIZENSHIP – application for Australian Citizenship by conferral – identity and good character requirements not satisfied – where the applicant is a citizen of Afghanistan – two Taskeras provided – both Taskeras not registered according to verification centre – where the applicant provided verification letters from the Embassy – verification centre results preferred – provision of fraudulent material not indicative of good character – decision under review affirmed

[RTFY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 55 (19 January 2022); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – whether the applicant is of good character for the purposes of paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – prior criminal record – relevant law and policy considered – relevant material considered – decision affirmed

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

(Citizenship) [2022] AATA 41 (14 January 2022); K Parker, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Tribunal satisfied as to Applicant’s identity – Applicant arrived in Australia by boat as refugee – no primary or secondary identity documents pre-dating Applicant’s arrival in Australia – Applicant’s parents fled from Iraq – Applicant born in Iran and was raised by an Iranian citizen in Iran without identification papers – Applicant undertook education and employment in Iran on an unofficial basis – Applicant left Iran with no possessions when his Iranian guardian died – significance of inconsistencies in the information provided by Applicant about his life story and departure from Iran – whether Applicant provided adequate explanations for those inconsistencies – consideration of Applicant’s life story – Tribunal satisfied as to Applicant’s identity – Decision Under Review set aside and remitted for reconsideration with a direction that approval of Applicant’s citizenship application is not prohibited under s 24(3) of the Australian Citizenship Act 2007 (Cth)

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

(Citizenship) [2022] AATA 62 (20 January 2022); D J Morris, Senior Member

CITIZENSHIP – applicant was conferred Australian citizenship – minister revoked citizenship on two bases – applicant convicted of serious offence – minister satisfied contrary to the public interest for applicant to remain an Australian citizen – applicant sought review by Tribunal – threshold question would person be rendered stateless – consideration of factors – is discretion enlivened on the facts - is it contrary to the public interest for applicant to remain an Australian citizen – what does contrary to the public interest mean – relevant factors to take into account – should the discretion be exercised to revoke citizenship – decision under review is affirmed

Compensation

Binno and Comcare (Compensation) [2022] AATA 19 (12 January 2022); C Puplick AM, Senior Member

WORKERS’ COMPENSATION – whether there are any ailments or aggravations of ailments affecting the applicant’s psychological or physical condition – whether any such ailments or aggravations of ailments have been significantly contributed to by the applicant’s employment – whether any psychological condition arose as a result of reasonable administrative action – whether injury arose out of, or in course of employment – decision affirmed

Cheatham and Comcare (Compensation) [2022] AATA 37 (14 January 2022); D Mitchell, Member

COMPENSATION – claim for compensation in relation to a mental ailment – whether Applicant suffered a psychological ailment or aggravation of a psychological ailment – whether the Applicant’s employment contributed, to a significant degree, to the onset or aggravation of the Applicant’s ailment – did the Applicant’s ailment arise from reasonable administrative action – where Respondent determined no liability for compensation pursuant to section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – creditability of Applicant – decision under review affirmed

[Moran and Inco Ships Pty Ltd](#) (Compensation) [2022] AATA 36 (14 January 2022); The Hon. J Pascoe AC CVO, Deputy President

COMPENSATION – seafarers compensation – alleged psychiatric/psychological injury – whether applicant had a pre-existing psychological condition – whether the alleged injury arose out of or in the course of employment – whether the employment contributed to the condition to a material degree – where medical certification to work as a seafarer had expired – where applicant required to obtain new medical certification – decision under review affirmed

Conflict of Laws

[Singh and Chief Executive, Department of Justice and Attorney-General](#) [2022] AATA 39 (14 January 2022); D Mitchell, Member

MUTUAL RECOGNITION – application of mutual recognition principles where licence granted with conditions – where licence being relied upon for mutual recognition is subject to a condition – where that condition is further imposed in issuing the new licence pursuant to mutual recognition principles – Real Estate Agent Licence – decision under review affirmed

Education and Research

[Woolgrove and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 48 (13 January 2022); D Cox, Member

HIGHER EDUCATION SUPPORT – HECS-HELP debt – application for remission – Applicant claiming special circumstances – whether Applicant meets the test in subsection 36-21(1)(b) of the Higher Education Support Act 2003 (Cth) – decision affirmed

Migration

[1904681](#) (Migration) [2021] AATA 4920 (8 October 2021); A McLean Williams, Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 802 (Child) – applicant did not become dependent since last applying for substantive visa and has not been undertaking education since turning 18 – born in home country to Australian citizen father and permanent resident mother – unable to travel to Australia with family and fostered in home country – arrived in Australia as a teenager and child visa application made – family friend promised to sponsor applicant and submit Child visa application – application not made until after applicant turned 18 – sponsor encouraged applicant to discontinue education and pursue career in sport – victim of deliberately misleading and predatory behaviour – Ministerial intervention recommended – decision under review affirmed

[FOREVER LAWNCARE PTY LTD](#) (Migration) [2021] AATA 4869 (7 December 2021); N Dougall, Member

MIGRATION – approval of a nomination – occupation of Gardener (General) – genuine need for the employment – nominee's visa history – terms and conditions of employment no less favourable – duties of the position – labour market testing – facilitating a stay in Australia – decision under review set aside

[Grover](#) (Migration) [2021] AATA 4960 (7 September 2021); A Dronjic, Member

MIGRATION – Skilled Nominated (Permanent) (Class SN) visa – Subclass 190 (Skilled – Nominated) – false or misleading information in previous visa application – ongoing judicial review application – waiver of requirement – compassionate or compelling circumstances – unique skills highly sought after in Australia – Welfare Centre Manager – respiratory diseases specialist – relevant to the COVID-19 pandemic – decision under review remitted

[Manok](#) (Migration) [2021] AATA 4836 (10 December 2021); M Foster, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – sibling relationship between applicant and sponsor and death of father – documentary evidence obtained very quickly after visa refused – reliability of documents – country information – members of family unit – no power to consider compassionate grounds – consent to decision without hearing – decision under review affirmed

[Webster](#) (Migration) [2021] AATA 4870 (22 December 2021); L Hardy, Member

MIGRATION – cancellation – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – incorrect information given in second extension application – 6 months of specified work while holding first extension – verification checks showed claimed work not undertaken – discretion to cancel visa – information provided by third party – COVID-19 restrictions limited work opportunities – prevalence in home country – specified work undertaken after application made – decision under review affirmed

[Amoa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 56 (17 January 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 – expectations of the Australian community – impediments to removal – strength, nature and duration of ties to Australia – decision affirmed

[BNHW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 63 (19 January 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 applied – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – best interests of minor children – expectations of the Australian community – ties to Australia – impediments to removal – international non-refoulement obligations considered – decision set aside and substituted

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

(Migration) [2022] AATA 52 (18 January 2022); D J Morris, Senior Member

MIGRATION – applicant is a citizen of Vietnam – applicant’s visa mandatory cancelled owing to conviction for serious offence – delegate refuses to revoke mandatory cancellation – minister had made direction – consideration of primary considerations in direction – protection of the Australian community – best interests of affected minor child – expectations of Australian community – other considerations – extent of impediments if removed – links to Australian community – any other relevant consideration – decision under review set aside and new decision substituted

PRACTICE AND PROCEDURE – leave sought to present evidence of courses applicant has done in prison as evidence supporting rehabilitation and employability – leave also sought to submit courses applicant could potentially undertake if allowed to stay in Australia – leave denied – applicant had ample opportunity to present evidence of courses done – Tribunal directly questioned applicant – respondent did not object to evidence so given – no weight would be given to courses applicant could potentially do where no enquiries yet made or enrolment sought

PRACTICE AND PROCEDURE – applicant submitted a Tribunal decision in response to respondent’s closing submissions – applicant subsequently apologised for not giving notice – courtesy but no requirement to give notice – published Court or Tribunal decisions not precluded by s 500(6H) of Act requiring two days’ notice to respondent – such authorities not personal to applicant – respondent can be assumed to have knowledge of published decisions – however no doctrine of stare decisis in Tribunal – particular circumstances of case always relevant

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

(Migration) [2022] AATA 38 (14 January 2022); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – criminal record – possession of Methamphetamine – 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 50-year-old man who came to Australia as a 24-year-old – extent of impediments if returned to NZ – reviewable decision affirmed

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

(Migration) [2022] AATA 35 (4 January 2022); 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 – serious act of violence – decision under review affirmed

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

(Migration) [2022] AATA 58 (11 January 2022); D O'Donovan, Senior Member

MIGRATION - visa refusal - Applicant failed character test under s 501(6)(a) - previous finding of protection obligations under s 36(2)(a) - delegate subsequently exercised discretion to refuse visa under s 501(1) - whether Applicant fails character test under s 501(6)(a) - whether discretion to refuse Applicant’s visa should have been exercised - considerations weigh in favour of non-exercise of discretion to refuse - decision under review set aside and substituted

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

(Migration) [2022] AATA 20 (12 January 2022); C J Furnell, Senior Member

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

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

(Migration) [2021] AATA 5040 (21 December 2021); A G Melick AO SC, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of a Class BF transitional (Permanent) visa - where Applicant does not pass the character test – whether the discretion to revoke the visa cancellation should be exercised – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

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

(Migration) [2021] AATA 4948 (9 December 2021); L Kirk, Senior Member

MIGRATION – mandatory cancellation of visa – Class XE Subclass 790 Safe Haven Enterprise 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 – other considerations – decision set aside and substituted

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

(Migration) [2022] AATA 21 (12 January 2022); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – extensive offending history – 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 33-year-old man who arrived in Australia as an infant – extent of impediments if returned to New Zealand – Non-Revocation – Decision affirmed

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

(Migration) [2022] AATA 61 (20 January 2022); Mrs J C Kelly, Senior Member

MIGRATION – cancellation of Applicant's Class TY, Subclass 444 Special Category (Temporary) visa – Applicant is a citizen of New Zealand – whether any error in decision to cancel visa pursuant to s 501(3A) – whether decision-maker entitled to rely on same term of imprisonment relied on in previous mandatory visa cancellation – failure to pass the 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 – expectations of the Australian community – extent of impediments if removed – impact on victims – links to the Australian community – decision under review set aside

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

(Migration) [2022] AATA 43 (17 January 2022); 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 – domestic violence committed by the Applicant – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

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

(Migration) [2021] AATA 4978 (24 December 2021); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 applied – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – best interests of minor children – expectations of the Australian community – links to the Australian community – impediments to removal – decision set aside and substituted

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

(Migration) [2021] AATA 5043 (23 December 2021); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of [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 – decision under review affirmed

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

(Migration) [2022] AATA 47 (19 January 2022); R Cameron, Senior Member

MIGRATION – bridging visa application refusal – Class WE subclass 050 Bridging Visa – applicant non-citizen born in Cambodia – whether the applicant passes the character test – contents of Direction 90 – risk of re-offending – family law matters – intervention order – bail granted - minimal or trivial likelihood of risk – decision set aside and remitted

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

(Migration) [2022] AATA 54 (18 January 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – Applicant convicted of two money laundering offences – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – minor children outside of Australia – expectations of the Australian community – extent of impediments if removed to Vietnam – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 34-year-old woman who arrived in Australia nearly eight years ago under a partner visa – Applicant is a victim of domestic violence – domestic violence as a separate other consideration – minor children outside Australia considered as a separate other consideration – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted

National Disability Insurance Scheme

[Davis and National Disability Insurance Agency](#) [2022] AATA 40 (14 January 2022); K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria met – permanency of impairments – whether impairments resulted in substantially reduced functional capacity in one or more of the prescribed activities – Decision Under Review set aside and substituted – access granted

[Hasson and National Disability Insurance Agency](#) [2022] AATA 34 (14 January 2022); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE AGENCY – access to the scheme – whether applicant meets the disability and early intervention requirements – where Tribunal finds impairment is permanent – right-hand deformity and dysfunction – 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 – decision under review affirmed

Practice and Procedure

[Austin and National Disability Insurance Agency](#) [2022] AATA 16 (11 January 2022); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – participant of scheme – Tribunal jurisdiction – procedural fairness – where the applicant sought an internal review and the NDIA conducted an unscheduled plan review under subsection 48(2) of the National Disability Insurance Scheme Act 2013 (Cth) – question of whether consent to apply for an internal review

[Fatehi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs \(Citizenship\)](#) [2022] AATA 31 (14 January 2022); A Poljak, Senior Member

PRACTICE AND PROCEDURE – summons to produce documents issued to the applicant’s treating psychologist – objection to inspection orders by the applicant – legal professional privilege claimed – purpose of the third party communications – applicant’s objection refused – respondent granted full access

[Goodliff and National Disability Insurance Agency](#) [2021] AATA 5022 (17 December 2021); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – National Disability Insurance Scheme – Tribunal has no jurisdiction where an applicant has been accepted as a participant upon internal review – application refused

[JXWV and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 5019 (10 December 2021); Ms A E Burke AO, Member

SOCIAL SECURITY — oral decision —not eligible for economic support payment — review therefore futile – application dismissed as no reasonable prospects of success

[Osman and DHL Supply Chain \(Australia\) Pty Ltd](#) (Compensation) [2022] AATA 59 (20 January 2022); A Poljak, Senior Member

PRACTICE AND PROCEDURE – reinstatement application – where the applicant withdrew – whether it is appropriate in the circumstances to reinstate the application – whether the application was dismissed in error – where main reason for seeking reinstatement is to reignite settlement negotiations – reinstatement application refused

[Victorian Institute of Technology Pty Ltd and Tertiary Education Quality and Standards Agency](#) [2021] AATA 4926 (20 December 2021); R West, Member

PRACTICE AND PROCEDURE – application to stay decision of Tertiary Education Quality and Standards Agency – Commonwealth Register of Institutions and Courses for Overseas Students – decision not to renew registration – imposition of conditions – application to stay part of the decision – factors relevant to the granting of a stay – maintenance of standards for education and training – protection of students – insufficient evidence of financial impact – stay application refused

[Walsh and National Disability Insurance Agency](#) [2021] AATA 4927 (26 November 2021); P Smith, Member

PRACTICE AND PROCEDURE – whether application should be dismissed under subsection 42A(5) of the Administrative Appeals Tribunal Act 1975 – applicant failed to appear at two scheduled events – application dismissed

Refugee

[1718712](#) (Refugee) [2021] AATA 5041 (8 December 2021); S Clarey, Member

REFUGEE – protection visa – Iraq – political opinion – opposition to militia groups – particular social group – people who actively oppose militia activity – religion – mixed marriage – fear of killing – refusal to join militia group – bomb attack on home – internal relocation – state protection – decision under review remitted

[1818153](#) (Refugee) [2021] AATA 4944 (20 October 2021); P Vlahos, Member

REFUGEE – protection visa – Uganda – particular social group – lesbian – homosexuality – public profile due to previous marriage – long-term sexual repression while living in Uganda – decision under review remitted

[1837029](#) (Refugee) [2021] AATA 5026 (30 November 2021); J Lambie, Senior Member

REFUGEE – cancellation – protection visa – Pakistan – incorrect information in the visa application – nationality – Pakistan citizenship – identity and age details – bogus documents – race – Hazara – false identity documents – Pakistan citizenship – false identity consistent with the information provided by the applicant's brother – real chance of serious harm in Pakistan – non-refoulement obligations – decision under review set aside

[2012790](#) (Refugee) [2021] AATA 4972 (22 October 2021); P Wood, Senior Member

REFUGEE – protection visa – South Africa – political opinion – contributed to conviction of prominent African National Congress (ANC) members – anti-corruption witness – fears persecution from the African National Congress – victim of false criminal charges – applicant’s oral evidence rehearsed and lacking detail – credibility concerns – decision under review affirmed

[2112867](#) (Refugee) [2021] AATA 4973 (8 November 2021); R Smidt, Member

REFUGEE – protection visa – India – particular social group – mixed religion marriage – member of the family unit – relationship ceased – credibility issues – physical assault – applicant arrested – application to vary apprehended violence order (AVO) – decision under review affirmed

Social Services

[Cole- Herring and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 17 (10 January 2022); M Griffin QC, Senior Member

DISABILITY SUPPORT PENSION – lump sum payment – disability payments – compensation affected payment – preclusion period – past and future economic loss – waiver of debt in special circumstances – whether special circumstances exist – review decision varied

[CZBN; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 51 (19 January 2022); M East, Member

SOCIAL SECURITY – disability support pension – continuing inability to work – whether continuing inability first arose before becoming Australian resident – autism spectrum disorder – conflicting opinion of clinical psychologists – Reviewable Decision affirmed

[Lalic and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 49 (18 January 2022); Mr S Evans, Member

SOCIAL SECURITY – jobseeker payment – start date of applicant’s payment – whether it can be backdated pursuant to relevant determinations and legislative provisions – whether the applicant is a ‘vulnerable’ person with ‘special circumstances’ – relevant law and policy considered – relevant material considered – decision under review affirmed

[Lloyd and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 50 (18 January 2022); Mr S Evans, Member

SOCIAL SECURITY – age pension – whether proceeds of sale of principal home are exempted from the assets test – whether age pension was correctly cancelled – whether a debt is owed to the Commonwealth – whether a debt can be written or waived in whole or in part – relevant legislation and policy considered – relevant material considered – decision under review set aside and substituted

[Schuh; Secretary, Department of Social Services and](#) (Social services second review) [2022]
AATA 53 (18 January 2022); B Pola, Senior Member

SOCIAL SECURITY – overpayment of family tax benefit and child care benefit – overpayment debts due to Commonwealth – write-off of debts not appropriate – no waiver as debts not attributable solely to administrative error – no “special circumstances” warranting waiver of debts – decision under review set aside

[SRCC and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 4938 (23 December 2021); B J Illingworth, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – family tax benefit – shared care of children – whether children are FTB children of the applicant – pattern of care discussed – Federal Circuit Court care orders discussed – children not FTB children of the applicant – decision affirmed

[Storey and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 60 (18 January 2022); L Rieper, Member

SOCIAL SERVICES – preclusion period – lump sum compensation payment – start date for preclusion period – whether the preclusion period had been incorrectly calculated – decision set aside and substituted

[Thurston and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 45 (18 January 2022); L Rieper, Member

SOCIAL SECURITY – Disability Support Pension – qualification period – whether the Applicant was qualified to receive DSP on the date of his claim – mental health condition – Impaired hearing and tinnitus – left wrist condition – sleep apnoea – Impairment related qualification criterion not satisfied – decision affirmed

[Twaddle and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 30 (14 January 2022); B Cullen, Member

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

[Ward and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 57 (18 January 2022); J Sosso, Deputy President

SOCIAL SECURITY – carer payment – compensation preclusion period – compensation charge - whether special circumstances exist - financial and other circumstances – financial hardship – conduct and health of the Applicant – Application of the 50% rule – decision under review set aside and remitted with the direction that the compensation payment paid is deemed as not have been made

Taxation

[Khanna and Commissioner of Taxation](#) (Taxation) [2022] AATA 33 (14 January 2022); Dr M Evans-Bonner, Senior Member

TAXATION – income tax assessment for year ended 30 June 2019 – personal superannuation contributions – whether Applicant entitled to a deduction for personal superannuation contributions – Applicant made redundant due to effect of COVID-19 pandemic and is seeking assistance as a “COVID victim” – Applicant lodged notice of intent to claim or vary a deduction for personal superannuation contributions late – no discretion to extend the time limit – whether the application should be dismissed on the basis it has no reasonable prospects of success or whether the substantive application should be determined – Reviewable Decision affirmed

[RWPY and Commissioner of Taxation](#) (Taxation) [2021] AATA 4921 (24 December 2021); B J McCabe, Deputy President

ELIGIBILITY FOR JOBKEEPER PAYMENTS – whereas the applicant made an application for Jobkeeper payments – whether the applicant was carrying on a business – whether the applicant’s work was that of an independent contractor – applicant was not found to be carrying on a business – decision under review affirmed

[Thanabalasingam and Tax Practitioners Board](#) (Taxation) [2021] AATA 5042 (9 December 2021); R Reitano, Member

APPLICATION FOR REGISTRATION AS A TAX AGENT – whether the applicant has the required relevant experience to be registered – whether the applicant has worked under the supervision and control of a registered tax agent for the required period – Tribunal not satisfied that this has occurred – decision under review affirmed

Trade and Commerce

[Australis Leisure Pty Ltd and Australian Trade and Investment Commission \(Austrade\)](#) [2022] AATA 44 (17 January 2022); J Sosso, Deputy President

FOREIGN AFFAIRS AND TRADE – export market development grants - whether the activities (other than manufacture) which result in the goods being made ready for sale primarily or substantially carried on in Australia – whether a significant proportion of the value of the goods added within Australia - 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
Australian Conservation Foundation and Secretary, Department of Agriculture, Water and the Environment	[2021] AATA 4619
Foster and National Disability Insurance Agency	[2021] AATA 4738
JSMJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4183
KKTB and National Disability Insurance Agency	2020/5978
Mihai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4503
Mukiza and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1488
Ocampo and Australian Postal Corporation	[2021] AATA 4464
Pourabbas Aghbolagh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4269
RPQB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3644
Spall and Minister for Home Affairs	[2021] AATA 4290
Storry and Business Licensing Authority & Office of Fair Trading (Victoria)	2021/6256
XZJY and National Disability Insurance Agency	2020/5985
YHPS and National Disability Insurance Agency	2020/6004

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BET20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 155	[2022] FCA 6 [2020] FCA 1539
Broad v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4563	[2021] FCA 840
SGQV v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2020] AATA 4594	VID812/2020

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