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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

[Bellett and Valentine](#) (Child support) [2021] AATA 3362 (22 July 2021); M Sutherland, 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

[Keysor and Keysor](#) (Child support) [2021] AATA 3177 (21 July 2021); S Letch, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – decision under review set aside and substituted

[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

[Gowland and Child Support Registrar](#) (Child support) [2021] AATA 3188 (2 August 2021); D Benk, Senior Member

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

Citizenship

[Al Shimmery and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3410 (8 September 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – good character requirement under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – offence of affray – plea of guilty – sentenced to 12-month good behaviour bond – other minor offences – decision set aside and remitted

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

(Citizenship) [2021] AATA 3473 (29 September 2021); R Maguire, Member

CITIZENSHIP – citizenship by conferral – character test – whether Applicant is of good character – prior traffic offences – convictions not recorded – wants to sponsor partner – Applicant not of good character – Decision affirmed

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

(Citizenship) [2021] AATA 3408 (23 September 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – whether Applicant meets requirement of likely to reside in Australia – Applicant demonstrated attachment to Australia – more probable than not Applicant will reside in Australia – decision set aside and remitted to Respondent

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

(Citizenship) [2021] AATA 3444 (23 September 2021); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – stateless Hazara national – whether satisfied of identity of applicant – whether documentation was sufficient – whether made genuine attempt to obtain documentation from Afghanistan/Iran – consideration of DFAT Country Information Report – whether satisfied of life story - whether the application for citizenship should be approved – life story remained consistent – Tribunal satisfied of identity – decision under review set aside and remitted

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

(Citizenship) [2021] AATA 3375 (25 August 2021); A Maryniak QC, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Applicant has satisfied identity requirement under s 24(3) of Australian Citizenship Act 2007 – inconsistencies within the Applicant's 'life story' – evidence supporting Biometrics and Documents pillars – Tribunal satisfied as to the Applicant's identity

Compensation

Mitchell and Comcare (Compensation) [2021] AATA 3376 (17 September 2021); A Poljak, Senior Member

COMPENSATION – applicant previously employed by Department of Defence – adjustment disorder – anxiety – depression – adult attention deficit disorder – hepatitis B – post traumatic stress disorder – renal failure – back pain – claim for boxing classes to be compensated under s 16 – claim for law degree to be included as part of rehabilitation program under s 37 – whether applicant continued to suffer from aggravation of compensable injury during relevant period – whether applicant still suffered a 'disease' as defined in ss 4 and 5B – reviewable decision related to boxing classes claim affirmed – reviewable decision related to law degree claim set aside and substituted

[Muglia and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3423 (24 September 2021); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – compensation preclusion period – 28-day period has elapsed – where extent of delay reasonably explained – where there is no reasonable prospect of success – application refused

Corporations

[Schroeder and Australian Securities and Investments Commission](#) [2021] AATA 3519 (30 September 2021); The Hon Justice D G Thomas, President and B J McCabe, Deputy President

CORPORATIONS – banning order – where applicant banned from providing financial services for a period of six years – where scope of Tribunal review changed as a result of legislative amendments – whether applicant should be banned from providing financial services on the basis that he is not a ‘fit and proper person’ – whether other grounds for a banning order in s 920A of the Corporations Act 2001 (Cth) enlivened – decision under review varied

[Stolyar and Inspector-General in Bankruptcy](#) [2021] AATA 3398 (22 September 2021); L Kirk, Senior Member

BANKRUPTCY – notice of objection from discharge – objection to specify a special ground – failure by bankrupt to disclose beneficial interest – sufficient evidence to support special ground exists – bankrupt had requisite intent not to disclose beneficial interest – bankrupt does not have reasonable excuse for failure to disclose beneficial interest – decision affirmed

Customs

[Hurley and Collector of Customs](#) [2021] AATA 3381 (21 September 2021); S Boyle, Deputy President

CUSTOMS – decisions of the Collector to issue statutory demands for payment of duty – alcohol as a dutiable good – whether there was a failure to keep the dutiable goods safely pursuant to s 35A(1)(a) of the Customs Act – periodic settlement permission (PSP) to deliver alcoholic beverages into home consumption without payment of duty applied – Caltex principles applied – Applicant failed to keep the dutiable goods safely pursuant to s 35A(1)(a)

Education and Research

[Sebbaha and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 3518 (1 October 2021); Dr S Fenwick, Senior Member

EDUCATION – HECS-HELP – debt remission – whether special circumstances apply – medical condition preventing attendance – full impact not on or after census date – decision affirmed

Industrial Law

[Bhagwandas and Secretary, Attorney-General's Department](#) [2021] AATA 3509 (30 September 2021); Dr S Fenwick, Senior Member

FAIR ENTITLEMENTS GUARANTEE – real estate agent – commission payments are wages entitlement – work done in the wages entitlement period – decision under review set aside and remitted

Migration

[BYMD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3476 (21 September 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BA Subclass 200 Refugee 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 – consideration of Australia's international non-refoulement obligations – sexual offences – family violence – decision under review affirmed

[De Pinho Neto and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3384 (21 September 2021); S Evans, Member

MIGRATION – visa cancellation under section 501 of the Migration Act 1958 (Cth) – cancellation not revoked under section 501CA – issue: should the cancellation be revoked – Direction No. 90 considered – primary and other considerations considered – Applicant's criminal history and background considered – Brazilian cultural factors considered – decision under review set aside and substituted

[Lafaele and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3379 (15 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 – applicant's history of drug related offences in New Zealand and Australia – applicant convicted of offence of drug trafficking – best interests of minor child – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision affirmed

[Metcalf and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3498 (28 September 2021); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – criminal record – possession of child exploitation material – 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 76-year-old man who came to Australia as a 27-year-old – extent of impediments if returned to UK – reviewable decision affirmed

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

(Migration) [2021] AATA 3443 (20 September 2021); A G Melick AO SC, Deputy President

MIGRATION – non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa – does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – drug trafficking – decision under review is set aside and substituted

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

(Migration) [2021] AATA 3380 (16 September 2021); J Rau SC, Senior Member

MIGRATION – refusal of application for Special Category (Temporary) (Class TY) (Subclass 444) under section 501(1) – where 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 – domestic violence – decision under review affirmed

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

(Migration) [2021] AATA 3514 (30 September 2021); T Tavoularis, Senior Member

MIGRATION – mandatory cancellation of the Applicant's Class XA Subclass 866 protection visa – Migration Act 1958 (Cth) s 501(3A) – Applicant fails to pass the character test – substantial criminal record – sentenced to a term of imprisonment for 12 months or more – whether there is another reason why the cancellation should be revoked – s 501CA – application of Direction No. 90 – international non-refoulement – where Applicant a citizen from Afghanistan – decision under review affirmed

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

(Migration) [2021] AATA 3385 (21 September 2021); C Burnett-Wake, Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 special category visa – where applicant has substantial criminal record – where applicant concedes he fails the character test – whether there is another reason under s 501CA of the Migration Act to revoke mandatory cancellation of the visa – ministerial direction no.90 – primary considerations – protection of the Australian community – the nature and seriousness of the conduct – the best interests of minor children – expectations of Australian community – other relevant considerations – extent of impediments if applicant is removed to New Zealand – impact on victims – ties to the Australian community – decision under review affirmed

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

(Migration) [2021] AATA 3474 (28 September 2021); J Sosso, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of Class BB Subclass 155 visa - where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No 90 – domestic violence – mental health issues – availability of health care in South Korea – decision under review affirmed

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

(Migration) [2021] AATA 3378 (20 September 2021); R Reitano, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – where Applicant has served prison sentence of 12 months or more – whether discretion in s501CA to revoke mandatory visa cancellation should be exercised – Direction No 90 – primary and other considerations – risk of re-offending – the protection and expectations of Australian community – the impact on victims – best interest of minor children – strength, nature, and duration of connections to Australia – non-refoulement obligations – impediments to applicant if removed – possibility of indefinite detention – whether the Tribunal has power to make decision – whether Applicant made representations to the Minister in time – whether the Applicant made representations to the Minister in prescribed form – where Applicant has significant mental health condition – where Applicant has substantial history of offending – degree of seriousness of offences – Reviewable Decision set aside and substituted

2109047 (Migration) [2021] AATA 3422 (12 August 2021); D Kelly, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – compliance with conditions and acceptable arrangements to depart Australia – requirement of a security – visa history, including unsuccessful application for protection visa, applications for bridging visas and periods as unlawful non-citizen – criminal offences, imprisonment and immigration detention – no arrangements to depart while High Court application in progress – removal as soon as practicable – travel restrictions and arrangements by home country and Australia – non-refoulement – general economic conditions – offers of support by brother and employers – hardship to wife and children – decision under review affirmed

Chen (Migration) [2021] AATA 3401 (20 August 2021); H Sanderson, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 102 (Adoption) – legitimate adoption – review applicant residing overseas over 12 months – adoption laws in China – acquiring Australian citizenship before adoption – review applicant's former wife currently providing care – adoption order not revoked – business commitments in Australia – referral for Ministerial Intervention – no other obvious person to care for the visa applicant in China – decision under review affirmed

Deng (Migration) [2021] AATA 3339 (24 August 2021); M Edgoose, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – members of the family unit – customary adoption – customs and culture of the Dinka tribe – biological mother attested to the adoption – formal legal adoption not reasonably practicable – civil unrest in South Sudan – closer relationship than with any other person – money transfers – decision under review remitted

Octavianus (Migration) [2021] AATA 3328 (27 August 2021); P Vlahos, Member

MIGRATION – Extended Eligibility (Temporary) (Class TK) visa – Subclass 445 (Dependent Child) – consent of both parents for the child's visa – consent of child over 12 years – father not communicating with the visa applicant – valid court order permitting removal from Indonesia – written consent from the applicant's father – decision under review remitted

[Gervais](#) (Migration) [2021] AATA 3491 (27 August 2021); P Hunter, Member

MIGRATION – Employer Nomination (Permanent) visa – Subclass 186 Employer Nomination Scheme – no approved nomination – bogus document with the visa application – false educational qualifications – compelling or compassionate circumstances – applicant left sponsoring employer – employer withdrew sponsorship – applicant’s crucial role with new employer – decision under review affirmed

National Disability Insurance Scheme

[CKPN and National Disability Insurance Agency](#) [2021] AATA 3447 (28 September 2021); K. Parker, Member

PRACTICE AND PROCEDURE – objection to Respondent’s request for 15 summonses – objections raised about issuing of summonses or certain aspects of them – Applicant’s request for one summons – determination by the Tribunal of the issues arising in the proceeding and orders made under s 25(4) of the Administrative Appeals Tribunal Act 1975 (Cth) – whether there is a reasonable expectation that summonses would shed light on the issues in the proceeding – whether period referred to in some of the summonses should be reduced – caution issued to both parties about their adversarial approach in the context of an expedited proceeding – some, but not all, summonses issued – Tribunal not satisfied time period referred to in summonses should be reduced

[Lamb and National Disability Insurance Agency](#) [2021] AATA 3373 (17 September 2021); K Buxton, Member

NATIONAL DISABILITY INSURANCE SCHEME – appointment, cancellation or suspension of nominee – nominee’s duty to consult – previous conduct of nominee – impact on participant’s funded supports – event or change of circumstances likely to affect the ability of the nominee to act – decision under review affirmed

[TJYS and National Disability Insurance Agency](#) [2021] AATA 3409 (20 September 2021); B W Rayment OAM QC, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – where claimed support is an assistance dog – whether claimed support is reasonable and necessary pursuant to s 34 of the National Disability Insurance Scheme Act 2013 – whether claimed support is likely to be effective and beneficial for the applicant – whether the claimed support represents value for money – whether there are comparable supports that achieve the same outcome at lower cost – whether the claimed support is likely to pose a risk to the applicant or others – decision under review set aside and substituted

[Vecchio and National Disability Insurance Agency](#) [2021] AATA 3510 (30 September 2021); C Puplick AM, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – whether claimed supports are reasonable and necessary – whether supports represent value for money – whether supports are not duplicative of currently funded supports – whether supports are in accordance with NDIS rules and guidelines – whether supports relate to “day to day living” – where home to be modified is not the participant’s principal place of residence where they intend to remain living – decision affirmed

[Williams and National Disability Insurance Agency](#) [2021] AATA 3383 (20 September 2021); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – learning disability – chronic inflammatory spondylarthritis – anxiety – depression – chronic fatigue syndrome – whether impairments result in “substantially reduced functional capacity” to undertake any one or more specified activities – whether Applicant meets early intervention requirements – access criteria under sections 24 and 25 National Disability Insurance Scheme Act 2013 not met – decision affirmed

Practice and Procedure

[Heydenrych and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3377 (21 September 2021); A Poljak, Senior Member

PRACTICE AND PROCEDURE – application for extension of time – substantive matter seeks review of decision to cancel applicant’s carer payment and carer allowance – whether it is reasonable in all the circumstances to do so – extent and reason for the delay – prejudice to the respondent – whether the applicant rested on his rights – merits of the substantive matter – extension of time application refused

[Martinovic and Australian Capital Territory](#) (Compensation) [2021] AATA 3435 (27 September 2021); S Webb, Member

PRACTICE AND PROCEDURE – compensation for psychological injury – determination of no present liability in respect of medical treatment expenses and incapacity for work – application for review – summons – production of medical records – legitimate forensic purpose – objections to access – request for non-disclosure orders – relevant principles – right to privacy – Harman obligation – apparent relevance – objection refused

[Oczesaschek and National Disability Insurance Agency](#) [2021] AATA 3511 (30 September 2021); B W Rayment OAM QC, Deputy President

PRACTICE AND PROCEDURE - National Disability Insurance Scheme – where applicant applied to Tribunal to review a decision not to approve certain supports – where the applicant requested the Tribunal consider additional supports – where additional supports not put to the original decision maker – where additional supports not put to the internal review decision maker – whether the participant’s plan is ambulatory – the reach of the CEO’s approval power – jurisdiction of the Tribunal – Tribunal has no jurisdiction to consider additional supports

[Sheward and National Disability Insurance Agency](#) [2021] AATA 3372 (20 September 2021); Dr C Huntly, Member

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act 1975 (Cth) – interlocutory decision – directions regarding concurrent evidence – objection made to use of concurrent evidence procedure – Tribunal consideration – General Practice Directions – Use of Concurrent Evidence Guideline – submissions not persuasive – directions stand

[Whitby-Smith and National Disability Insurance Agency](#) [2021] AATA 3446 (28 September 2021); K Parker, Member

PRACTICE AND PROCEDURE – powers of the Tribunal upon review – whether Tribunal has jurisdiction in respect of all supports requested by Applicant – determination of the matters before or put before National Disability Insurance Agency internal reviewer – whether direction should be made under s 25(4) of the Administrative Appeals Tribunal Act 1975 (Cth) to limit issues

[Selkirk and National Disability Insurance Agency](#) [2021] AATA 3478 (29 September 2021); R Reitano, Member

JURISDICTION – where the decision maker has decided not to appoint a plan nominee or correspondence nominee – meaning of the words ‘a decision to appoint a plan nominee – meaning of the words ‘a decision to appoint a correspondence nominee’ – section 99 reviewable decisions and decision makers – statutory interpretation – ordinary English meaning – context – purpose of Act – Tribunal does not have jurisdiction to review

[SBZQ and National Disability Insurance Agency](#) [2021] AATA 3496 (29 September 2021); K Buxton, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – jurisdiction – whether authority to lodge review application – parental responsibility – whether substantive or procedural defect – application may be validated retrospectively – Tribunal has jurisdiction to determine the application

Professions and Trades

[Meagher and Victorian Bar Incorporated](#) [2021] AATA 3445 (28 September 2021); P Britten-Jones, Deputy President

PRACTICE & PROCEDURE – JURISDICTION – Trans-Tasman Mutual Recognition Act 1997 (Cth) (TTRMA) – decision to grant or refuse New Zealand barrister a Victorian barristers’ practising certificate – decision to refuse a New Zealand barrister membership to the Victorian Bar – whether the Tribunal has jurisdiction to review these decisions – meaning of ‘decisions made in the exercise of powers conferred by that enactment’ – whether a decision to grant a practising certificate on condition of insurance is a decision made under the TTRMA or the Legal Profession Uniform Law (Victoria) – whether a decision to refuse to grant New Zealand barrister membership to the Victorian Bar is a decision under the TTRMA or under the Constitution of the Victorian Bar – meaning of ‘registration’ under the TTRMA – jurisdiction found for the practising certificate decision – no jurisdiction found for the membership decision

Refugee

[1709775](#) (Refugee) [2021] AATA 3393 (5 July 2021); D McCulloch, Member

REFUGEE – protection visa – Nigeria – family land dispute – homosexuality – credibility concerns – inconsistent social media information – inconsistent evidence – decision under review affirmed

[2104473](#) (Refugee) [2021] AATA 3499 (14 July 2021); J Meyer, Member

REFUGEE – protection visa – South Africa – race – white South African – particular social group – white farmer living in rural area – high crime rate – reverse apartheid – access to employment – COVID-19 – access to healthcare and social welfare – criminal conviction in Australia – National Register for Sex Offenders – vigilantism – decision under review affirmed

[1715978](#) (Refugee) [2021] AATA 3504 (28 July 2021); T Hamilton-Noy, Member

REFUGEE – protection visa – Papua New Guinea – particular social group – women in Papua New Guinea – attempted sexual assaults – family members of Papua New Guinea Defence Force soldiers – Autonomous Region of Bougainville – pro-independence movement – fear of the Bougainville Revolution Army (BRA) – effective state protection – culture of tribal violence and payback – repeated returns to Papua New Guinea – significant delay in seeking protection – decision under review remitted

[1712502](#) (Refugee) [2021] AATA 3500 (30 July 2021); P Noonan, Member

REFUGEE – protection visa – Libya – arrival as Gaddafi scholarship holder – seen as supporter of Gaddafi – social group – applicant's daughters – young Westernised females – unfamiliar with language and culture – risk of persecution – decision under review remitted

[1918722](#) (Refugee) [2021] AATA 3503 (11 August 2021); F Simmons, Member

REFUGEE – protection visa – cancellation – Afghanistan – incorrect information – irregular maritime arrival – claimed to be Pakistani citizen – Hazara – Shia – previous applications for humanitarian visas under different names – inconsistent evidence – applicant is citizen of Afghanistan – US withdrawal from Afghanistan – applicant's ethnicity and religion – no support in Afghanistan – decision under review set aside

[1720116](#) (Refugee) [2021] AATA 3502 (11 August 2021); N Lamont, Member

REFUGEE – protection visa – Congo, Democratic Republic of – political opinion – member of Union Pour la Democratie et le Progres Social (UDPS) – arrest and persecution – disappearance of husband and children – use of aliases – credibility issues – Australian citizen children – father incarcerated – best interest of children – referred for ministerial intervention – decision under review affirmed

[1925478](#) (Refugee) [2021] AATA 3501 (23 August 2021); N Lamont, Member

REFUGEE – protection visa – Afghanistan – Federal Court remittal – ethnicity, religion and imputed political opinion – Hazara Shia, imputed anti-Taliban – general persecution, threats and attacks, and restriction of religious practice – applicant present at major bomb attack – all family members refugees in third country – Australian permanent resident wife and citizen child – spontaneous, detailed and consistent evidence – country information – withdrawal of international troops, fall of government and takeover by Taliban – decision under review remitted

[1711505](#) (Refugee) [2021] AATA 3441 (18 September 2021); R Smidt, Member

REFUGEE – protection visa – Jordan – religion – Christian now atheist critical of Islam and Christianity – political opinion – supporter of secularisation of constitution – activity on social media and online forums – threats, warnings, blocked posts and suspended accounts – returned failed asylum seeker – mental health – credibility – inconsistent claims and unconvincing evidence – application for protection made after spouse visa refused – activities and interactions exaggerated or manipulated, undated or dating from after spouse visa refused or not clearly identified as the applicant – country information – no legal penalties for conversion or apostasy, and low to moderate ostracism and discrimination – decision under review affirmed

Social Services

[Achmar and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3479 (23 September 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – disability support pension – no program of support – whether severe impairment – thyroid cancer – spinal condition – mental health condition not fully diagnosed – upper limb condition affecting hands and arms not severe impairment – other conditions not fully diagnosed, treated and stabilised – decision under review affirmed.

[Ahmad and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3434 (24 September 2021); M Griffin QC, Senior Member

SOCIAL SECURITY – claim for disability support pension – qualification period – whether the Applicant was qualified to receive DSP on the date of her claim, whether conditions were permanent as at the qualification period – whether conditions were fully diagnosed, treated and stabilised – eligibility requirements were met as at qualification period – original decision affirmed

[Armanious and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3374 (18 August 2021); W Frost, Member

SOCIAL SECURITY – disability support pension – whether condition is permanent – whether condition fully treated and stabilised during relevant period – Applicant not assigned any impairment rating under the Impairment Tables for conditions during the qualification period – decision under review affirmed

[Barrett and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3400 (22 September 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including diverticular disease – whether fully diagnosed, treated and stabilised – degree of impairment-corroboration – JCA Report – decision under review set aside and substituted

[Dawson; Secretary, Department of Social Services and](#) (Social services second review) [2021]
AATA 3442 (16 September 2021); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – extension of time to apply for review of a decision of the Social Services and Child Support Division of the Tribunal (AAT1) – factors that are relevant when considering an extension of time – awareness of appeal rights and explanation for delay – length of delay – prejudice to the Respondent and general public – merits of the substantive application – whether alternative avenues of relief available to the Applicant – Tribunal not satisfied extension of time reasonable in all the circumstances – poor conduct by the Secretary who submitted that regardless of the outcome of this application he would not implement the AAT1 Decision – application for extension of time refused – stay order application dismissed because AAT1 Decision not reviewable

[Dubroja and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3505 (30 September 2021); Dr L Bygrave, Member

SOCIAL SECURITY – multiple applications for review – periodic compensation payments – rate of payment – whether applicant was a member of a couple – not married – financial aspects of the relationship – nature of household – social aspects of relationship – sexual relationship – nature of commitment to each other – overpayment debt – disability support pension claim – whether applicant has an impairment rating of 20 points or more under the Impairment Tables

[Dubroja and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3507 (30 September 2021); Dr L Bygrave, Member

SOCIAL SECURITY – multiple applications for review – whether applicant was a member of a couple – not married – financial aspects of the relationship – nature of household – social aspects of relationship – sexual relationship – nature of commitment to each other – rate of payment – parenting payment – carer payment – family tax benefit – whether there is a debt – whether debt should be recovered – waiver of debt in special circumstances – waiver of debt arising from sole administrative error – writing off debt

[El-Omari and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3387 (22 September 2021); Dr L Bygrave, Member

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

[Joseski and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3412 (24 September 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – carer payment – carer allowance – whether applicant obtained the benefit of these payments when not entitled to – whether applicant has a debt to the Commonwealth – serious mental illness – capacity to repay the debt – whether debt should be written off – whether debt solely attributable to administrative error – whether debt should be waived due to special circumstances – decision set aside and remitted

[Kervin and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3411 (24 September 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – Pension Bonus Scheme – 13 week period to seek review – whether special circumstances exist to extend the lodgement period for the Applicant’s claim under the Pension Bonus Scheme – applicant not provided with information relevant to his situation – decision set aside and substituted

[Simpson and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3506 (30 September 2021); A Poljak, Senior Member

SOCIAL SECURITY – cancellation of age pension – assets test – valuation of property – net market value test applied – four valuations provided – whether the applicant had sold his share of the property to his son – whether common intention constructive trust existed – decision under review affirmed

[Vracar and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3382 (21 September 2021); C Puplick AM, Senior Member

SOCIAL SECURITY – entitlement to disability support pension – whether conditions fully diagnosed, treated and stabilised during the qualification period – where treatment was refused – whether impairment was of 20 points or more under s 94(1)(b) – decision affirmed

Taxation

[STNK and Commissioner of Taxation \(Taxation\) \[2021\] AATA 3399](#) (17 September 2021); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – whether applicant’s sales GST-free under s 38-385 of the A New Tax System (Goods and Services Tax) Act 1999 – whether recipient of supply a ‘dealer in precious metal’ – onus of proof not discharged – decision affirmed

TAXATION – GOODS AND SERVICES TAX – whether the applicant made a GST-free supply as the exporter of goods – relevance of whether applicant held title to goods at time of export – whether general anti-avoidance rule applies – whether dominant purpose or principal effect of scheme for applicant to obtain input tax credits – where applicant had no knowledge of and obtained no substantial benefit from scheme – held applicant exported goods – held general anti-avoidance rule does not apply – decision set aside

TAXATION – ADMINISTRATIVE PENALTIES – whether shortfall in GST returns due to applicant intentionally disregarding GST law or reckless as to operation of the law – where tax agent who prepared returns did not give evidence – whether base penalty amount assessed correctly – penalty reduced to penalty for recklessness – held no evidentiary foundation to further reduce base penalty amount or remit penalty in whole or part

EVIDENCE – application of s 1305 of Corporations Act 2001 in reviews of taxation decisions – whether invoices therefore prima facie evidence of transactions they describe – held s 1305 does not apply in applications for review of taxation decisions

Veterans' Affairs

[Turner and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 3497 (28 September 2021); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – Veterans' entitlements – Disability pension – Practice and procedure – Time limitation for lodgement of application for review – Whether applicant lodged application for review within the prescribed time – Whether application for review lodged more than 12 months after applicant was furnished with decision of Veterans' Review Board – Whether Veterans' Review Board gave decision to applicant – Application lodged out of time – No jurisdiction to consider application – (CTH) Veterans' Entitlements Act 1986 s 176(4) – (CTH) Administrative Appeals Tribunal Act 1975 ss 29(1) (2), (7) – (CTH) Acts Interpretation Act 1901 ss 28A, 29 – (CTH) Evidence Act 1995 ss 160(1), 163(1)

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
Darnia-Wilson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3019
LPDT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2224
PFJB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2721

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
EPL20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4266	[2021] FCAFC 173
Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4592	[2021] FCA 1134
MXDK v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3762	[2021] FCA 1142
Nahi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 209	[2021] FCA 1169
NDBR v Minister for Home Affairs	[2019] AATA 612	[2021] FCAFC 170 [2019] FCA 1631
Sillars v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 994	[2021] FCAFC 174 [2020] FCA 1313
STZS v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2504	[2021] FCA 1140



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