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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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Recent news

In-person hearings in our Canberra, Melbourne and Sydney Registries

The AAT's Canberra, Melbourne and Sydney front counters remain closed to visitors until further notice. However, as COVID-19 restrictions in the ACT, Victoria and New South Wales are lifted, we will gradually resume in-person hearings.

To prioritise the safety of our members, staff and the users of our service, in-person hearings will only proceed in our Canberra, Melbourne and Sydney registries where all parties, representatives and other participants are willing to show evidence that they have been fully vaccinated.

[Find out more](#)

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

[Bircumshaw and Smeaton](#) (Child support) [2021] AATA 3361 (5 August 2021); A byers, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to pattern of care – decision under review set aside and substituted

[Locastro and Keogan](#) (Child support) [2021] AATA 3348 (29 July 2021); R Ellis, Senior Member

CHILD SUPPORT – particulars of assessment – whether multi-case allowance was properly applied – whether other parent was party to multiple child support assessments – decision under review affirmed

[Masland and Dewing](#) (Child support) [2021] AATA 3183 (30 July 2021); R Ellis, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – benefits derived from business – decision under review set aside and substituted

[Sassaman and Child Support Registrar](#) (Child support) [2021] AATA 3352 (20 July 2021); C Breheny, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay – little merit – weighing all factors the extension of time was correctly refused – decision under review 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

Citizenship

[FXXN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 3525 (27 September 2021); Senior Member D J Morris

CITIZENSHIP – where applicant applied for Australian citizenship by conferral – where applicant held protection visa at time of application – where a delegate of Minister refused application as not satisfied applicant was of good character – applicant sought review before Tribunal – where a delegate of Minister has since cancelled Applicant’s visa – where Applicant seeking separate review of that decision before Tribunal – application dismissed as having no reasonable prospect of success

PRACTICE AND PROCEDURE – where essential requirement underpinning application no longer present – where no discretion exercisable that could be beneficial to applicant – where not appropriate to exercise power to adjourn application – where applicant may lodge fresh application in future if circumstances change – application dismissed as having no reasonable prospect of success – oral decision followed by written reasons

[Lual and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 3527 (1 October 2021); Deputy President S Boyle and Dr Huntly, Member

CITIZENSHIP – refusal of a delegate of the Minister to grant the Applicant’s application for conferral of Australian citizenship – delegate found that the Applicant was not of good character – Applicant is a citizen of Sudan who arrived in Australia as a 29-year-old – Tribunal not satisfied of the Applicant’s good character – reviewable decision affirmed

[Smith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 3575 (7 October 2021); Senior Member C Puplick AM

CITIZENSHIP – refusal of a citizenship application – whether the applicant is of good character – criminal conduct – traffic offences – drug offences – failure to disclose offences – whether enough time passed since offences – decision affirmed

[Trim and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 3632 (8 October 2021); Senior Member Theodore Tavoularis

CITIZENSHIP – applications for citizenship by descent – where applicants legally adopted in Cook Islands – where applicants adopted by an Australian citizen – whether Cook Islands is a “Convention Country” or a “prescribed overseas jurisdiction” under the Australian Citizenship Act 2007 (Cth) – decision under review affirmed

[ZYHV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 3717 (8 October 2021); The Hon. John Pascoe AC CVO, Deputy President

CITIZENSHIP – Application for citizenship by conferral – Good character – Identity – Whether the Tribunal can be satisfied of the applicant’s identity – Whether the Tribunal can be satisfied the applicant is of good character – Where limited evidence of identity provided – Applicant’s life story not credible – Decision affirmed

Compensation

[Fittock and Comcare](#) (Compensation) [2021] AATA 3628 (11 October 2021); D Mitchell, Member

COMPENSATION – accepted injury – aggravation of adjustment disorder – claim for medical expenses relating to gastric sleeve surgery – whether medical treatment was obtained in relation to accepted injury – whether medical treatment was reasonable to obtain in the circumstances – no claim for liability for obesity or diabetes or aggravation thereof – relevant treatment not in related to accepted injury – decision under review affirmed

[Hudson and TNT Australia Pty Ltd](#) (Compensation) [2021] AATA 3526 (22 September 2021); L M Gallagher, Member

COMPENSATION – Safety, Rehabilitation and Compensation Act 1958 – Workplace Injury – definition of injury (other than a disease) – whether Injury arose during course of employment – whether TNT had a present liability to pay compensation – whether injury resolved or ceased – decision affirmed

Corporations

[George and Australian Securities and Investments Commission](#) [2021] AATA 3615 (8 October 2021); Professor Ann O'Connell, Senior Member

BUSINESS NAME REGISTRATION – Business names register – objection to registration of business name – name which is identical or nearly identical to registered business name – Business Names Registration Act 2011 – Business Names Registration (Availability of Names) Determination 2015 – objects of the Act – avoidance of confusion – misleading consumers – decision set aside and substituted

Education and Research

[Dafalla and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 3703 (15 October 2021); Emeritus Professor P A Fairall, Senior Member

EDUCATION, SKILLS AND TRAINING – higher education funding – whether the applicant's HECS-HELP debt may be remitted – whether the applicant faced 'special circumstances' – relevant statutory provisions and policies considered – applicant's circumstances considered – relevant cases considered – decision under review affirmed

Environment

[Jacaru Pty Ltd and Minister for the Environment](#) [2021] AATA 3623 (11 October 2021); Deputy President J Sosso

ENVIRONMENT – Regulated native specimen – CITES specimen – Application for export permit – Refusal – history of non-compliance – Objects of Part 13A – Discretion to issue permit – Consideration of business hardship – Decision substituted – Remittal for consideration of permit conditions

Migration

[BMKL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3636 (12 October 2021); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Myanmar – Class XB Subclass 200 Refugee (Permanent) Visa – failure to pass good character test – sexual and violent offending – offending involving children – whether another reason why the mandatory visa cancellation should be revoked – non-refoulement obligations – fear of persecution – Myanmar coup d'état – Ministerial Direction No. 90 applied – decision affirmed

[BYSV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3643 (14 October 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – Class TY Subclass 444 Special Category (Temporary) visa (visa) – where visa was cancelled under section 501(1) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – bulk of Applicant's offending was as a child – substance abuse – best interests of minor children in Australia – cultural ties – expectations of the Australian community – extent of impediments if removed – strength, nature and duration of ties to Australia – other relevant considerations – decision set aside and substituted

[Dilworth and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3570 (5 October 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 drug offences – family violence – decision under review affirmed

[EI Khoueiry and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA (6 October 2021); Senior Member J Rau SC

MIGRATION – refusal of application for Class BB Subclass 155 Five Year Resident Return visa 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 – offences involving the trafficking of dangerous drugs – decision under review affirmed

[FFXL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3655 (14 October 2021); Senior Member B Pola

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

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

(Migration) [2021] AATA 3576 (7 October 2021); Dr S Fenwick, Senior Member

MIGRATION – mandatory visa cancellation – national of South Sudan – Global Special Humanitarian (Class XB) (Subclass 200) Refugee (Permanent) visa – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision set aside and substituted

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

(Migration) [2021] AATA 3637 (12 October 2021); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – offences of criminal damage by fire, disorderly behaviour in public and obstructing public officers – 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 – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 39-year-old man who arrived in Australia as a 23-year-old – extent of impediments if returned to Lebanon – Non-Revocation Decision affirmed

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

(Migration) [2021] AATA 3635 (12 October 2021); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – serious offending involving drug trafficking – whether discretion to revoke mandatory cancellation should be exercised – other considerations – decision under review affirmed

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

(Migration) [2021] AATA 3644 (13 October 2021); Senior Member D J Morris

MIGRATION – remittal by the Federal Court of Australia – cancellation of Class XB Subclass 200 (refugee) visa – applicant is Somali citizen – substantial criminal record – applicant fails character test – whether there is another reason to set aside mandatory cancellation – consideration of ministerial direction – primary considerations – incidents of family violence – other considerations – non-refoulement obligations – special consideration relating to prolonged detention – strength of ties with Australia – extent of impediments if removed – decision under review affirmed

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

(Migration) [2021] AATA 3532 (1 October 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION - decision of delegate of Minister to refuse Bridging E (Class WE) visa - character test - substantial criminal record - sentence of 12 months or greater - Direction 90 - primary and other considerations - protection of the Australian community - nature and seriousness of criminal offending - risk to the Australian Community - strength, nature and duration of ties to Australia - best interests of minor children - expectations of the Australian community - Australia's non-refoulement obligations - where Applicant has spent a significant amount of his life in Australia - extent of impediments if returned to Sri Lanka - reviewable decision set aside and remitted

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

(Migration) [2021] AATA 3617 (22 September 2021); Deputy President J W Constance

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 – family violence committed by the non-citizen – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision affirmed

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

(Migration) [2021] AATA 3630 (11 October 2021); Senior Member D J Morris

MIGRATION – cancellation of class BA subclass 200 refugee visa – where application is citizen of Iraq – where visa cancelled mandatorily because of substantial criminal record as defined in Migration Act – where applicant invited to make representations that there is another reason under s 501CA of Act for visa cancellation to be set aside – where delegate of Minister decided discretion not enlivened – where applicant sought review by Tribunal – where ministerial direction made under s 499 of Act – decision-makers must comply with direction – Direction No. 90 – primary considerations – special consideration relating to prospect of prolonged detention – other considerations – discretion enlivened – decision under review set aside and new decision substituted

2000781 (Migration) [2021] AATA 3794 (1 September 2021); A Murphy, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect answers in protection visa application – previous application and personal and family details – included under another name as brother in second cousin’s humanitarian visa application – minor at the time and unaware of application – did not ‘make’ application – national identity card, consistent answers in other visa applications and statutory declarations by applicant and cousin – review decided without hearing – decision under review set aside

2101516 (Migration) [2021] AATA 3651 (16 September 2021); J Clarke, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – member of family unit – secondary visa applicant is primary applicant’s cousin and review applicant’s brother – customary adoption of secondary applicant by review applicant and primary applicant after deaths of review applicant and secondary applicant’s parents – residency and dependency – living with primary applicant’s father – visa applicants fully dependent on review applicant – review applicant would continue to support secondary applicant regardless – request for expedition of review after fall of Afghan government – Hazara Shia – country information – decision under review remitted

Andal (Migration) [2021] AATA 3601 (23 September 2021); J Silva, Member

MIGRATION – cancellation – Bridging A (Class WA) visa – Subclass 010 (Bridging A) – issued in association with further student visa application – false or misleading information provided in visa application – other name known by not declared – Philippine name format, with mother’s and father’s surnames – formats of questions about names in applications – previous visa refusal not declared – agent who completed form skipped that portion of application – refusal declared in first visitor visa application – limited significance of incorrect information – no deliberate deception but lack of care – discretion to cancel visa – student visa application refused and application for review in progress – study and work history – possibility of applying for Bridging Visa E – decision under review set aside

[Sheik Mohammed](#) (Migration) [2021] AATA 3768 (4 September 2021); M Moustafine, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – previous compliant visits by applicant and family – import business development plans – applicant nominated in a Business sponsorship – work and family commitments in Fiji – decision under review affirmed

[Vung](#) (Migration) [2021] AATA 3556 (12 September 2021); R Westaway, Senior Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse (Provisional)) – false or misleading information in relation to visa application – genuine relationship – conflicting and changing information about how parties met and relationship developed – sponsor’s limited education, mental health and memory issues – interpretation issues – no element of fraud or deception – other information consistent and supports claim of genuine relationship – financial, household and social aspects of relationship – limited time spent together and COVID-related travel restrictions – nature of commitment – legally married – third applicant’s application withdrawn – decision under review remitted for first and second applicants, no jurisdiction for third applicant

National Disability Insurance Scheme

[Buckley and National Disability Insurance Agency](#) [2021] AATA 3622 (8 October 2021); K Buxton, Member

NATIONAL DISABILITY INSURANCE SCHEME – participant supports – reasonable and necessary supports – value for money – visual alert system - tailored and flexible responses to the individual goals and needs of the participant

[Croker and National Disability Insurance Agency](#) [2021] AATA 3654 (14 October 2021); Emeritus Professor P A Fairall, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access – physical impairment relating to hands and wrists – whether the applicant meets the disability requirements – permanency – substantial reduction in functional capacity – whether the applicant needs the NDIS for life – early intervention requirements – decision under review affirmed

[Rooney and National Disability Insurance Agency](#) [2021] AATA 3523 (1 October 2021); Senior Member R Cameron

NATIONAL DISABILITY INSURANCE SCHEME – request for motorised scooter – crutches – orthotics – commonly used item – substantially reduced functional capacity – early intervention requirements – whether the Applicant requires NDIS support for life – decision under review affirmed

Practice and Procedure

[Atkinson and National Disability Insurance Agency](#) [2021] AATA 3540 (1 October 2021); Deputy President F Meagher

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – application for review of decision refusing the Applicant access to the National Disability Insurance Scheme – interlocutory application for direction that the Applicant participate in assessments by an occupational therapist and a psychiatrist – process of balancing risk to Applicant with benefit of obtaining further evidence – procedural fairness – application refused

[Bates and National Disability Insurance Agency](#) [2021] AATA 3571 (7 October 2021); P Smith, Member

PRACTICE AND PROCEDURE – Jurisdiction – National Disability Insurance Scheme Act 2013 (Cth) - application for review - no internal review decision made by the Respondent – no jurisdiction – application dismissed

[Cini and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3656 (14 October 2021); Senior Member D J Morris

[Connor-Wagura and National Disability Insurance Agency](#) [2021] AATA 3638 (13 October 2021); Deputy President J W Constance

PRACTICE AND PROCEDURE – JURISDICTION – where Applicant requested Tribunal review of the decision to approve a plan of supports – where Agency has not made an internal review decision – Tribunal does not have jurisdiction

[Holmes and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3642 (13 October 2021); Senior Member D J Morris

[Mihalopoulos and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3533 (1 October 2021); Senior Member C Puplick AM

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

[VNBM and Commissioner of Taxation](#) (Taxation) [2021] AATA 3579 (7 October 2021); Senior Member R Olding

PRACTICE AND PROCEDURE – CONFIDENTIALTY ORDERS – where application for review heard in private – where applicant sought further confidentiality orders – where orders might frustrate regulators in carrying out their duties – where applicant withdrew request – whether limited confidentiality order should be made - interim order revoked

Refugee

[1704030](#) (Refugee) [2021] AATA 3557 (23 July 2021); P Windsor, Member

REFUGEE – Protection Visa – Albania – blood feud – death threats – significant harm from members of a rival family – mental health issues – relocation not reasonable – state protection not available – complementary protection criterion – decision under review remitted

[1714358](#) (Refugee) [2021] AATA 3536 (9 August 2021); D McCulloch, Member

REFUGEE – protection visa – Nigeria – novelist and scholar – publication of novels based on African society and politics – confraternities/cults – fear of harm from the Ogboni cult – supporting statements by Australian academics – credibility concerns – inconsistent evidence – power or influence of the Ogboni – decision under review affirmed

[1716586](#) (Refugee) [2021] AATA 3647 (3 August 2021); D Creedon, Member

REFUGEE – Protection Visa – Turkey – religion – Alevi religious identity – perceived political opinions – leftist activist – applicant was coerced into becoming an informant – mental health problems – relocation not reasonable – state protection not available – decision under review remitted

[1724543](#) (Refugee) [2021] AATA 3616 (20 August 2021); B Darcy, Member

REFUGEE – protection visa – Papua New Guinea – religion – Jehovah's Witness – particular social group – whistle blower – unlawful dismissal – mishandled legal proceedings – legal action against employer – fear of killing – police violence – state protection – decision under review affirmed

[1928196](#) (Refugee) [2021] AATA 3566 (20 July 2021); M Hawkins AM, Member

REFUGEE – cancellation – protection visa – Stateless/Iran – ground for cancellation – incorrect information in visa application – citizenship status – family composition – claimed adverse profile – undocumented, stateless Faili Kurd – consideration of discretion – deliberate and calculated for the purposes of enhancing protection claims – non-refoulement obligations – Faili Kurd who is a citizen of Iran – atheism – treatment of returnees – rights of the child and family unity obligations – best interests of the children – differences in lifestyle expectancy – compulsory military service – decision under review set aside

Social Services

[Awad and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3631 (8 October 2021); N Gaudion, Member

SOCIAL SECURITY – aged pension – overpayment of aged pension – administrative errors – special circumstances – decision set aside and substituted – whether applicant has incurred a liability under the pension loans scheme – no basis to waive or write off the pension loan scheme debt – decision affirmed

Bartone and Secretary, Department of Social Services (Social services second review) [2021]
AATA 3578 (8 October 2021); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether insufficient medical evidence provided – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review set aside and remitted

Brandley and Secretary, Department of Social Services (Social services second review) [2021]
AATA 3562 (6 October 2021); B Cullen, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions permanent – whether 20 points or more under the impairment tables during the relevant period – whether continuing inability to work – decision under review affirmed

Halliday and Secretary, Department of Social Services (Social services second review) [2021]
AATA 3719 (15 October 2021); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether insufficient medical evidence provided – where conditions overlap and therefore cannot be rated as one element has not been fully treated – assessment of functional impairment arising from birth deformity – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review set aside

Hobbs; Secretary, Department of Social Services and (Social services second review) [2021]
AATA 3534 (5 October 2021); Ms A E Burke AO, Member

SOCIAL SECURITY – eligibility for Youth Allowance – claimant lives away from home at boarding school – whether claimant needs to live away from home for the purpose of education, training, searching for employment or doing anything else in preparation for employment – whether the likelihood of the claimant’s “getting employment” will be significantly increased if she lives away from home – consideration of educational and employment opportunities at boarding school compared to those in home town – consideration of claimant’s academic performance and whether she had a special talent or area of excellence – decision set aside and substituted for decision that claimant is not eligible for Youth Allowance

Lee and Secretary, Department of Social Services (Social services second review) [2021] AATA 3574 (7 October 2021); R Maguire, Member

SOCIAL SECURITY – Newstart Allowance – suspension of benefits – whether Applicant was beneficiary of termination payment – whether payment should enliven income maintenance period – calculation of income maintenance period – decision affirmed

Loughman; Secretary, Department of Social Services and (Social services second review) [2021]
AATA 3561 (6 October 2021); The Hon. J Pascoe AC CVO, Deputy President

SOCIAL SECURITY – Carer payment and carer allowance – Respondent providing care for husband – Whether Respondent providing constant care to husband – Definition of constant care – Husband diagnosed with medical condition – Husband maintaining casual employment at relevant time – Whether Respondent qualified for carers payment under Adult Disability Assessment Test at relevant time – Tribunal granted carer payment claim to Respondent – Respondent not qualified for carer payment – Decision under review set aside and substituted

[Low and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3524 (1 October 2021); Senior Member K Millar

SOCIAL SECURITY – disability support pensions – claim for disability support pensions rejected – whether applicant’s medical conditions fully diagnosed, treated and stabilised during qualification period – whether applicant attracted an impairment rating of at least 20 points – whether applicant had a continuing inability to work – decision under review affirmed

[Lowth and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3626 (11 October 2021); D Mitchell, Member

SOCIAL SECURITY – Disability Support Pension – rate of payment – request for review of initial decision not made within 13 weeks – date of effect of a favourable decision
PRACTICE AND PROCEDURE – role of the Tribunal – application for dismissal of application for review – frivolous or vexatious or no prospects for success – no utility in review – favourable decision would have no practical benefit for the Applicant – application dismissed

[Marchant and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3568 (7 October 2021); Dr L Bygrave, Member

SOCIAL SECURITY – age pension – lump sum compensation settlement – preclusion period – whether compensation preclusion period was correctly calculated – whether special circumstances exist – substantial and regular expenditure – gambling – decision under review affirmed

[Oyberman and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3535 (5 October 2021); Ms A E Burke AO, Member

SOCIAL SECURITY – youth allowance – whether the applicant satisfied the general qualification requirement for youth allowance – whether decision to reject claim was correct – whether course was an approved course – whether “special circumstances” exist – whether appropriate to exercise discretion – decision affirmed

[Phillips and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3560 (6 October 2021); R West, Member

SOCIAL SECURITY – aged pension – overpayment – debt due to the Commonwealth - consideration of write off or waiver of the debt – whether debt attributed solely to administrative error – decision affirmed

[QZXS and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3624 (7 October 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffered from permanent impairments that attracted 20 points or more under the Impairment Tables – Impairment Table 1 – Functions requiring Physical Exertion and Stamina – Impairment Table 7 – Brain Function – Impairment Table 5 – Mental Health Function – Impairment Table 13 – Continence Function – fibromyalgia/ chronic fatigue syndrome – irritable bowel syndrome (IBS) – mental health condition described differently by various medical practitioners including as Major Depressive Disorder, depression and anxiety and post-traumatic stress disorder with depression and anxiety – tinnitus – conduct of the Applicant – Applicant threatened to make complaints to various ministers and oversight bodies when she was not given what she wanted by the Tribunal – Applicant made serious allegations of misleading and improper conduct by the Respondent and Respondent’s legal representatives which Tribunal found to be without foundation – protracted application filed in the General Division of the Tribunal approximately five years ago – Reviewable Decision affirmed

[Tamay and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3559 (6 October 2021); Ms A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether severe – narrow dispute around descriptor (b) under table 5 mental health function – whether descriptor means person is unable or restricted in ability to undertake social/reactional activities or travel – whether applicant has continuing inability to work – where work is the trigger for applicants mental health condition - decision under review set aside

Taxation

[Carvell and Commissioner of Taxation](#) (Taxation) [2021] AATA 3627 (8 October 2021); R Reitano, Member

TAXATION – default assessments – administrative penalties – taxpayer’s burden to prove assessment excessive – taxpayer’s burden to prove correct taxable income – whether assessment is excessive or incorrect – whether penalty should be remitted – decision affirmed

[FYYB and Commissioner of Taxation](#) (Taxation) [2021] AATA 3567 (27 July 2021); R Reitano, Member

ADMINISTRATIVE PENALTY – superannuation fund – objection raised to decision not to remit administrative penalty – contravention of borrowing provisions – borrowing of money from a member of the fund – seriousness of contravention – whether penalty is unjust or overly oppressive – decision under review affirmed

Trade and Commerce

[Dietzel and Secretary, Attorney-General's Department](#) [2021] AATA 3640 (13 October 2021); Senior Member R Cameron

FAIR ENTITLEMENTS GUARANTEE – whether applicant entitled to redundancy pay – date of termination – whether employer was a small business employer as defined by the Fair Work Act 2009 (Cth) – clauses of the contract – redundancy pay policy – decision affirmed

[Elia and Inspector-General in Bankruptcy](#) [2021] AATA 3639 (4 October 2021); The Hon. Matthew Groom, Senior Member

BANKRUPTCY – Inspector-General's refusal to review income assessment of trustee in bankruptcy – lack of information provided by applicant led to Inspector-General being in no better position than the trustee to make an assessment – consideration of reasons sufficient to justify review – consideration of applicant's explanation for payments received – consideration of supporting witnesses and documentary evidence – decision under review affirmed

[George and Australian Securities and Investments Commission](#) [2021] AATA 3615 (8 October 2021); Professor A O'Connell, Senior Member

BUSINESS NAME REGISTRATION – Business names register – objection to registration of business name – name which is identical or nearly identical to registered business name – Business Names Registration Act 2011 – Business Names Registration (Availability of Names) Determination 2015 – objects of the Act – avoidance of confusion – misleading consumers – decision set aside and substituted

Veterans' Affairs

[Louth and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 3641 (13 October 2021); L Rieper, Member

VETERANS' AND MILITARY COMPENSATION – rate of service pension – Asgard allocated pension – whether deemed income amendments apply – effect of continuous Centrelink Income Support – decision superseded – application dismissed

[Madden and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 3558 (6 October 2021); Senior Member R Cameron

VETERANS' AFFAIRS – benefits and entitlements – whether the Applicant is a veteran – whether the Applicant rendered qualifying service - Veterans Entitlements Act – not a member of the defence force – not a veteran – decision affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Coronica and Commissioner of Taxation	[2021] AATA 1225
GWRV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2803
GXXS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3094
HDWH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3056
Kwatra and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3147
Mitchell and Comcare	[2021] AATA 3376
XHKD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2948

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
KXXH v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5313	[2021] FCA 1229
Rascovici v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1640	[2021] FCA 1191

Statements of Principles

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

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

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

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

Notification of Investigations relating to existing Statements of Principles

On 1 October 2021, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

taking immune checkpoint inhibitors

This investigation will be carried out in the context of the following Statement of Principles Instruments:

hypopituitarism (Reasonable Hypothesis) - No. 11 of 2019

<https://www.legislation.gov.au/Details/F2021C00710>

hypopituitarism (Balance of Probabilities) - No. 12 of 2019

<https://www.legislation.gov.au/Details/F2021C00707>

diabetes mellitus (Reasonable Hypothesis) - No. 48 of 2020

<https://www.legislation.gov.au/Details/F2021C00711>

diabetes mellitus (Balance of Probabilities) - No. 49 of 2020

<https://www.legislation.gov.au/Details/F2021C00712>

hypogonadism (Reasonable Hypothesis) - No. 73 of 2021

<https://www.legislation.gov.au/Details/F2021L00619>

hypogonadism (Balance of Probabilities) - No. 74 of 2021

<https://www.legislation.gov.au/Details/F2021L00620>

Notification of Investigations (where there is no existing Statement of Principles)

On 1 October 2021, the AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

portal vein thrombosis - <https://www.legislation.gov.au/Details/C2021G00778>

eosinophilic oesophagitis - <https://www.legislation.gov.au/Details/C2021G00777>

heat stroke - <https://www.legislation.gov.au/Details/C2021G00779>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **1 November 2021**:

Chronic gastritis and chronic gastropathy (Balance of Probabilities) - No. 102 of 2021

<https://www.legislation.gov.au/Details/F2021L01385>

Chronic gastritis and chronic gastropathy (Reasonable Hypothesis) - No. 101 of 2021

<https://www.legislation.gov.au/Details/F2021L01384>

Dental pulp and periapical disease (Balance of Probabilities) - No. 100 of 2021

<https://www.legislation.gov.au/Details/F2021L01389>

Dental pulp and periapical disease (Reasonable Hypothesis) - No. 99 of 2021

<https://www.legislation.gov.au/Details/F2021L01388>

Malignant neoplasm of the pancreas (Balance of Probabilities) - No. 104 of 2021

<https://www.legislation.gov.au/Details/F2021L01402>

Malignant neoplasm of the pancreas (Reasonable Hypothesis) - No. 103 of 2021

<https://www.legislation.gov.au/Details/F2021L01401>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA will be revoked on **1 November 2021**:

Chronic gastritis and chronic gastropathy - No. 26 of 2013

<https://www.legislation.gov.au/Details/F2013L00722>

chronic gastritis and chronic gastropathy - No. 25 of 2013

<https://www.legislation.gov.au/Details/F2013L00720>

Dental pulp and apical disease - No. 3 of 2014

<https://www.legislation.gov.au/Details/F2014L00014>

Dental pulp and apical disease No. 3 of 2014

<https://www.legislation.gov.au/Details/F2014L00014>

Malignant neoplasm of the pancreas - No. 74 of 2013

<https://www.legislation.gov.au/Details/F2013L01893>

Malignant neoplasm of the pancreas - No. 73 of 2013

<https://www.legislation.gov.au/Details/F2013L01891>



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