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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

[PYVW and Child Support Registrar](#) (Child support second review) [2021] AATA 3978 (29 October 2021); Dr J Henderson, Member

CHILD SUPPORT – percentage of care – whether there was a change in care – whether existing determination of care should be revoked – actual care – extent of care – inconsistent evidence – conflicting evidence – inconsistent dates provided by the Other Party – no pattern of care – decision under review set aside and substituted

[Dowson and Child Support Registrar](#) (Child support) [2021] AATA 3365 (10 August 2021); P Jensen, Member

CHILD SUPPORT – refusal to grant an extension of time to object – estimate decision - reasonable explanation for the delay in lodging the objection late – some prospects of objection succeeding and therefore there is arguable merit – the extension of time should be granted - decision under review set aside and substituted

[Long and Ryeland](#) (Child support) [2021] AATA 3608 (18 August 2021); M Martellotta, Member

CHILD SUPPORT – particulars of the assessment – whether children were eligible children for child support assessment – whether children were in custody of or under guardianship, care and control or supervision of a person under a prescribed child welfare law – whether there was a terminating event in relation to the children – decision under review affirmed

[Postlewait and Child Support Registrar](#) (Child support) [2021] AATA 3612 (11 August 2021); D Benk, Senior Member

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

[Scrivenor and Child Support Registrar](#) (Child support) [2021] AATA 3691 (16 August 2021); L Rieper, Member

CHILD SUPPORT – percentage of care – whether parent ceased to take reasonable action during maximum interim period – date of effect of objection decision – whether there were special circumstances that prevented the objection being lodged in time - special circumstances exist - decision under review varied

[Skilern and Clower](#) (Child support) [2021] AATA 3699 (11 August 2021); S Letch, Member

CHILD SUPPORT – non-agency payment - whether payment made to a third party in lieu of child support - intention of both parents - decision under review affirmed

Citizenship

[Al-Jumaili and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3969 (28 October 2021); Senior Member A Poljak

CITIZENSHIP – application for Australian Citizenship by conferral – whether the applicant is of good character – failure to disclose criminal offences in Citizenship application – 13 offences – seriousness of offences – limited rehabilitation – decision under review affirmed

[Jahedikargar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3964 (26 October 2021); Dr P McDermott RFD, Deputy President

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – whether the Tribunal is satisfied the applicant is of good character – where the applicant failed to disclose prior conviction – where the applicant gave false or misleading information – where the applicant gave inconsistent accounts of fear of persecution in her applications for visitor visa, protection visa and citizenship – Tribunal not satisfied the applicant is of good character – decision under review affirmed

[Jawadi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3981 (29 October 2021); Senior Member C J Furnell

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – Afghanistan – whether Minister can be satisfied of Applicant's identity under s 24 of the Australian Citizenship Act 2007 (Cth) – application of Australian Citizenship Policy Statement – documents – life story – decision affirmed

[Oze-Igiehon and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3982 (27 October 2021); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant's identity and good character – three pillars of identity – inconsistencies in Applicant's date of birth in documentation submitted to the Department – unlawful non-citizen between 2010 and 2012 – Tribunal satisfied of the Applicant's identity – Tribunal not satisfied of the Applicant's good character – Reviewable Decision affirmed

[Razai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3827 (22 September 2021); A Maryniak QC, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether Applicants have satisfied paragraph 21(2)(h) of Australian Citizenship Act – whether Applicant of good character – false and misleading conduct in dealing with the Australian Government – decision affirmed

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

(Citizenship) [2021] AATA 3884 (22 October 2021); Senior Member D J Morris

CITIZENSHIP – where the applicant applies for Australian citizenship by conferral – where the applicant was born in Iran and claims to be stateless – where the delegate was satisfied applicant over 18 – where delegate satisfied applicant was a permanent resident – where applicant met general residence requirements – where delegate not satisfied of applicant’s identity and decided prohibition applies – where certain other requirements not assessed – applicant sought review by Tribunal – where applicant has not provided any personal documents sourced from Iran – decision under review affirmed

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

(Citizenship) [2021] AATA 3810 (19 October 2021); Brigadier A G Warner, AM LVO (Retd), Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – character test – non-trivial offence at very lowest end of the scale – spent conviction – whether Tribunal is satisfied Applicant is of good character – reviewable decision set aside and remitted with direction that applicant is of good character

Compensation

[YYHQ and Comcare](#) (Compensation) [2021] AATA 3809 (19 October 2021); Deputy President B W Rayment OAM QC

WORKERS’ COMPENSATION – psychiatric condition – adjustment disorder - whether disease arose out of or in the course of employment – whether employment contributed to disease to a significant degree – whether disease suffered as a result of reasonable administrative action taken in a reasonable manner – decision under review affirmed

Conflict of Laws

[Cooper and Queensland Building and Construction Commission](#) [2021] AATA 3926 (27 October 2021); D Mitchell, Member

MUTUAL RECOGNITION – application of mutual recognition principles where - mutual recognition of occupations between States – Accredited Practitioner (Fire Safety) and Nominee Supervisor’s Licence in the class of hydraulic services design - restricted between New South Wales and Queensland – the equivalence of occupations – equivalence by condition – entitlement to licence – decision under review affirmed

Customs

[Alstom Transport Australia Pty Ltd and Comptroller-General of Customs](#) [2021] AATA 3816 (19 October 2021); Deputy President B W Rayment OAM QC

CUSTOMS – tariff concession order – whether the core criteria were met on the day the TCO application was lodged – whether substitutable goods were produced in Australia in the ordinary course of business – to what use or uses are the TCO goods described in the application put or can they be put – no relevant substitutable goods found to exist – decision under review set aside and remitted

Education and Research

[Peters and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 2250 (18 October 2021); Senior Member C J Furnell

HIGHER EDUCATION – HECS-HELP balance – application for remission of HECS-HELP debt – chronic migraine – vestibular migraine – where applicant withdrew from units after the census date – whether requirement that remission application be made before end of application period can be waived – whether special circumstances – whether beyond applicant’s control – whether circumstances made their full impact after the census dates – whether circumstances made it impracticable for applicant to complete requirements of units – decisions under review affirmed

[Sadeque and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 3729 (15 October 2021); Senior Member P J Clauson AM

HIGHER EDUCATION – University – HECS-HELP Debt – Special circumstances – Whether circumstances beyond student’s control – whether circumstances made impact known after census date – Decision affirmed

Freedom of Information

[Bradford and Australian Federal Police](#) (Freedom of information) [2021] AATA 3984 (25 October 2021); Deputy President S Boyle

FREEDOM OF INFORMATION – Australian Information Commissioner decided not to review (FOI Act s 54W) – whether documents are exempt because information would or could prejudice an investigation or the enforcement or proper administration of the law (FOI Act s 37(1)(a)) – whether disclosure would or could disclose the existence or identity of confidential sources (FOI Act s 37(1)(b)) – whether disclosure would or could endanger any person (FOI Act s 37(1)(c)) – whether disclosure of information would or could prejudice fair trial of a person or impartial adjudication of a particular case (FOI Act s 37(2)(a)) – whether disclosure would or could be expected to disclose lawful methods or procedures for preventing, detecting, investigating (FOI Act s 37(2)(b)) – whether secrecy provisions apply to documents (FOI Act s 38) – whether documents subject to legal professional privilege (FOI Act s 42) – whether disclosure of document would or could be expected to cause damage to relations between the Commonwealth and a State (FOI Act s 47B(a)) – whether disclosure of documents would involve unreasonable disclosure of personal information (FOI Act s 47F) – whether disclosure is in the public interest – two reviewable decisions varied – four reviewable decisions affirmed

Migration

[CYTW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 3887 (22 October 2021); Ms C Burnett-Wake, Member

MIGRATION – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – whether Applicant engages s 36(2C)(b) of the Migration Act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review affirmed

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

(Migration) [2021] AATA 3822 (5 October 2021); Senior Member P Q Wood

MIGRATION – Mandatory cancellation of visa – non-revocation of mandatory visa cancellation – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass character test – Applicant concedes fails character test – where Applicant made representations seeking revocation of visa cancellation – where delegate not satisfied another reason to revoke visa cancellation – where Applicant seeks review by Tribunal – contents of Direction 90 – substantial criminal offending – protection of the Australian community – expectations of the Australian community – Applicant’s mental health – Applicant’s substance abuse – links to the Australian community – other relevant considerations – non-refoulement obligations – extent of impediments if removed – decision under review affirmed

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

(Migration) [2021] AATA 3888 (22 October 2021); R Bellamy, Member

MIGRATION – refusal to grant a Protection visa – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – violent offending including family violence – decision under review affirmed

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

(Migration) [2021] AATA 3842 (27 September 2021); Deputy President A G Melick AO SC

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa – 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 – sexually based offences involving a child – decision under review affirmed

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

(Migration) [2021] AATA 3815 (6 October 2021); Senior Member D O’Donovan

VISA CANCELLATION - substantial criminal record – Ministerial Direction No. 90 – whether there is another reason the visa cancellation should be revoked – nature and seriousness of offences – best interests of minor children – extent of impediments if removed – strength, duration and nature of ties – decision under review set aside

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

(Migration) [2021] AATA 3895 (26 October 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – Class TY Subclass 444 Special Category (Temporary) 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 – family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – strength, nature and duration of ties to Australia – impact on victims – links to the Australian community – decision set aside and substituted

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

(Migration) [2021] AATA 3923 (27 October 2021); Senior Member D J Morris

MIGRATION – where the applicant is a citizen of the French Republic - where the applicant's visa has been mandatorily cancelled under Act for having a 'substantial criminal record' – where a delegate of the Minister refuses to exercise discretion to revoke mandatory cancellation – where applicant seeks review of delegate's decision by Tribunal – where decision-makers must follow any ministerial direction issued under Act – where Minister has issued Direction No. 90 – primary considerations – other considerations – decision under review is affirmed

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

(Migration) [2021] AATA 3873 (1 October 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Bridging (Class WC Subclass 030) 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 – domestic violence – decision under review affirmed

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

(Migration) [2021] AATA 3828 (20 October 2021); Senior Member C Puplick AM

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 – conduct constituting family violence – best interests of minor children – expectations of the Australian community – non-refoulement obligations – impediments to removal – impact on victims – links to the Australian community – decision set aside and substituted

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

(Migration) [2021] AATA 3797 (18 October 2021); Deputy President S Boyle

MIGRATION – s 501CA(4) of the Migration Act – decision not to revoke the mandatory cancellation of the Applicant's visa – preliminary issue – whether representations made in accordance with reg 2.52(2)(b) of the Migration Regulations – Applicant fails the character test – Direction 90 considered – Applicant is a citizen of New Zealand – Applicant convicted of two counts of indecently dealing with a child who is a lineal/de facto relative – victim gave evidence at the hearing – victim supports the revocation of the cancellation of visa – there is not "another reason" to revoke the visa cancellation – reviewable decision affirmed

Dorman (Migration) [2021] AATA 3902 (29 September 2021); M East, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) - Post-Study Work stream – Australian study requirement – two academic years of relevant study – courses partially completed within 6 months before visa application – degree, post-graduate diploma or diploma courses – fee payment for Graduate Certificate – decision under review affirmed

Mutara (Migration) [2021] AATA 3788 (9 September 2021); S Griffiths, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – remaining relative of an Australian relative – location of the applicant's father declared unknown – father now holds Resident Return 155 Visa – Australian relative usually resident in Australia – maternal responsibility within the family – decision under review remitted

[Nguyen](#) (Migration) [2021] AATA 3950 (27 September 2021); J Bakas, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – working only in the nominated occupation – position of Baker – site visit identified the applicant making pizzas – employing sponsor’s approval and business requirement – common practice by bakers across Australia – comparable duties of Fast Food Cook – decision under review set aside

[Singh](#) (Migration) [2021] AATA 3634 (19 July 2021); J L Redfern PSM, Deputy President

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – whether the applicant meets the genuine temporary entrant criterion – applicant invited to provide information under s.359(2) of the Act – applicant provided written consent for the Tribunal to proceed to a decision without a hearing – not satisfied that the applicant has an intention genuinely to stay temporarily – decision under review affirmed

[Teppitak](#) (Migration) [2021] AATA 3633 (19 July 2021); J L Redfern PSM, Deputy President

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – whether the applicant meets the genuine temporary entrant criterion – applicant invited to provide information under s.359(2) of the Act – applicant provided written consent for the Tribunal to proceed to a decision without a hearing – Tribunal not satisfied that the applicant has intention genuinely to stay temporarily – decision under review affirmed

National Disability Insurance Scheme

[CKJW and National Disability Insurance Agency](#) [2021] AATA 3983 (28 October 2021); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – post-traumatic stress disorder – persistent depressive disorder – generalised anxiety disorder – chronic suicidality – whether impairment results 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

[FFNR and National Disability Insurance Agency](#) [2021] AATA 3890 (21 October 2021); Deputy President B W Rayment OAM QC

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – support worker for additional 11 hours a day seven days per week – whether support requested is mere preference – funding of support to take in account what is reasonable for families to bear – decision set aside and remitted

[Gelzinnis and National Disability Insurance Agency](#) [2021] AATA 3970 (28 October 2021); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – where applicant has psychosocial disability – internet services – motor vehicle – whether requested supports are reasonable and necessary pursuant to subsection 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – whether supports represent value for money – whether supports relate to disability – financial sustainability of the NDIS – decision under review set aside and remitted with directions

[MRLK and National Disability Insurance Agency](#) [2021] AATA 3896 (25 October 2021); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – Crohn’s Disease – Anorectal Disease – Generalised Anxiety Disorder – whether impairment results 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

[Adelaide Building Consultants and Australian Securities and Investments Commission](#) [2021] AATA 3965 (21 October 2021); Dr N A Manetta, Senior Member

BUSINESS NAME REGISTRATION – applicant objects to registration of another’s business name – applicant seeks extension of time to seek review of registration decision under s 29(7) AAT Act – whether applicant has reasonable prospects of success – Business Names Registration (Availability of Names) Determination 2015 – section 5A - whether subsequently registered name is identical or nearly identical to applicant’s business name – names not identical or nearly identical after application of section 5A – application bound to fail on merits – extension of time refused

[Brindabella Christian Education Limited and Minister for Education and Youth](#) [2021] AATA 3814 (19 October 2021); Senior Member D O’Donovan

PRACTICE AND PROCEDURE – confidentiality orders under section 35 – protection of names and positions of public servants – desirable that the contents of documents lodged with the Tribunal be made available to the parties

[Guinane and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3812 (19 October 2021); A E Burke AO, Member

SOCIAL SECURITY — oral decision – start date – applicant already in receipt of DSP – no review lodged of ARO decision within 13 weeks – effect of item 8 section 147 of Administration Act– any favourable decision may only take effect from date review lodged – this date after Applicant in receipt of DSP – review therefore futile – application dismissed as no reasonable prospects of success

[Moore and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3966 (28 October 2021); Dr P McDermott RFD, Deputy President

PRACTICE AND PROCEDURE – SOCIAL SECURITY – Seniors Health Card – applicant not eligible for seniors health card at time of claim – claim for seniors health card rejected – applicant sought review – application dismissed as having no prospects of success

[Sheather and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3798 (18 October 2021); D Mitchell, Member

SOCIAL SECURITY – Disability Support Pension – date of effect of disability support pension – request for review of initial rejection 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

[Singh and Commonwealth Ombudsman](#) (Freedom of information) [2021] AATA 3889 (22 October 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Application to issue summons to witnesses – Witnesses the primary decision-maker and internal reviewer of the Respondent – Whether summons relevant to the Tribunal’s task of review – Application refused

[The Applicant and The Regulator](#) [2021] AATA 3980 (1 September 2021); Deputy President B J McCabe and Senior Member D O'Donovan

INTERLOCUTORY APPLICATION: Recusal Application – the ability to bring an impartial mind – fair-minded lay observer – additional evidence provided by the regulator – material should be redacted – submissions disclosed potential sensitive information – inadmissible material not to be considered by the tribunal – recusal application refused

[The Australian People Future Fund and Registrar of Personal Property Securities](#) [2021] AATA 3874 (19 October 2021); Dr N A Manetta, Senior Member

PERSONAL PROPERTY SECURITIES – applications filed out of time – applicant refused to pursue its application for an extension of time – applicant contends Tribunal does not have jurisdiction to review the applications and requests immediate transfer of them to Federal Court – applications dismissed for lack of jurisdiction in absence of the grant of an extension of time

Refugee

[1619754](#) (Refugee) [2021] AATA 3919 (2 September 2021); J L Redfern PSM, Deputy President

REFUGEE – Application for a Temporary Protection (Class XD) (Subclass 785) visa – Vietnam – reconsideration of an earlier decision made by the Tribunal – earlier decision was a ‘no jurisdiction’ decision – where no decision has been made on the merits of the review – whether the Tribunal has the power to revoke an earlier decision – whether the Tribunal should exercise the power to reconsider its earlier decision – where parties agree that the matter should be reconsidered – earlier decision is set aside or revoked and substituted with a decision that the Tribunal has jurisdiction to conduct a review

[1708431](#) (Refugee) [2021] AATA 3972 (20 August 2021); S Lee, Member

REFUGEE – protection visa – Philippines – marriage to Australian citizen – death of spouse – no claims of persecution in the context of the refugee criteria – best interests of Australian citizen children – referred for Ministerial intervention – decision under review affirmed

[1806078](#) (Refugee) [2021] AATA 3537 (9 July 2021); S Norman, Member

REFUGEE – Protection Visa – Iraq – religion – Assyrian Chaldean Catholic Christian – health conditions – membership of a particular social group – persons suffering from mental health conditions in Iraq – effective protection measures not available to applicant – decision under review remitted

[1824350](#) (Refugee) [2021] AATA 3538 (12 July 2021); R Shanahan, Member

REFUGEE – protection visa – Iran – abusive husband in Iran – divorcee/single woman with children – religion – conversion to Christianity – outstanding court issues – found with a bottle of alcohol – employment as a female taxi driver – children imputed with being ‘Westernised’ – credibility concerns – decision under review affirmed

[2001170](#) (Refugee) [2021] AATA 3881 (9 August 2021); K Raif, Senior Member

REFUGEE – cancellation – protection visa – Iran – delegate not satisfied as to applicant’s identity – nationality – stateless – race – Faili Kurd – date of birth incorrectly converted from Persian to Gregorian calendar – ability to obtain education and access health care – little to undermine applicant’s claims about identity – inconsistent evidence on applicant’s and parents’ nationality – credibility issues – insufficient basis for cancellation under s 116 – decision under review set aside

[2012787](#) (Refugee) [2021] AATA 3973 (31 August 2021); L Nicholls, Senior Member

REFUGEE – protection visa – Iran – arrival at Territory of Ashmore and Cartier Islands – initial application refused by department, Immigration Assessment Authority and at IAA review – legislative reversal of original unauthorized maritime arrival status – eligibility to apply for tribunal review – tribunal refusal upheld by Federal Circuit Court – issue of validity of first visa application where applicant held TSH visa and has not left Australia since ceasing to hold that visa not addressed – departmental refusal for second SHEV and subsequent tribunal review – protracted immigration history – inconsistent evidence – relationship with married woman – subsequent relationship with second unmarried woman – abduction – torture – credibility issues – decision under review affirmed

Social Services

[Chambers and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3891 (21 October 2021); Senior Member K Millar

SOCIAL SECURITY – disability support pension – suspension of disability support pension – portability – unlimited portability – whether qualified for unlimited portability – decision under review set aside and remitted

[Farooq and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3920 (27 October 2021); Senior Member A Poljak

FAMILY ASSISTANCE AND SOCIAL SECURITY – carer payment – carer allowance – family tax benefit A – family tax benefit B – portability – whether portability period should be extended – where applicant was absent from Australia for six months – serious accident and illness – legal proceedings – serious crime – political or social unrest or war – decisions under review set aside and substituted

[Gable and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3893 (22 October 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – age pension – where part age pension was initially granted – company valuation – whether the mortgage debt on the applicant’s principal residence can be set off against other assets for the purposes of the asset test - whether the Applicant experienced severe financial hardship – decision affirmed

[Hanisch and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3921 (27 October 2021); Senior Member P J Clauson

SOCIAL SECURITY – carer allowance – qualification – residence – rejection – Adult Disability Assessment Tool Score – assessment questionnaire – differing answers provided previously – only contemporary questionnaire under consideration – decision under review affirmed

[Huntly and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3979 (29 October 2021); Dr J Henderson, Member

SOCIAL SECURITY – pensions, allowances, benefits – whether Applicant was overpaid newstart allowance during relevant period – whether Applicant was overpaid parenting payment (partnered) during relevant period – whether overpayment constitutes a legally recoverable debt – whether write off or waiver provisions apply – sole administrative error not established – special circumstances not established – Applicant found to have intentionally misled Centrelink – Reviewable Decision set aside and substituted

[Khanna and Secretary, Department of Social Services](#)v (Social services second review) [2021]
AATA 3799 (18 October 2021); Senior Member C Puplick AM

SOCIAL SECURITY – whether applicant qualified for payment of age pension – whether applicant is of pensionable age – whether applicant meets residence requirements – whether applicant exempt from residence requirements – alternatively, whether applicant eligible under an International Agreement – decision affirmed

[Munns and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3813 (19 October 2021); D Mitchell, Member

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

[Oudah and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3885 (22 October 2021); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – whether applicant's impairments can be assigned 20 points or more in accordance with the Impairment Tables – relevant legislation and secondary materials considered – medical reports and other evidence considered – decision under review affirmed

[Pham and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 3967 (28 October 2021); Mr S Evans, Member

SOCIAL SECURITY – special benefit – whether the applicant qualifies for special benefit – Long Term Available Funds Test - provisions of relevant legislation and policy considered – relevant case considered – applicant's financial records considered – applicant's circumstances considered – decision under review affirmed

[Taulaga and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3922 (27 October 2021); Senior Member B Pola

SOCIAL SECURITY – Disability Support Pension – DSP – whether condition is fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Qualification Period – decision under review affirmed

[Veney and Secretary, Department of Agriculture, Water and the Environment](#) (Social services second review) [2021] AATA 3886 (22 October 2021); Mr S Evans, Member

FAMILY ASSISTANCE AND SOCIAL SECURITY – farm household allowance – whether enterprise has a significant commercial purpose or character – quandongs - applicant in receipt of newstart allowance – whether multiple entitlement exclusion applies - whether the applicant’s farm enterprise has a significant commercial purpose or character – decision in the Social Services and Child Support Division affirmed

[Viscuso; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 3811 (19 October 2021); R Reitano, Member

SOCIAL SECURITY – lump sum compensation preclusion period – age pension – whether part of unpaid settlement amount has been received within the meaning of s.1169 of the Social Security Act 1981 (Cth) – whether special circumstances exist to waive the compensation preclusion period – special circumstances do not exist – decision set aside and substituted

[Xin and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 3826 (20 October 2021); S Evans, Member

SOCIAL SECURITY – carer allowance, carer payment and student start up scholarship – whether Applicant is eligible for back payment – vulnerable claimant – information not provided – decisions under review affirmed

Taxation

[Angel Loop Ltd and Commissioner of Australian Charities and Not-for-profits Commission](#) (Taxation) [2021] AATA 3894 (25 October 2021); Deputy President R I Hanger AM QC

TAXATION AND COMMERCIAL – not-for-profit charity – early investments – charitable purposes – ancillary purposes – facilitating business relationships – public benefit – decision affirmed

[Cancer & Bowel Research Australia Ltd and Commissioner of the Australian Charities and Not-for-profits Commission](#) [2021] AATA 3875 (19 October 2021); Dr N A Manetta, Senior Member

CHARITIES - applicants refused registration under the Australian Charities and Not-for-profits Commission Act 2012 - where applicants are incorporated entities limited by guarantee - whether or not entities are charitable institutions - entities incorporated for the purpose of assisting in the termination of ongoing liabilities of another entity - entities do not have uniquely charitable purposes or ancillary purposes - entities are not “charities” under the Charities Act 2013 - entities not entitled to registration - decisions under review affirmed.

[Driscoll and Commissioner of Taxation](#) (Taxation) [2021] AATA 3892 (25 October 2021); Mr R Reitano, Member

TAXATION - superannuation fund compliance - self-managed superannuation fund - discretion to issue Notice of Compliance - whether the trustee contravened regulatory provisions - sole purpose - late lodgement of returns - seriousness of contravention - decision under review affirmed

[Southern Global Group Pty Ltd and Commissioner of Taxation](#) (Taxation) [2021] AATA 3968 (28 October 2021); D Mitchell, Member

TAXATION – goods and services tax – bank account methodology audit – were bank deposits taxable supplies – Applicant’s burden to prove amended assessments excessive or otherwise incorrect and what the amended assessments should have been – which assessments were the subject of the objection decision – decision under review affirmed and varied



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
DPGF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3228

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
De Veyra v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 223	[2021] FCA 1292
Doves v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 367	[2021] FCA 1281
HZCP v Minister for Immigration and Border Protection & Anor	[2017] AATA 775	[2021] HCATrans 168 [2019] FCAFC 202 [2018] FCA 1803
PGDX v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 339	[2021] FCA 1235
RJFB v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 40	[2021] FCA 1284
RRFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3602	[2021] FCA 1273
Walker v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1773	[2021] FCA 1296

Statements of Principles

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

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

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

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

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **22 November 2021**:

Fibromyalgia (Balance of Probabilities) - No. 108 of 2021

<https://www.legislation.gov.au/Details/F2021L01460>

fibromyalgia (Reasonable Hypothesis) - No. 107 of 2021

<https://www.legislation.gov.au/Details/F2021L01459>

chronic fatigue syndrome (Balance of Probabilities) - No. 106 of 2021

<https://www.legislation.gov.au/Details/F2021L01454>

chronic fatigue syndrome (Reasonable Hypothesis) - No. 105 of 2021

<https://www.legislation.gov.au/Details/F2021L01455>

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 **22 November 2021**:

fibromyalgia - No. 14 of 2014

<https://www.legislation.gov.au/Details/F2014L00018>

fibromyalgia - No. 13 of 2014

<https://www.legislation.gov.au/Details/F2014L00016>

chronic fatigue syndrome - No. 12 of 2014

<https://www.legislation.gov.au/Details/F2014L00015>

chronic fatigue syndrome - No. 11 of 2014

<https://www.legislation.gov.au/Details/F2014L00013>



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