



Administrative
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Bulletin

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The *AAT Bulletin* is a fortnightly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read online. 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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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

[Burchet and Gooche](#) (Child support) [2022] AATA 3049 (14 July 2022); D Lambden, 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 – no interim period applied – decision under review affirmed

[Belchier and Belchier](#) (Child support) [2022] AATA 3054 (23 June 2022); R Ellis, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – a ground for departure established – decision to depart – decision under review set aside and substituted

[Perkins and Perkins](#) (Child support) [2022] AATA 3066 (29 June 2022); T Bubutievski, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – a ground for departure established – decision not to depart – not just and equitable – decision under review affirmed

[Dutton and Dietz](#) (Child support) [2022] AATA 3057 (27 July 2022); J Longo, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart – decision under review set aside and substituted

[Tallents and McCloud](#) (Child support) [2022] AATA 3065 (27 July 2022); K Dordevic, Senior Member (Presiding) and A Beckett, Member

CHILD SUPPORT – departure determination – income, property and financial resources – earning capacity of the liable parent – a ground for departure established – decision to depart – decision under review set aside and substituted

Citizenship

[David and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3402 (9 September 2022), Mr S Evans, Member

CITIZENSHIP — Application for Australian citizenship by conferral — Good character requirement — Whether the Applicant is of good character under section 21(2)(h) of the *Australian Citizenship Act 2007* (Cth) — Where the Applicant had been convicted of criminal offences — Where the Applicant's criminal offending requires viewing it in totality — Good character requirement not satisfied — Decision affirmed.

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

(Citizenship) [2022] AATA 3609 (19 September 2022); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal – good character requirement – reckless wounding committed as young person – reacting to racist taunt— effluxion of time – decision under review set aside and remitted

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

(Citizenship) [2022] AATA 3383 (17 October 2022); Mr S Evans, Member

CITIZENSHIP — Application for Australian citizenship by conferral — Good character requirement — Whether the Applicant is of good character under section 21(2)(h) of the *Australian Citizenship Act 2007* (Cth) — Where the Applicant had been convicted of criminal offences — Where the Applicant failed to disclose criminal conviction in application — Where the offences occurred a substantial period of time in the past — Decision set aside and remitted

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

(Citizenship) [2022] AATA 3612 (22 February 2022); Senior Member L Kirk

CITIZENSHIP – good character test – bogus documents submitted to Department – false information submitted in relation to Applicant’s marital status and family composition – false information submitted with purpose of achieving favourable migration outcome – Applicant has not demonstrated genuine remorse for misrepresentations made - Tribunal unable to form affirmative belief Applicant is of good character – decision affirmed

Tharmarajah and Minister for Immigration, Citizenship and Multicultural Affairs (Citizenship)

[2022] AATA 3386 (14 October 2022); Senior Member D J Morris

CITIZENSHIP – applicant is citizen of Sri Lanka – citizenship by conferral – applicant satisfied certain requirements – delegate decided not satisfied applicant was of good character – application refused – review by tribunal – two offences – seven years since offending – offences significant – sentence relevant – no other offending recorded – Tribunal applies holistic approach to conduct – decision under review set aside and matter remitted with direction

Compensation

Adams and Comcare (Compensation) [2022] AATA 3404 (18 October 2022); Deputy President A G Melick AO SC

Workers’ Compensation (Cth) — Injury — Whether injury arose out of or during the course of employment — Non-specific upper limb pain — Idiopathic pain — Whether physiological change necessary to establish disease — Whether experience of symptoms constitutes an aggravation of an injury – Decision set aside and substituted

Davis and Military Rehabilitation and Compensation Commission (Compensation) [2022] AATA

3590 (27 October 2022); Deputy President J Sosso

VETERANS’ AFFAIRS — hiatus hernia — date of clinical onset — whether Veteran was obese for the two year period prior to clinical onset — SoP No. 61 of 2022 — SoP No. 69 of 2014 — decision under review affirmed

[Doobree and Comcare](#) (Compensation) [2022] AATA 3564 (26 October 2022); L M Gallagher, Member

COMPENSATION – Commonwealth employee – adjustment disorder – whether adjustment disorder syndrome contributed to, to a significant degree, by employment -reasonable administrative action – decision under review affirmed

[Radley and Comcare](#) (Compensation) [2022] AATA 3405 (20 October 2022); Senior Member A Poljak

COMPENSATION – whether Comcare is liable for compensation pursuant to section 14 and 16 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – relevant law and material considered – decisions under review affirmed

[ZHBH and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 3549 (13 October 2022); D Mitchell, Member

VETERANS' AFFAIRS – claim for acceptance of liability – mental health conditions – diagnosis – date of onset – contributed to, to the required degree by military service – decision under review affirmed

Migration

[Aramoana and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3591 (27 September 2022); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of a Special Category (Subclass 444) 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 – decision under review set aside and substituted

[BFQX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3406 (27 September 2022); Senior Member T Tavoularis

MIGRATION – Non-revocation of a mandatory cancellation of a Class XA Protection visa – where Applicant does not pass the character test – where there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – non-refoulement obligation (People's Republic of China) – decision under review affirmed

[CKMY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3560 (21 October 2022); Senior Member J C Kelly

MIGRATION – child visa – visa was refused under s 501(6)(d)(i) because applicant did not pass character test – whether applicant passes the character test – whether the discretion should be exercised to refuse the Applicant's visa application – offending as a child a relevant consideration – offences committed as an adult – offences committed as a child – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – best interests of minor children – expectations of Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – links to the Australian community – decision set aside and substituted

[Faingataa and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]
AATA 3562 (16 September 2022); Senior Member A George

MIGRATION – Class WC Subclass 030 Bridging C visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – offending very serious – decision under review affirmed

[FBMX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3545 (25 October 2022); Deputy President B W Rayment OAM KC

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – wound person intend to cause grievous bodily harm conviction – non-refoulement obligations – humanitarian concerns – psychologist evidence low risk of reoffending – decision under review set aside and substituted

[FLLB and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]
AATA 3387 (14 October 2022); Senior Member R Bellamy

MIGRATION – refusal to grant a Protection (Subclass XA-866) 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 – repeated violent offending including family violence – decision under review affirmed

[Haidas and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3527 (19 September 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether another reason for cancellation to be revoked – driving offences, affray, and armed robbery - violent offending but applicant not fundamentally antisocial – real interest in remaining in Australia - decision set aside and cancellation decision revoked

[Hewett and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3548 (19 October 2022); D Cosgrave, Member

MIGRATION – Cancellation of Applicant's visa under s501(2) of the Migration Act 1958 - where Applicant does not pass the character test – whether discretion not to exercise the power to cancel the subject visa – consideration of Ministerial Direction No. 90 – serious violent offences– multitude of drug and domestic-violence related offending – decision under review affirmed

[Jouini and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3589 (27 October 2022); Senior Member K Raif

MIGRATION – mandatory cancellation of visa – Class WE Subclass 050 Bridging E visa – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – aggression related criminal history – lack of insight into conduct – family violence – best interests of children – links to the Australian community – expectations of the Australian community – decision affirmed

[JZGW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3436 (19 October 2022); Senior Member D J Morris

MIGRATION – remittal – applicant is citizen of Vietnam – applicant held spouse visa until that visa cancelled – cancelled because of substantial criminal record – applicant invited to make representations to Department – delegate of minister refused to revoke visa cancellation – review by Tribunal – Tribunal affirmed decision – Federal Court quashes Tribunal decision and remits for fresh consideration by Tribunal – new direction since last heard – Direction No. 90 – primary considerations – single offence of major drug trafficking over extended charging period – applicant has minor children in Australia – other considerations – impact on applicant’s health of repatriation – decision under review is affirmed

[Khalil and Minister for Immigration, Citizenship, and Multicultural Affairs](#) [2022] AATA 3563 (26 October 2022); Senior Member T Tavoularis and Senior Member A Nikolic AM CSC

MIGRATION – visa refusal – citizen of Egypt – Partner (Temporary) (Class UK) visa – criminal offending – substantial criminal record – failure to pass good character test – discretion to refuse visa – Direction No. 90 applied – reviewable decision affirmed

[LGLH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3613 (28 October 2022); Dr L Kirk, Senior Member

MIGRATION – Migration Act s 501CA(4) – matter remitted from the Federal Court of Australia – whether there is another reason to revoke mandatory cancellation of applicant's visa – Ministerial Direction No. 90 – whether the same material can be considered for two or more considerations – nature and seriousness of offending – family violence – whether ex-partner in relationship breakdown is a family member – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – whether Tribunal is obligated to consider non-refoulement obligations – Plaintiff M1/2021 v Minister for Home Affairs (2022) 400 ALR 417– whether non-refoulement obligations are owed – South Sudan – consequences of adverse decision – detention with no chronologically fixed endpoint – extent of impediments if removed – links to the Australian community – strength, nature, and duration of ties – reviewable decision set aside and substituted

[Pau and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3385 (14 October 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – aggravated break and enter – stalking – threats to kill – protection of the Australian community – expectations of the Australian community – family breakdown – best interests of children – links to the Australian community – impediments to relocation – offending over short time period and out of character – decision set aside and substituted

[RBKG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3434 (20 October 2022); Senior Member J Rau SC

MIGRATION – mandatory cancellation of Class BC Subclass 100 Spouse visa under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 - decision under review is affirmed.

[Seau and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3430 (18 October 2022); Senior Member K Raif

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked? – Direction no. 90 considered – relevant law and material considered – decision under review affirmed

[Te Huia and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3547 (25 October 2022); Senior Member R Cameron

MIGRATION – mandatory cancellation of visa – Class TY Subclass 444 Special Category (Temporary) visa – applicant non-citizen born in New Zealand – repeated family violence offending – contents of Direction 90 – risk of re-offending –rehabilitation and remorse –expectations of the Australian community – decision affirmed

[Fang](#) (Migration) [2022] AATA 3282 (16 August 2022); D Kelly, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 Regional Sponsored Migration Scheme – Direct Entry stream – position of Wholesaler – no approved nomination – compelling and compassionate circumstances – members of the family unit – request for Ministerial Intervention – pastoral service to a church – decision under review affirmed

[Mushtaq](#) (Migration) [2022] AATA 3290 (17 August 2022); J Murphy, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – occupation of Accountant – Australian study requirement – courses completed within 6 months before visa application – courses closely related to skilled occupation – Leadership and Management studies – course not transferable to the applicant’s nominated occupation – broader employment and future career aspirations – decision under review affirmed

[1934985](#) (Migration) [2022] AATA 3215 (17 August 2022); D Crawshay, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – carer of the resident – assistance reasonably provided by welfare, hospital, nursing or community services in Australia – impairment assessment – no available family members – appropriate enquiries into available assistance – limited investigation of service providers – decision under review affirmed

[2203635](#) (Migration) [2022] AATA 3112 (7 July 2022); Deputy President A Younes

MIGRATION – cancellation– subclass 155 (Five Year Resident Return) visa–applicant had given incorrect information – applicant’s returns to Iraqi for a lengthy period – applicant’s central fear of harm relates to his tribe, not the Iraqi authorities – no non-compliance by the applicant in the way described in the NOICC – discretionary power to cancel the applicant’s visa does not arise – decision under review set aside

[2103000](#) (Migration) [2022] AATA 3111 (7 July 2022); M McAdam, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – tourist stream – application made within 28 days after last substantive visa ceased – factors beyond applicant’s control and compelling reasons for granting visa – previously held student guardian visa to accompany daughter – could not apply until daughter applied for hers – COVID-19 restrictions and delay in issuing of daughter’s new passport – daughter’s age, personal circumstances, physical and mental health and progress at school – daughter’s visa now granted – extensive and credible evidence – disciplinary action against former agent – decision under review remitted

National Disability Insurance Scheme

[Pearce and National Disability Insurance Agency](#) [2022] AATA 3608 (28 October 2022); Senior Member C J Furnell

NATIONAL DISABILITY INSURANCE SCHEME – statement of participant supports – assessment of reasonable and necessary supports – accessories for use with hearing aids – interpreting and captioning services – effect of new participant plan on Tribunal jurisdiction – bar on variation of a plan once it is in effect – Tribunal decision unable to affect funding of supports under current plan – Tribunal not satisfied supports effective and beneficial for the applicant given absence of jurisdiction to affect supports under current plan – Tribunal satisfied that but for that absence of jurisdiction it would have been satisfied that certain of the supports sought by the applicant were reasonable and necessary – nevertheless, decision affirmed

Practice and Procedure

[Bringans and Australian Securities and Investments Commission](#) [2022] AATA 3403 (19 October 2022); Senior Member G Lazanas

PRACTICE AND PROCEDURE – application for stay of decision – banning order – applicant banned from providing any financial services – applicant banned from controlling an entity that carries on a financial services business – applicant banned from performing any function involved in the carrying on of a financial services business – whether discretion of the Tribunal is enlivened to grant a stay – whether a stay is desirable for the purpose of securing the effectiveness of the hearing and determination of the application for review – prospects of success – reputational damage and financial hardship – whether hearing rendered nugatory – public interest considerations – anticipated delay in hearing of the application for review – application for stay refused

[Gratt and National Disability Insurance Agency](#) [2022] AATA 3379 (17 October 2022); Senior Member D Connolly

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – extension of time to apply for review – delay – prejudice – interests of justice – application refused

[Hill and National Disability Insurance Agency](#) [2022] AATA 3431 (19 October 2022); Mr S Webb, Member

PRACTICE & PROCEDURE – jurisdiction – successive participant plans – replacement plan following plan review – approval of statement of participant supports – reviewable decision – internal review and deemed internal review decision essentially conditioned by request being made within the prescribed time – no request for internal review – no internal review decision – deemed decision to refuse review of a participant plan conditioned by request – no request for plan review – no actual or deemed decision – no jurisdiction – applications dismissed

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

(Citizenship) [2022] AATA 3611 (15 July 2022); Dr L Kirk, Senior Member

PRACTICE AND PROCEDURE – publication of reasons for decision – suppression order – suppression of name of applicant – suppression of name of witnesses – norm of publication established by s 35 of AAT Act – protection of privacy of family members – where harm to applicant and witnesses may be prevented – considerations found to outweigh norm established by s 35 of AAT Act – direction made under s 35 of AAT Act – application granted

[**Pelovski and National Disability Insurance Agency**](#) [2022] AATA 3380 (6 October 2022); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – request for a remittal order under section 42D of the AAT Act 1975 (Cth) — request for a stay under subsection 41(2) of the AAT Act 1975 (Cth) to stay reviewable decision – Plan Managed – Agency Managed – where the Respondent intends to include a prohibition in the Applicant’s statement of participant supports if the reviewable decision is remitted under section 42D of the AAT Act 1975 (Cth) to prevent the Applicant’s Plan Nominee and Support worker from receiving payment – hearing scheduled to determine substantive issue in dispute - not necessary to make an order to stay the reviewable decision under subsection 41(2) of the AAT Act 1975 (Cth)

[**QQRK and Commissioner of Taxation**](#) (Taxation) [2022] AATA 3399 (26 September 2022); Deputy President B J McCabe

PRACTICE AND PROCEDURE – Taxation – Administrative Appeals Tribunal – summons to produce documents – secrecy – override state provisions – invoking public interest exemption – summons set aside – testing financial affairs – material assisting in putting the applicant to proof on transactions – summons approved

[**TDWF and Commissioner of Taxation**](#) (Taxation) [2022] AATA 3610 (24 October 2022); Deputy President B J McCabe

PROCEDURAL FAIRNESS – rules of evidence – cross-examination – costs – cards on the table

[**Van Duren and Secretary, Department of Social Services**](#) (Social services second review) [2022] AATA 3400 (18 October 2022); Mr S Webb, Member

PRACTICE & PROCEDURE – application for review of AAT 1st Review decision – prescribed time for making application – application out of time – discretion to extend time – reasonable explanation – no prejudice – no reasonable prospects of success – not appropriate to exercise discretion – extension of time refused

Refugee

[**2115776**](#) (Refugee) [2022] AATA 3160 (3 March 2022); J.L Redfern PSM, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Sri Lanka – application for protection on the basis of the refugee and complementary protection criterion – attack alleged to be politically motivated – whether there is a real chance or real risk of sustaining serious or significant harm – credibility concerns – late production of evidence – not satisfied the applicant is a refugee – failed asylum seeker – separation from wife in Australia found not to enliven complementary protection obligations – not satisfied that the applicant faces a real risk of significant harm – decision under review affirmed

[1813142](#) (Refugee) [2022] AATA 3424 (15 July 2022); N Burns, Member

REFUGEE – protection visa – Iraq – religion – Chaldean Christian – particular social group – imputed political opinion – business serving alcohol – Kurdistan Region of Iraq – attacks by Muslim extremists – state protection – decision under review remitted

[1703854](#) (Refugee) [2022] AATA 3170 (4 August 2022); A Murphy, Member

REFUGEE – protection visa – Thailand – fear of harm from money lenders or human traffickers – trafficked to work in sex industry in Australia to repay significant debt in Thailand – no work in that industry and no money repaid – work in another sector and period as unlawful non-citizen – agent’s report to AFP’s human trafficking team – country information – household debt and money lenders – not a member of a particular social group for refugee criterion – complementary protection – insufficient state protection available and relocation not reasonable – members of family unit – decision under review remitted

[1934533](#) (Refugee) [2022] AATA 3159 (4 August 2022); R Smidt, Member

REFUGEE – Protection Visa – Iraq – involvement in treating Sunnis fleeing violence during the period of conflict with ISIS – membership of the particular social groups – medical professionals in Iraq – involvement in demonstrations against corruption in Iraq – effective protection measures not available – harm feared is systematic and discriminatory – decision under review remitted

[1830159](#) (Refugee) [2022] AATA 3223 (15 August 2022); L Hardy, Member

REFUGEE – protection visa – Egypt – religion – Coptic Christian – fear of Muslim extremists – forced divorce – forced conversion to Islam – custody of children – workplace harassment – claims of insulting Islam – limited geographical relocations – delay in applying for protection – decision under review affirmed

Social Services

[Al-Hammuri and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3433 (20 October 2022); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – suspension of payment – maximum portability period of 28 days – whether portability period could be extended – general extension of a portability period – whether applicant was attending to an acute family crisis – decision under review affirmed

[Mohammed and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3382 (14 October 2022); Dr L Bygrave, Member

SOCIAL SECURITY – claim for special benefit – newly arrived resident’s waiting period – whether the Applicant suffered a substantial change in circumstances beyond their control after they first entered Australia – decision under review affirmed

[TMFD and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3432 (17 October 2022); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions are fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – continuing inability to work – adequate consideration of evidence before the Tribunal – decision under review remitted to the Respondent for reconsideration

[ZVJQ and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3435 (19 October 2022); Ms A E Burke AO, Member

SOCIAL SECURITY – disability support pension – suspension – maximum portability period – extension of portability period – whether Applicant’s injury or serious illness prevented her from returning to Australia – impact on ability to travel because of COVID – decision under review varied in part but otherwise affirmed

Taxation

[Grech and Tax Practitioners Board](#) [2022] AATA 3401 (19 October 2022); Deputy President I Hanger

Tax agent – whether applicant fit and proper person – whether applicant provides competent tax services – whether applicant adequately supervises employees working under their registration – where applicant unaware of access to their tax agent portal – applicant deemed not a fit and proper person – decision under review affirmed

[H & B Auto Repair Centre Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 3561 (25 October 2022); D Mitchell, Member

TAXATION – goods and services tax – input tax credits – four year rule to claim input tax credit – eligibility to claim input tax credits – taxpayer’s burden to prove assessment excessive or otherwise incorrect – decision under review affirmed

[T.D.S BIZ PTY LTD and Commissioner of Taxation](#) (Taxation) [2022] AATA 3543 (25 October 2022); Senior Member A Poljak

TAXATION – R&D tax incentive – whether the applicant is entitled to the R&D tax incentive in relation to its supporting R&D activities – whether the applicant is liable for an administrative penalty – whether remission is warranted – relevant law and material considered – applicant not entitled to R&D tax incentive – applicant liable for administrative penalty – decision under review affirmed

Veterans’ Affairs

[Chugg and Repatriation Commission](#) (Veterans’ entitlements) [2022] AATA 3381 (17 October 2022); Mr A Maryniak KC, Member

VETERANS' AFFAIRS - War widow's pension - Whether veteran's death was "war-caused" - Applicant accepts application cannot succeed unless ischemic heart disease made a relevant contribution to the veteran's death or kind of death - cause of death held to be cerebral ischaemia, dementia, aspiration and pneumonia - kind of death held to be aspiration and pneumonia as a consequence of dementia and cerebral ischaemia - 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
Dooley and Secretary, Attorney-General's Department	[2022] AATA 3027
Farrow-Smith and Comcare	[2022] AATA 3157
GJRR and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3104
Kenjad Pty Ltd as Trustee for the Kenjad Trust and Secretary, Department of Social Services	[2022] AATA 2999
Lucas and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 3151
McEwan and Comcare	[2022] AATA 1586
McGlone and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 3202
MQGT and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3228
Nkani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1239
Titoa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2329
Tsoumbris and Pacific National Services Pty Ltd	[2022] AATA 3249

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ascic v Comcare	[2019] AATA 2476	[2022] FCA 1245 [2021] FCA 1498
JJNY v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 62	[2022] FCA 1239

**Lyu v Minister for Immigration,
Citizenship, Migrant Services and
Multicultural Affairs**

[\[2021\] AATA 643](#)

[\[2022\] FCA 1258](#)
[\[2021\] FCCA 1604](#)

**Secretary, Department of Social Services
v Doherty**

[\[2020\] AATA 3311](#)

[\[2022\] FCA 1242](#)

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 commence on 21 November 2022:

Acute stress disorder (Balance of Probabilities) - No. 96 of 2022

<https://www.legislation.gov.au/Details/F2022L01378>

Acute stress disorder (Reasonable Hypothesis) - No. 95 of 2022

<https://www.legislation.gov.au/Details/F2022L01377>

Allergic rhinitis (Balance of Probabilities) - No. 112 of 2022

<https://www.legislation.gov.au/Details/F2022L01386>

Allergic rhinitis (Reasonable Hypothesis) - No. 111 of 2022

<https://www.legislation.gov.au/Details/F2022L01387>

Diaphragmatic hernia (Balance of Probabilities) - No. 100 of 2022

<https://www.legislation.gov.au/Details/F2022L01374>

Diaphragmatic hernia (Reasonable Hypothesis) - No. 99 of 2022

<https://www.legislation.gov.au/Details/F2022L01373>

Leptospirosis (Balance of Probabilities) - No. 102 of 2022

<https://www.legislation.gov.au/Details/F2022L01390>

Leptospirosis (Reasonable Hypothesis) - No. 101 of 2022

<https://www.legislation.gov.au/Details/F2022L01389>

Malignant neoplasm of unknown primary site (Balance of Probabilities) - No. 104 of 2022

<https://www.legislation.gov.au/Details/F2022L01380>

Malignant neoplasm of unknown primary site (Reasonable Hypothesis) - No. 103 of 2022

<https://www.legislation.gov.au/Details/F2022L01379>

Pleural plaque (Balance of Probabilities) - No. 106 of 2022

<https://www.legislation.gov.au/Details/F2022L01384>

Pleural plaque (Reasonable Hypothesis) - No. 105 of 2022

<https://www.legislation.gov.au/Details/F2022L01383>

Portal vein thrombosis (Balance of Probabilities) - No. 108 of 2022

<https://www.legislation.gov.au/Details/F2022L01382>

Portal vein thrombosis (Reasonable Hypothesis) - No. 107 of 2022

<https://www.legislation.gov.au/Details/F2022L01381>

Posttraumatic stress disorder (Balance of Probabilities) - No. 98 of 2022

<https://www.legislation.gov.au/Details/F2022L01376>

Posttraumatic stress disorder (Reasonable Hypothesis) - No. 97 of 2022

<https://www.legislation.gov.au/Details/F2022L01375>

Restless legs syndrome (Balance of Probabilities) - No. 114 of 2022

<https://www.legislation.gov.au/Details/F2022L01399>

Restless legs syndrome (Reasonable Hypothesis) - No. 113 of 2022

<https://www.legislation.gov.au/Details/F2022L01398>

Rotator cuff syndrome (Balance of Probabilities) - No. 110 of 2022

<https://www.legislation.gov.au/Details/F2022L01392>

Rotator cuff syndrome (Reasonable Hypothesis) - No. 109 of 2022

<https://www.legislation.gov.au/Details/F2022L01391>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These commence on 21 November 2022

Gingivitis (Balance of Probabilities) - No. 116 of 2022

<https://www.legislation.gov.au/Details/F2022L01395>

Gingivitis (Reasonable Hypothesis) - No. 115 of 2022

<https://www.legislation.gov.au/Details/F2022L01394>

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 **21 November 2022**:

Acute stress disorder - No. 42 of 2014

<https://www.legislation.gov.au/Details/F2014L00470>

Acute stress disorder - No.41 of 2014

<https://www.legislation.gov.au/Details/F2014L00469>

Allergic rhinitis - No. 23 of 2014

<https://www.legislation.gov.au/Details/F2014L00300>

Allergic rhinitis - No. 22 of 2014

<https://www.legislation.gov.au/Details/F2014L00306>

Leptospirosis - No. 95 of 2014

<https://www.legislation.gov.au/Details/F2014L01386>

Leptospirosis - No.94 of 2014

<https://www.legislation.gov.au/Details/F2014L01385>

Malignant neoplasm of unknown primary site – No. 81 of 2014

<https://www.legislation.gov.au/Details/F2014L01143>

Malignant neoplasm of unknown primary site - No. 80 of 2014

<https://www.legislation.gov.au/Details/F2014L01142>

Pleural plaque - No. 46 of 2014

<https://www.legislation.gov.au/Details/F2014L00477>

Pleural plaque - No. 45 of 2014

<https://www.legislation.gov.au/Details/F2014L00474>

Posttraumatic stress disorder - No. 83 of 2014

<https://www.legislation.gov.au/Details/F2014L01145>

Posttraumatic stress disorder - No.82 of 2014

<https://www.legislation.gov.au/Details/F2014L01144>

Restless legs syndrome - No. 21 of 2014

<https://www.legislation.gov.au/Details/F2014L00308>

Restless legs syndrome - No. 20 of 2014

<https://www.legislation.gov.au/Details/F2014L00307>

Rotator cuff syndrome - No. 101 of 2014

<https://www.legislation.gov.au/Details/F2014L01379>

Rotator cuff syndrome - No. 100 of 2014

<https://www.legislation.gov.au/Details/F2014L01376>

Recent developments

New summons forms available on our website

New versions of the following summons forms have been approved under regulation 7(1) of the *Administrative Appeals Tribunal Regulation 2015*, for the purposes of section 40A of the *Administrative Appeals Tribunal Act 1975*:

- [Summons to give evidence](#)
- [Summons to give evidence and produce documents](#)
- [Summons to produce documents or things.](#)

The previous versions of these forms are still valid.

We have also updated [our guide](#) on what you need to do if you receive a summons to produce documents.



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