



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 23/2021

15 November 2021

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

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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

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

Contents

Recent news	3
New online application form for Migration and Refugee Division Reviews	3
AAT Recent Decisions	4
Child Support.....	4
Citizenship.....	5
Compensation	6
Corporations	6
Education and Research.....	6
Migration.....	6
National Disability Insurance Scheme.....	9
Practice and Procedure.....	9
Professions and Trades	10
Refugee.....	10
Social Services.....	11
Taxation.....	13
Appeals	14
Appeals lodged.....	14
Appeals finalised	14
Statements of Principles	16
Notification of Investigations relating to existing Statements of Principles	16
New Statements of Principles	16
Statements of Principles to be revoked.....	17

Recent news

New online application form for Migration and Refugee Division Reviews

Updates have been made to the [online application form](#) on our website, for review of decisions by the AAT's Migration and Refugee Division.

The new online application form includes changes:

- to the representative and declaration sections of the form, and
- to address the new jurisdiction of the AAT to review decisions made under section 197D(2) of the *Migration Act 1958* (Cth) about protection findings.

The new online form is now on our [website](#).

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

[BMJG and Child Support Registrar](#) (Child support second review) [2021] AATA 4171 (12 November 2021); Dr L Bygrave, Member

CHILD SUPPORT – percentage of care – notice of change of percentage of care – whether new determination of care should be made – date of effect of any new determination – whether other parent took reasonable action to have court ordered care arrangements reinstated – whether special circumstances exist – decision set aside and substituted

[Skillern 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

[Brower and Donelan](#) (Child support) [2021] AATA 3686 (19 August 2021); M Sutherland (Presiding), Member and M Kennedy, Member

CHILD SUPPORT – percentage of care – whether there were changes to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decisions under review set aside and substituted

CHILD SUPPORT – date of effect of the tribunal's decisions – late applications for review – whether there were special circumstances that prevented the applications for review being lodged in time – special circumstances do not exist – tribunal decides not to make a determination under subsection 95N(2)

[Franklin and Corey](#) (Child support) [2021] AATA 3696 (19 August 2021); H Moreland, Member

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

[Corwin and Corwin](#) (Child support) [2021] AATA 3606 (20 August 2021); S Brakespeare, Member

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

[Rencher and Wathey](#) (Child support) [2021] AATA 3689 (25 August 2021); K Dordevic, Member

CHILD SUPPORT – particulars of the administrative assessment – whether child is ordinarily resident in Australia – whether child is citizen of Australia – decision affirmed

Citizenship

[Dib and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 4170 (12 November 2021); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – whether the good character requirement under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) is satisfied – relevant law and policy considered – applicant’s background and criminal history considered – character references considered – decision under review set aside and substituted

[DXXJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 4015 (3 November 2021); M J McGrowdie, Senior Member

CITIZENSHIP – application for citizenship by conferral – assessment of character under the relevant legislation – where altered documents used to obtain a New South Wales Driver’s License – false information supplied at International Airport in Australia – decision affirmed

[Hasan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 4141 (10 November 2021); S Evans, Member

CITIZENSHIP – whether the applicant satisfies the good character requirement under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – domestic violence conviction – nature of offending disputed – conviction not declared – decision under review affirmed

[Khin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 4138 (10 November 2021); S Boyle, Deputy President

CITIZENSHIP – refusal to grant Australian citizenship by conferral – delegate not satisfied of identity (Citizenship Act s 24(3)) – Applicant from Myanmar – discrepancy in Applicant’s birthdate – consistent and sufficient life story supported by witness statements and evidence – Applicant established identity to best of her ability having regard to the circumstances of her life – Tribunal satisfied of identity – reviewable decision set aside and remitted

[Kyi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 4069 (5 November 2021); S Boyle, Deputy President

CITIZENSHIP – refusal to grant Australian citizenship – delegate not satisfied of identity (Citizenship Act s 24(3)) – Applicant from Myanmar – no source documents produced – failure to exhaust reasonable efforts to obtain identity documents – failure to provide sufficient life story – Tribunal not satisfied of identity – prohibition under the Citizenship Act s 24(3) applies – reviewable decision affirmed

[Smith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Citizenship) [2021] AATA 4077 (4 November 2021); Dr C Huntly, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship by conferral – whether Tribunal satisfied applicant was of good character – applicant is a 56-year-old man who came to Australia in 1995 using an assumed identity – failure to provide requested information – reviewable decision affirmed

[XRKV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 3987 (1 November 2021); J C Kelly, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – whether satisfied of identity of applicant – various dates of birth provided – Australian Citizenship Procedural Instructions – decision under review set aside

Compensation

[NXPQ and Comcare](#) (Compensation) [2021] AATA 4094 (9 November 2021); J W Constance, Deputy President

WORKERS' COMPENSATION – previous application for review to Administrative Appeals Tribunal – previous application affirmed by the Tribunal – where new application based on substantially same facts as in previous application – abuse of process – application for review dismissed

Corporations

[Lee and Australian Securities and Investments Commission](#) [2021] AATA 4048 (4 November 2021); R Reitano, Member

CORPORATIONS LAW – banning order – applicant prohibited from providing any financial services for a certain period – dishonesty – multiple forgeries of signatures and false witnessing – backdating documentation – whether applicant is a fit and proper person – whether applicant is likely to contravene a financial services law in the future – whether a banning order should be made – appropriate duration of banning order – set aside and substituted

Education and Research

[VRQC and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 4032 (4 November 2021); B Pola, Senior Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-credit – whether application made before end of application period – whether period should be waived – special circumstances – mental health conditions and difficult family situation – whether applicant's circumstances were beyond her control – whether applicant's circumstances made their full impact on or after the census date – no special circumstances – decision under review affirmed

Migration

[BBRL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4079 (8 November 2021); T Tavoularis, Senior 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 – where Applicant concedes they have been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review set aside

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

(Migration) [2021] AATA 4155 (11 November 2021); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – Class BF Transitional (Permanent) visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record - Ministerial Direction No. 90 – primary considerations – 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 – international non-refoulement obligations – extent of impediments if removed – strength, nature and duration of ties to Australia – non-refoulement consideration strongly outweighs Applicant’s past criminal conduct and risk of future offending – decision set aside and substituted

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

(Migration) [2021] AATA 4139 (10 November 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – cannabis cultivation and possession offences – Applicant “crop-sitting” cannabis grow house – Applicant declared a drug trafficker – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of two minor children – expectations of the Australian community – extent of impediments if removed to Vietnam – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 27-year-old man who arrived in Australia as a 16-year-old student – Reviewable Decision affirmed

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

(Migration) [2021] AATA 4097 (9 November 2021); B W Rayment OAM QC, Deputy President

MIGRATION – re-determination of matter on remittal from the Federal Court – applicant’s visa cancelled pursuant to s. 501 of the Migration Act 1958 (Cth) – cancellation not revoked – applicant does not satisfy the character test – issue for determination: whether there is another reason why the cancellation of the applicant’s visa should be revoked – provisions of Direction 90 considered – primary and other considerations assessed – applicant’s background and criminal history considered – decision under review affirmed.

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

(Migration) [2021] AATA 4053 (5 November 2021); S Evans, Member

MIGRATION – mandatory visa cancellation – failure to pass character test – whether there is another reason why the original decision should be revoked – Direction No. 90 – protection of the Australian community – family violence – best interests of minor children – expectations of the Australian community – extent of impediments if removed – impact on victims – links to the Australian community – decision under review set aside and substituted

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

(Migration) [2021] AATA 4054 (8 October 2021); R Bellamy, Member

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 there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – non-refoulement claims where receiving country is Ethiopia – decision under review set aside

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

(Migration) [2021] AATA 4052 (3 November 2021); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class AS Subclass 801 Spouse visa under section 501CA(4) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – repeat driving offences – decision under review set aside

Sharma's Kitchen Pty Ltd (Migration) [2021] AATA 4033 (15 October 2021); N Dougall, Member

MIGRATION – application for approval of nomination of position – specified occupation – inapplicability conditions – mass production in factory setting – scale of operations and expansion of product range – some specialised products for religious and cultural events cannot be machine-made – sales and export potential – genuine position – comparison of position description and ANZSCO listing – nominee's role in training other workers – decision under review set aside

1934462 (Migration) [2021] AATA 4086 (15 October 2021); S Baker, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – subclass 155 (Five Year Resident Return) visa – incorrect information in application – relationship status – marriage certificate provided – applicant did not provide incorrect information in relation to his citizenship status – representative provides a compelling explanation – minor nature of the breach – hardship – mental health – decision under review set aside

1807306 (Migration) [2021] AATA 4102 (19 October 2021); D Crawshay, Member

MIGRATION – Partner (Resident) (Class BS) visa – Subclass 801 (Spouse) – relationship ceased – family violence claims – evidence from two professionally qualified declarants – no psychological treatments or counselling – appropriate referrals not taken up – therapeutic professional relationship – request for Ministerial Intervention – decision under review affirmed

Wellage (Migration) [2021] AATA 4132 (21 October 2021); L Nicholls, Senior Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – no substantive visa at the time of visa application – suspension of flights into Sri Lanka – factors beyond the applicant's control – compelling reasons – impact of the COVID19 pandemic – suspension of flights only temporary at first – stay for any other purpose – absence of helpful and publicly available direction – decision under review remitted

1930833 (Migration) [2021] AATA 4031 (22 October 2021); N Goetz, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine temporary stay – period of unlawful residence conditions – lengthy stay in Australia – outstanding debt to the Commonwealth – abiding by visa conditions – substantially complying with previous substantive visa – limited medical evidence – decision under review affirmed

National Disability Insurance Scheme

[Aiden and National Disability Insurance Agency](#) [2021] AATA 4099 (9 November 2021); F Meagher, Deputy President

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where Applicant applied to Tribunal to review a decision to approve a statement of participant supports – where additional supports not considered within internal review decision – jurisdiction of the Tribunal – Tribunal has jurisdiction to consider matters that were before the primary decision-maker

[HRZI and National Disability Insurance Agency](#) [2021] AATA 4029 (2 November 2021); D O'Donovan, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – statement of participant supports – whether Tribunal has jurisdiction to review supports not included in original request for review – Tribunal has jurisdiction

Practice and Procedure

[Kerney and Comcare](#) (Compensation) [2021] AATA 4140 (10 November 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – application for dismissal under section 42A of the Administrative Appeals Tribunal Act 1975 (Cth) – failure to proceed with the application – application dismissed

[MEC Resources Ltd and Innovation and Science Australia](#) [2021] AATA 4030 (3 November 2021); S Boyle, Deputy President

PRACTICE AND PROCEDURE – request for stay (AAT Act s 41(2)) – Applicant's registration revoked under PDF Act s 47(1)(a) – Scott considerations applied – prospects of success – consequences of refusing stay – public interest and consequences to Respondent in carrying out its functions – whether applications would be rendered nugatory if stay refused – request for stay refused

[MSZN and National Disability Insurance Agency](#) [2021] AATA 4047 (4 November 2021); F Meagher, Deputy President

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where Applicant applied to Tribunal to review a decision to approve a statement of participant supports – where additional supports not considered within internal review decision – jurisdiction of the Tribunal – Tribunal has jurisdiction to consider matters that were before the primary decision-maker – jurisdiction to ultimately be determined at substantive hearing

[ProGalor Hub Pty Ltd and Australian Skills Quality Authority](#) [2021] AATA 4058 (5 November 2021); A Poljak, Senior Member

PRACTICE AND PROCEDURE – application for a stay of decision of Australian Skills Quality Authority – registered training organisation – decision to suspend the applicant's scope of registration – factors relevant to considering application for a stay – prospects of success – reputational damage – public interest – stay application granted in the same terms as current interim stay orders

[Ravey and National Disability Insurance Agency](#) [2021] AATA 4068 (5 November 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – whether the tribunal has jurisdiction to review supports requested by the applicant – where additional supports requested after lodgement of application – where additional supports requested not put before internal reviewer – application remitted to respondent for reconsideration

[Walsh and Australian Postal Corporation](#) [2021] AATA 4057 (5 November 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – application for dismissal – whether application should be dismissed under s 42A of the Administrative Appeals Tribunal Act 1975 – where applicant has failed to comply with directions – where applicant has failed within reasonable time to proceed – where applicant cannot be contacted – application dismissed

Professions and Trades

[Vac Corporate Pty Ltd and Tax Practitioners Board](#) [2021] AATA 4098 (28 October 2021); R Reitano, Member

TAX AGENTS – temporary suspension of registration for submitting returns containing false statements – breach of obligations of honesty and competence – protection of the public – specific deterrence – general deterrence - appropriate sanction – Decision under review affirmed

Refugee

[1923821](#) (Refugee) [2021] AATA 4150 (20 July 2021); F Simmons, Member

REFUGEE – cancellation – protection visa – stateless – incorrect information in application – race – Rohingya – religion – Muslim – applicants' possession of Pakistani identity documents – ability of Rohingya to obtain Pakistani citizenship – prevalence of document fraud in Pakistan – applicant's Rohingya language fluency – genuine documents fraudulently obtained – decision under review set aside

[1705111](#) (Refugee) [2021] AATA 4143 (5 October 2021); D McCulloch, Member

REFUGEE – protection visa – Nepal – complementary protection criterion – political opinion – Nepal Communist Party UML – abduction by the Maoists – ongoing health treatment – financial hardship – credibility issues – state protection – delay in applying for protection – decision under review affirmed

[1710850](#) (Refugee) [2021] AATA 4142 (11 October 2021); A Paxton, Member

REFUGEE – protection visa – India – particular social group – attacks by developers for land acquisition – physical assault – fear of killing – state protection – internal relocation – delay in applying for protection – decision under review affirmed

[1809967](#) (Refugee) [2021] AATA 4144 (17 October 2021); K Chapman, Member

REFUGEE – protection visa – Iraq – religion and imputed political opinion – Sunni Muslim fearing harm from Shia militia – death of worker with militia links under brother’s supervision – worker’s family’s demand for compensation – brother kidnapped and tortured and applicant and father threatened – some money paid and attempt at mediation – relocations from Shia to mixed to Sunni neighbourhood – ethnically mixed marriage with Arab husband and Kurdish wife – delay in departing to care for elderly father and for medical treatment – brother now in third country – country information – fear of persecution well-founded, but does not relate to all areas of country – complementary protection – targeted risk not faced by population generally – not reasonable to relocate with ethnically mixed children to areas without existing support networks – detailed, consistent and credible evidence – members of family unit – no jurisdiction for child born after delegate’s decision – decision under review remitted

[1935245](#) (Refugee) [2021] AATA 4152 (26 October 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Iran – Federal Court remittal – race – Ahwazi Arab – alcohol consumption – land resumption without compensation – Sepah investigations – revenge by girlfriend’s family – obtaining a passport – court documents – departure on a fraudulent passport – employment – access to health services – decision under review affirmed

Social Services

[Akkok and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4137 (8 November 2021); R West, Member

SOCIAL SECURITY – disability support pension – DSP refused – First Tier Review affirmed – s.147 Administration Act – liver disease – arthritis – Von Willebrand Disease – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Ali; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 4095 (9 November 2021); B Pola, Senior Member

Debt – debt raised to recover overpayments of disability support pension – overpayments arose because correct amount of self-employment income not taken into account – where third party deposited funds to debtor to supervise a construction project for no compensation – where evidence of withdrawals of project funds for debtor’s personal expenses – where lack of documentary evidence to delineate project expenses from debtor’s personal expenses – whether whole or part of debt should be written off – whether debtor had no capacity to repay the debt – whether deductions from benefits to repay the debt would cause severe financial hardship – whether whole or part of the debt should be waived – whether debt solely attributable to an administrative error on the part of the Commonwealth – whether debtor received the overpayments in good faith – whether debtor knowingly failed to comply with statutory obligations – whether special circumstances exist to warrant waiver of debt – no special circumstances – decision under review set aside

[Bofilios and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4050 (27 October 2021); A Durkin, Member

SOCIAL SECURITY – whether Applicant member of a couple – Applicant received payments of disability support pension (DSP) blind at partnered rate – whether Applicant entitled to single rate of DSP blind – whether a special reason exists not to treat the Applicant as a member of a couple – decision under review set aside

[Gatley; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 4096 (9 November 2021); C Puplick AM, Senior Member

SOCIAL SECURITY – where the Secretary is the Applicant – entitlement to disability support pension – whether conditions fully diagnosed, treated and stabilised during the qualification period – whether impairments amounted to 20 points – whether there is a continuing inability to work – whether the program of supports requirements are satisfied – decision set aside and substituted

[Koulmandas and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4017 (29 October 2021); A G Melick AO SC, Deputy President

FAMILY ASSISTANCE AND SOCIAL SECURITY – parenting payment – child care benefit – family tax benefit – whether the Applicant was a member of a couple – whether the debt should be waived – whether special circumstances apply

[Liang and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4076 (8 November 2021); K Millar, Senior Member

SOCIAL SECURITY – family tax benefit – parenting payment – cancellation – suspension – portability – portability period – unlimited portability – overseas – unable to return to Australia – COVID-19 – decision set aside and remitted

[Neville and Secretary, Department of Social Services Services](#) (Social services second review) [2021] AATA 4154 (11 November 2021); B Pola, Senior Member

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

[Newton and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4049 (4 November 2021); L Rieper, Member

DISABILITY SUPPORT PENSION – qualification for disability support pension – Applicant has multiple health conditions – conditions are fully diagnosed but were not fully treated or fully stabilised during the qualification period – Applicant does not have impairment rating of 20 points or more – Applicant does not have continuing inability to work – decision affirmed

[Taleb and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4078 (5 November 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – JobSeeker Payment – Disability Support Pension – where applicant received lump sum compensation payment – compensation preclusion period imposed – whether special circumstances exist – decision affirmed

[Vella; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 4051 (4 November 2021); D Mitchell, Member

SOCIAL SECURITY – Parenting Payment – overpayment – where partners income was not reported – where no sole administrative error – where no special circumstances – decision under review set aside and substituted

Taxation

[XQDX and Commissioner of Taxation](#) (Taxation) [2021] AATA 4070 (5 November 2021); S Boyle, Deputy President

TAXATION – review of a decision of the Commissioner to disallow the Applicant’s objection to amended assessments – whether Applicant entitled to claim notional deduction pursuant to ITAA 97 div 355 – R&D expenditure – whether Applicant incurred expenditure on R&D for the purposes of ITAA 97 s 355-205 – whether Applicant owns IP of R&D – whether level of penalty appropriate under TAA s 284-90 – whether penalty should be remitted in full or in part under TAA s 298-20 – reviewable decision 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
Arachchi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3146
Bhagwandas and Secretary, Attorney-General's Department	[2021] AATA 3509
BYMD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3476
El Khoueiry and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3577
Lafaele and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3379
XGHJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3474

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
JZGW v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4430	[2021] FCA 1333
QDKH v National Disability Insurance Agency	[2021] AATA 922	[2021] FCAFC 189
Calvey v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 277	[2021] FCA 1389
Kerry v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 869	[2021] FCA 1355
Kura v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1365	[2021] FCA 1343

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

[\[2020\] AATA 4804](#)

[\[2021\] FCA 1375](#)

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

[\[2020\] AATA 4683](#)

[\[2021\] FCA 1327](#)



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 22 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:

gender dysphoria as a factor in suicide and attempted suicide

<https://www.legislation.gov.au/Details/C2021G00825>

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

suicide and attempted suicide (Reasonable Hypothesis) - No. 65 of 2016

<https://www.legislation.gov.au/Details/F2018C00632>

suicide and attempted suicide (Balance of Probabilities) - No. 66 of 2016

<https://www.legislation.gov.au/Details/F2018C00628>

The RMA also intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of multiple conditions in relation to the Statement of Principles set out as per the Notice below:

<https://www.legislation.gov.au/Details/C2021G00828>

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**:

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

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

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

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

fibromyalgia (Reasonable Hypothesis) - No. 107 of 2021

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

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

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

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**:

chronic fatigue syndrome - No. 11 of 2014

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

chronic fatigue syndrome - No. 12 of 2014

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

fibromyalgia - No. 13 of 2014

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

fibromyalgia - No. 14 of 2014

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



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).