



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT 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](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Child Support.....	3
Compensation .....	5
Education and Research.....	5
Migration.....	6
National Disability Insurance Scheme.....	11
Practice and Procedure.....	12
Professions and Trades .....	12
Refugee.....	12
Social Services.....	13
Taxation.....	14
<b>Appeals.....</b>	<b>16</b>
Appeals lodged.....	16
Appeals finalised .....	16
<b>Statements of Principles .....</b>	<b>18</b>
Notification of Investigations relating to existing Statements of Principles .....	18

# 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

[Gilligan and Hallam](#) (Child support) [2022] AATA 3075 (29 July 2022); M Sutherland, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

[Mullen and Mullen](#) (Child support) [2022] AATA 3519 (1 August 2022); S De Bono, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – estimate reconciliation - decision under review set aside and substituted

[Thorner and Patfield](#) (Child support) [2022] AATA 3377 (24 August 2022); D Cox, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the parents – earning capacity – a ground for departure not established – decision not to depart - decision under review affirmed

[Twentyman and Twentyman](#) (Child support) [2022] AATA 3067 (28 July 2022); R King, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Zentner and Zentner](#) (Child support) [2022] AATA 3374 (17 August 2022); F Hewson, Senior Member

CHILD SUPPORT – departure determination – money, goods or property provided provided by liable parent for the benefit of the children – a ground for departure established – decision to depart - decision under review set aside and substituted

## Citizenship

[Muse and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2022]  
AATA 3655 (27 October 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – failure to pass citizenship test – Australian Citizenship Act 2007 (Cth) – application made under general eligibility provisions – no evidence of intellectual disability or impaired cognitive function Citizenship Policy applied – Applicant has not passed citizenship test – decision affirmed

[Nadiri and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022]  
AATA 3656 (2 November 2022); C J Furnell, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – Australian Citizenship Act 2007 (Cth) – Afghanistan – whether Minister can be satisfied of applicant's identity under s 24 of the Australian Citizenship Act 2007 (Cth) – inconsistencies as to applicant's surname and date of birth – application of the Australian Citizenship Policy Statement – application of Citizenship Procedural Instruction 16 – Tribunal satisfied of applicant's identity – whether the Tribunal can be satisfied that applicant is of good character – application of Citizenship Procedural Instruction 15 – provision of false personal information and bogus documents in visa and citizenship applications – Tribunal not satisfied applicant is of good character – decision affirmed

[SHHV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022]  
AATA 3617 (20 October 2022); C J Furnell, Senior Member

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) – where photo of Applicant and some similar life story information supplied in connection with visa application – application of the Australian Citizenship Policy Statement – biometrics – documents – life story – decision set aside and matter remitted

[Vagi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022]  
AATA 3739 (7 November 2022) (7 November 2022); J Sosso, Deputy President

CITIZENSHIP – Australian citizenship – Applicant seeks citizenship by descent – refusal of application – birthplace of Applicant in dispute – authenticity of documents – decision under review set aside and remitted

## Compensation

[Kallimanis and Linfox Australia Pty Ltd](#) (Compensation) [2022] AATA 3737 (7 November 2022); B W Rayment OAM KC, Deputy President

WORKERS' COMPENSATION – s 42B(1) of the Administrative Appeals Tribunal Act 1975 (Cth) – previous application for review to the Tribunal – previous application affirmed by the Tribunal – new application based on similar facts – not clear that same claim is being made – abuse of process not established – application for dismissal refused

[Percival and Comcare](#) (Compensation) [2022] AATA 3728 (4 November 2022); Dr P McDermott RFD, Deputy President

COMPENSATION – Post traumatic stress disorder – Injury – Disease – Applicant diagnosed with Post traumatic stress disorder caused by workplace exposure – Cease effects determination amended to reflect previous diagnoses of condition – Post traumatic stress disorder under remission – No further liability for compensation and treatment – Where decision under review varied

[Webeck and Comcare](#) (Compensation) [2022] AATA 3784 (10 November 2022); W Frost, Member

COMPENSATION – accepted injuries – calculation of weekly compensation for incapacity payments – employee's normal weekly earnings – previous Tribunal decision – where the employee is found to cease employment – definition of employee – effect of industrial agreement on normal weekly earnings amounts – applicable indexation and relevant percentage rates – employee found to resign from employment – decision affirmed

## Education and Research

[Baldry and District Registrar, Administrative Appeals Tribunal](#) [2022] AATA 3796 (28 October 2022); C. J. Furnell, Senior Member

Application for fee reduction – Administrative Appeals Tribunal Act 1975 – Administrative Appeals Tribunal Regulation 2015 – application for review of decision to refuse request for fee reduction – whether payment of prescribed application fee would cause or has caused financial hardship – income – expenses – assets – liabilities – Tribunal does not consider that payment of prescribed application fee would cause or has caused financial hardship – decision affirmed

[Lazaris and Secretary, Department of Employment](#) [2022] AATA 3787 (7 October 2022); Emeritus Professor P A Fairall, Senior Member

EDUCATION, SKILLS AND TRAINING – higher education funding – whether the applicant's HECS-HELP debt may be remitted – loss of employment – whether the applicant faced 'special circumstances' – decision affirmed.

## Migration

[BPKX and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3686 (2 November 2022); D J Morris, Senior Member

MIGRATION – applicant held Refugee (Subclass 200) visa – visa cancelled under s 501(2) of Migration Act – does applicant pass character test – if not should discretionary power to cancel visa be exercised – what is the country of reference – applicant found to be entitled to citizenship of South Sudan – ministerial Direction No. 90 – offending as a child – decision in Thornton distinguished – primary considerations – serious offending in groups but applicant not generally principal offender – other considerations – decision under review set aside and new decision substituted

[Dick and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3785 (9 November 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – possession of child exploitation material – Applicant is a 65-year-old man who arrived in Australia from the United Kingdom when he was a 12-year-old child – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the offending – risk to the Australian community – expectations of the Australian community – links to the Australian community – strength, nature and duration of ties to Australia – impediments if removed to the United Kingdom – Applicant is an amputee with significant health issues and has been medically certified as presently unable to travel – prospect of indefinite or prolonged detention – Reviewable Decision set aside and substituted

[DQDW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3657 (15 September 2022); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of Absorbed Person 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 affirmed

[English and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3627 (20 October 2022); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BF transitional (permanent) 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 – breach of domestic violence orders – decision under review affirmed

[FYQV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3768 (24 October 2022); Theodore Tavoularis, Senior Member and Kate Millar, Senior Member

MIGRATION – protection visa application – refused – refusal decision for protection visa made on the same day as the non-revocation of the decision to mandatorily cancel the Applicant’s Class XB Subclass 202 Global Special Humanitarian visa by the Respondent Minister – however Applicant was notified of each decision on consecutive days – Statement for the purposes of s36A of the Act was marked as ‘DRAFT’ – Question before the Tribunal was whether the Protection visa application was assessed in accordance of

s36A of the Act – Tribunal makes a finding that it has not- decision under review set aside and remitted back to the Department for reconsideration with directions

[FYQV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3806 (24 October 2022); Theodore Tavoularis, Senior Member and Kate, Millar Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 202 Global Special Humanitarian 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 obligations owed to the Applicant- Tribunal found another reason to revoke the mandatory cancellation decision- decision under review set aside and substituted

[Haidas and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3770 (9 November 2022); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category Temporary visa – whether the Applicant passes the character test – whether there is another reason why the decision to cancel the Applicant’s visa should be revoked – consideration of Ministerial Direction No. 90 – substantial criminal records – decision under review set aside and substitutes a decision revoking the original visa cancellation

[HNHB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3688 (3 November 2022); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of Class BB Subclass 801 visa – applicant has substantial criminal record and has had his visa cancelled twice – whether there is another reason to revoke mandatory cancellation decision – the primary considerations of the protection and expectations of the Australian community and family violence outweigh the countervailing considerations – the decision under review is affirmed

[Hofman and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3740 (31 August 2022); Lee Benjamin, Member

MIGRATION – Non-revocation of a 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 – decision under review affirmed

[Jasick and Minister for Immigration, Citizenship and Migrant Services](#) (Migration) [2022] AATA 3684 (3 November 2022); D Dragovic, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of a Class 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 - decision under review set aside and substituted – dangerous operation of a vehicle (causing death) – seventy-one-year-old applicant from the United States with schizophrenia

[LWZB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3687 (21 October 2022); D J Morris, Senior Member

MIGRATION – citizen of Afghanistan – held global special humanitarian visa – then held resident return visa – visa cancelled under s 501(3A) of Migration Act – dispute about whether visa validly cancelled – new notice of cancellation issued – applicant requested that mandatory cancellation be revoked – delegate decided not to revoke cancellation – review by tribunal – ministerial direction – primary considerations – protection of Australian community – sexually based offences – use of carriage service but no physical contact found – whether family violence conduct – best interests of minor children in Australia – expectations of Australian community – other considerations – preliminary protection assessment – links to Australia – impediments if removed – special consideration of likelihood of prolonged detention – oral decision to set aside decision under review and substitute new decision – operation of decision delayed to enable Respondent to make logistical arrangements – written reasons provided

[Martin and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3722 (4 November 2022); J C Kelly, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – sentenced to a term of imprisonment for 12 months or more – whether there is another reason to revoke mandatory cancellation of applicant's visa – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – nature and seriousness of the applicant's conduct – offences committed in Australia and New Zealand – risk to the Australian community – family violence – best interests of minor children – expectations of the Australian community – other considerations – extent of impediments if removed – links to the Australian community – decision set aside and substituted



[MJMG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3626 (31 October 2022); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of Class XB subclass 202 (Global Special Humanitarian) visa – applicant entitled to citizenship of South Sudan – failure to pass character test – lengthy and diverse criminal history – whether another reason the mandatory cancellation should be revoked – applicant has diagnosed mental health condition – risk to the Australian community – extent of impediments if removed – decision set aside and substituted

[Ngatupuna and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3689 (28 October 2022); C Puplick AM, Senior Member

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 – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – impediments to removal – links to the Australian community – decision affirmed

[QFWW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)  
(Migration) [2022] AATA 3677 (21 October 2022); Dr L Kirk, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – matter remitted from federal court – whether cancellation for same offence twice is valid – where subsequent offending exists – XJLR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2022] FCAFC 6 – Tribunal satisfied of jurisdiction – applicant has substantial criminal record – whether there is 'another reason' to revoke mandatory cancellation decision – Ministerial Direction 90 – Nature and Seriousness of offending – best interests of minor children – expectations of the Australian community – whether international non-refoulement obligations exist – where information insufficient to establish international non-refoulement obligation – impediments to return – links to the Australian community – decision set aside and substituted

[RZBB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3741 (7 November 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian 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 cancelation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 – Consideration of possibility of indeterminate detention if cancellation of visa not revoked- decision under review is affirmed

[Waga and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 3791 (21 October 2022); Theodore Tavoularis, Senior Member

MIGRATION – Non-revocation of a mandatory cancellation of a Regional Sponsor Migration Scheme Visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction 90 – family / domestic violence – decision under review affirmed

[XSLJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 3792 (2 November 2022); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION - visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 90 – protection of the Australian community – best interests of minor children – expectations of the Australian community – links to the Australian community – reviewable decision set aside

[El Hussein](#) (Migration) [2022] AATA 3348 (26 August 2022); J Meyer, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – genuinely intend to live together as spouses – parties were neighbours in Lebanon – significant evidence of communication – joint travel – wedding plans postponed by the COVID19 pandemic – money transfers – employment plans – joint social activities – decision under review remitted

[Fakautoki](#) (Migration) [2022] AATA 3322 (23 August 2022); N Schmitz, Member

MIGRATION – New Zealand Citizen (Family Relationship) (Temporary) (Class UP) visa – Subclass 461 New Zealand Citizen Family Relationship (Temporary) – no substantial visa at the time of application – factors beyond the applicant’s control – compelling reasons – further visa application posted to incorrect address – relationship ceased – decision under review affirmed

[Goordeen](#) (Migration) [2022] AATA 3445 (27 September 2022); A Mercer, Member

MIGRATION – Skilled Independent (Permanent) (Class SI) visa – Subclass 189 (Skilled – Independent) – occupation of Senior Laboratory Scientist – taxable income for the last 4 financial years – investment properties negatively geared – exemption categories – salary sacrificed amounts excluded – taxable income – decision under review affirmed

[Hossain](#) (Migration) [2022] AATA 3362 (26 September 2022); R. Skaros, Senior Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Federal Court remittal – not the subject of an approved nomination – confined to the consideration of the issue in PIC 4020(1) – false or misleading information – genuineness of the nominated position – whether false or misleading at the time it was given – decision under review remitted

[2212473](#) (Migration) [2022] AATA 3343 (19 September 2022); J Lambie, Senior Member

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – granted in conjunction with application for protection visa – criminal charges and convictions – breach of intervention order and other offences – imprisonment and other penalties – discretion to cancel visa – ground for cancellation conceded – long period of immigration detention, assault, mental health and treatment, alcohol and drug use – grounds for protection, non-refoulement and possibility of indefinite detention – finely balanced factors and considerable hesitation – decision under review set aside

## **National Disability Insurance Scheme**

[Kelly and National Disability Insurance Agency](#) [2022] AATA 3786 (10 November 2022); P Goward, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary support – Operational Guidelines – home modifications – installation of a water filtration system – Down’s syndrome – Immunocompromise – water quality – preventive support – decision affirmed

[Morris and National Disability Insurance Agency](#) [2022] AATA 3736 (10 October 2022); D Barker, Member

PRACTICE AND PROCEDURE – JURISDICTION – application for review of a decision to approve a plan of supports – where Agency has not made an internal review decision – no jurisdiction – application for review dismissed

[Syddall and National Disability Insurance Agency](#) [2022] AATA 3738 (8 November 2022); The Hon. Justice F Meagher

NATIONAL DISABILITY INSURANCE SCHEME – review of supports in plan – whether funding for a modified Toyota Commuter, including the associated travel costs, and a trailer is reasonable and necessary pursuant to section 34 of the National Disability Insurance Scheme Act 2013 (Cth) – consideration of National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth) – funding for vehicle precluded by Rules – funding for various other transport supports is reasonable and necessary – decision under review remitted with direction

## Practice and Procedure

[Active Sports Management Pty Ltd and Industry Innovation and Science Australia](#) [2022] AATA 3646 (1 November 2022); A Poljak, Senior Member

PRACTICE AND PROCEDURE – interlocutory application – reinstatement of application – where application was dismissed pursuant to subsection 42A(5) of the Administrative Appeals Tribunal Act 1975 (Cth) (the AAT Act) – whether matter may be reinstated pursuant to subsection 42A(10) of the AAT Act – relevant law and circumstances considered – application reinstated

[Cornwell and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3721 (4 November 2022); D J Morris, Senior Member

PRACTICE AND PROCEDURE – debt to Commonwealth – applicant seeks to re-open withdrawn application – significant period of time has elapsed since withdrawal – Tribunal finds no power to extend time in absence of fresh application – applicant specifically precluded from applying for reinstatement of an application deemed dismissed because of discontinuance or withdrawal – other avenues of relief available to applicant – matter dismissed for want of jurisdiction – oral decision – matter finalised ex parte – written reasons provided

## Professions and Trades

[PCBQ and Commissioner for Fair Trading \(NSW\)](#) [2022] AATA 3725 (4 November 2022); The Hon. J Pascoe AC CVO, Deputy President and S Evans, Member

MUTUAL RECOGNITION – Application of Mutual Recognition Act 1992 (Cth) – Registration of construction contractor – Application of mutual recognition principles – Substantial equivalence of occupations – Applicant a registered builder in Victoria – registered in New South Wales –Registered by operation of section 21(4) – Whether activities of builder substantially the same as those of a builder under respective registrations – whether restrictions necessary to achieve substantial equivalence – registration varied to include restriction

## Refugee

[1705904](#) (Refugee) [2022] AATA 3384 (12 July 2022); S Burford, Senior Member

REFUGEE – protection visa – South Africa – particular social group – young women without familial support – orphans in South Africa – gender-based violence – forced prostitution – mental health issues – marriage to an Australian citizen – family separation – effective state protection – decision under review affirmed

[1824617](#) (Refugee) [2022] AATA 3593 (12 August 2022); D McCulloch, Member

REFUGEE – protection visa – Nigeria – political opinion – member of regional/ethnic separatist organisation – meetings and protests raided by authorities and members killed – credibility – inconsistent claims and evidence – implausibility of employee with public job role actively involved in proscribed organisation – limited knowledge of organisation – no activity in Australia despite active group here – country information – decision under review affirmed

[1829743](#) (Refugee) [2022] AATA 3426 (16 August 2022); R Smidt, Member

REFUGEE – Protection visa – Ghana – feared she would be hurt by the spirit – feared her family and others would force her to become a priest and harm her if she refused – evidence to has been extremely confused and often contradictory – credibility concerns – decision under review affirmed

[1904527](#) (Refugee) [2022] AATA 3392 (19 July 2022); J L Redfern PSM, Deputy President

REFUGEE – protection visa – Vietnam – statutory requirements for notification of decision – time limit for lodging review application – Tribunal's power to revoke and reopen its decision – whether to exercise the power – decision under review revoked and substituted

[1930909](#) (Refugee) [2022] AATA 3346 (8 August 2022); P Windsor, Member

REFUGEE – protection visa – Nigeria – Federal Court remittal – particular social group – Igbo females – fear of killing – employment – female genital mutilation – internal relocation – fear of kidnapping – state protection – third country protection – Economic Community of West African States (ECOWAS) entry and residence – decision under review remitted

[1931571](#) (Refugee) [2022] AATA 3419 (9 August 2022); M O'Loughlin, Member

REFUGEE – Protection Visa – Kenya – sexuality – homosexual – membership of the particular social group – homosexual men – effective protection measures not available – decision under review remitted

## **Social Services**

[Hanna and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3772 (9 November 2022); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – age pension – debt – whether there was an overpayment of social security payment – Belgium pension – whether applicant declared employment income – whether applicant can deduct business-related deductions from gross income – whether there was an administrative error – whether there are special circumstances to waive debt – reviewable decision set aside and substituted – pension rate – whether amount of arrears paid was correct – decision set aside and remitted

[Urbano and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3798 (7 November 2022); Dr Linda Kirk, Senior Member

SOCIAL SECURITY – Carer Payment – qualification for carer payment – care receiver's assets test – whether applicant engages exception to assets test – whether applicant can rely on faulty information received from agency – decision affirmed

## Taxation

[Chami and Commissioner of Taxation](#) (Taxation) [2022] AATA 3797 (11 November 2022); D K Grigg, Senior Member

TAX – cancellation of Australian Business Number and GST registration – business activity statements revised to NIL – whether the applicant carried on an enterprise for GST and ABN purposes – where no corroborating independent material to support the applicant's claim – where applicant claimed all corroborating material lost in flood – decision under review affirmed

[Duff and Commissioner of Taxation](#) (Taxation) [2022] AATA 3675 (2 November 2022); P Ehrlich KC, Senior Member

INCOME TAX – definition of “resident or resident of Australia” – s 6(1) Income Tax Assessment Act 1936 (Cth) – admitted pre-existing domicile in Australia – whether domicile changed in 2016 – whether applicant otherwise had permanent place of abode outside Australia – overseas employment – short-term contracts – Norwegian cruise liners – no intention that any new place of residence be indefinite – ship cannot be a domicile – Applicant not a resident of a new place – ships predominantly in international waters – no permanent place of abode outside Australia – subparagraph (a)(ii) of definition of “resident or resident of Australia” irrelevant to issues – Applicant a resident of Australia for tax purposes – decision affirmed

[FYMS and Commissioner of Taxation](#) [2022] AATA 3790 (9 November 2022); Bernard J McCabe, Deputy President

RELEVANCE – subjective – objective – privilege – external legal advice – internal legal advice – Australian Crime Commission – Criminal Asset Confiscation Taskforce – summons

[Moreton Resources Ltd and Industry Innovation and Science Australia](#) (Taxation) [2022] AATA 3804 (21 September 2022); F D O'Loughlin KC, Deputy President

TAXATION – Research and Development – Supporting R&D Activities, whether activities registered as Supporting R&D Activities are directly related to registered Core R&D Activities of previous Income Years.

REVIEW BY AAT – Power and Procedure on remittal from Federal Court

[Worsley and Tax Practitioners Board](#) (Taxation) [2022] AATA 3742 (4 November 2022); Dr Linda Kirk, Senior Member

TAX AGENTS – termination of registration as tax agent – whether applicant breached Code of Professional conduct – whether applicant "fit and proper person" – where applicant breached stay order – whether applicant's personal circumstances mitigate breach – whether to exercise discretion to terminate registration – reviewable 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
<b>Faingataa and Minister for Immigration, Citizenship, and Multicultural Affairs</b>	<a href="#">[2022] AATA 3562</a>
<b>RBKG and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3434</a>
<b>RPQB and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3192</a>
<b>Rutherford and Inspector-General in Bankruptcy</b>	<a href="#">[2022] AATA 403</a>
<b>Seau and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3430</a>
<b>SGTX and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2536</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ambrose v Secretary of Department of Social Services</b>	<a href="#">[2022] AATA 645</a>	<a href="#">[2022] FCA 1274</a>
<b>Arachchi v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3146</a>	<a href="#">[2022] FCA 1311</a>
<b>Ba v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 191</a>	<a href="#">[2022] FCA 1271</a>
<b>King v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4391</a>	<a href="#">[2022] FCA 1319</a>
<b>Minister for Immigration, Citizenship and Multicultural Affairs v RGKY</b>	<a href="#">[2020] AATA 4255</a>	<a href="#">[2022] FCAFC 177</a> <a href="#">[2021] FCA 750</a>
<b>Pihere v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4236</a>	<a href="#">[2022] FCA 1342</a>



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<b>Pokrywka v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2020] AATA 5165</a>	<a href="#">[2022] FCA 1287</a>
<b>RLXN v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2152</a>	<a href="#">[2022] FCA 1277</a>
<b>Zdziarski v Telstra Corporation Limited</b>	<a href="#">[2022] AATA 145</a>	<a href="#">[2022] FCA 1296</a>

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# 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

The AAT has been advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

### **Multiple Conditions – Instruments Sunsetting on 1 October 2025**

<https://www.legislation.gov.au/Details/C2022G01071>

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

### **Achilles tendinopathy and bursitis (Reasonable Hypothesis) - No. 96 of 2015**

<https://www.legislation.gov.au/Details/F2015L01336>

### **Achilles tendinopathy and bursitis (Balance of Probabilities) - No. 97 of 2015**

<https://www.legislation.gov.au/Details/F2015L01337>

### **Acute myeloid leukaemia - No. 71 of 2015**

<https://www.legislation.gov.au/Details/F2020C00211>

**Acute myeloid leukaemia - No. 72 of 2015**

<https://www.legislation.gov.au/Details/F2017C00808>

**Arachnoid cyst - No. 91 of 2015**

<https://www.legislation.gov.au/Details/F2015L00924>

**Arachnoid cyst - No. 92 of 2015**

<https://www.legislation.gov.au/Details/F2015L00925>

**Cardiomyopathy - No. 85 of 2015**

<https://www.legislation.gov.au/Details/F2018C00643>

**Cardiomyopathy - No. 86 of 2015**

<https://www.legislation.gov.au/Details/F2018C00644>

**Cerebrovascular accident - No. 65 of 2015**

<https://www.legislation.gov.au/Details/F2021C00459>

**Cerebrovascular accident - No. 66 of 2015**

<https://www.legislation.gov.au/Details/F2021C00460>

**Depressive disorder - No. 83 of 2015**

<https://www.legislation.gov.au/Details/F2018C00661>

**Depressive disorder - No. 84 of 2015**

<https://www.legislation.gov.au/Details/F2018C00663>

**External burn (Reasonable Hypothesis) - No. 110 of 2015**

<https://www.legislation.gov.au/Details/F2017C00862>

**External burn (Balance of Probabilities) - No. 111 of 2015**

<https://www.legislation.gov.au/Details/F2017C00861>

**Gastric ulcer and duodenal ulcer - No. 61 of 2015**

<https://www.legislation.gov.au/Details/F2018C00645>

**Gastric ulcer and duodenal ulcer - No. 62 of 2015**

<https://www.legislation.gov.au/Details/F2017C00758>

**Hallux valgus (Reasonable Hypothesis) - No. 98 of 2015**

<https://www.legislation.gov.au/Details/F2015L01334>

**Hallux valgus (Balance of Probabilities) - No. 99 of 2015**

<https://www.legislation.gov.au/Details/F2015L01335>

**Hepatitis A - No. 63 of 2015**

<https://www.legislation.gov.au/Details/F2015L00645>

**Hepatitis A - No. 64 of 2015**

<https://www.legislation.gov.au/Details/F2015L00648>

**Hepatitis E (Reasonable Hypothesis) - No. 112 of 2015**

<https://www.legislation.gov.au/Details/F2015L01332>

**Hepatitis E (Balance of Probabilities) - No. 113 of 2015**

<https://www.legislation.gov.au/Details/F2015L01333>

**Ingrowing nail (Reasonable Hypothesis) - No. 106 of 2015**

<https://www.legislation.gov.au/Details/F2015L01326>

**Ingrowing nail (Balance of Probabilities) - No. 107 of 2015**

<https://www.legislation.gov.au/Details/F2015L01327>

**Lipoma (Reasonable Hypothesis) - No. 100 of 2015**

<https://www.legislation.gov.au/Details/F2015C00802>

**Lipoma (Balance of Probabilities) - No. 101 of 2015**

<https://www.legislation.gov.au/Details/F2015C00801>

**Malignant melanoma of the skin (Reasonable Hypothesis) - No. 102 of 2015**

<https://www.legislation.gov.au/Details/F2015L01317>

**Malignant melanoma of the skin (Balance of Probabilities) - No. 103 of 2015**

<https://www.legislation.gov.au/Details/F2015L01318>

**Malignant neoplasm of the bile duct - No. 69 of 2015**

<https://www.legislation.gov.au/Details/F2017C00755>

**Malignant neoplasm of the bile duct - No. 70 of 2015**

<https://www.legislation.gov.au/Details/F2017C00753>

**Malignant neoplasm of the gallbladder - No. 89 of 2015**

<https://www.legislation.gov.au/Details/F2017C00859>

**Malignant neoplasm of the gallbladder - No. 90 of 2015**

<https://www.legislation.gov.au/Details/F2017C00857>

**Meniere's disease (Reasonable Hypothesis) - No. 108 of 2015**

<https://www.legislation.gov.au/Details/F2015L01328>

**Meniere's disease (Balance of Probabilities) - No. 109 of 2015**

<https://www.legislation.gov.au/Details/F2015L01329>

**Tuberculosis - No. 81 of 2015**

<https://www.legislation.gov.au/Details/F2015L00913>

**Tuberculosis - No. 82 of 2015**

<https://www.legislation.gov.au/Details/F2015L00914>

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