



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

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

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Recent news

Our end of year arrangements

We will be closed on the following days:

- Monday 27 December 2021
- Tuesday 28 December 2021
- Monday 3 January 2022

Our offices and registries will be operating on Wednesday 29, Thursday 30 and Friday 31 December 2021, except for in Canberra and Hobart where they will be closed. Our Melbourne registry remains closed to visitors, however, staff will be onsite there to respond to telephone calls and emails.

If we or the agency that made the original decision have provided a date by which an application or documents must be submitted, you should consider using our [online lodgement facilities](#) so that you don't miss your deadline.

If you intend to send documents by post, please be aware there may be delays in postal delivery during this time.

Contact us on 1800 228 333 or visit www.aat.gov.au for more information.

Last edition for 2021 and first edition for 2022

This edition of the Bulletin is the last edition for 2021.

The first edition of the Bulletin for 2022 will be on **10 January 2022**.

We wish you all a safe and happy Christmas season.

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

[Dixon and Child Support Registrar](#) (Child support) [2021] AATA 4602 (13 December 2021); B Pola, Senior Member

CHILD SUPPORT – refusal to issue a departure authorisation certificate – child support debt – where the applicant is unable to give security – whether a departure authorisation certificate should be issued on humanitarian grounds – decision under review is affirmed

[FRGC and Child Support Registrar](#) (Child support second review) [2021] AATA 4734 (17 December 2021); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – outside of prescribed time limit – extension of time to object – special circumstances – interim care determination – Federal Court parenting orders – mental health – serious illness – decision set aside and substituted

[JSGN and Child Support Registrar](#) (Child support second review) [2021] AATA 4666 (16 December 2021); M East, Member

CHILD SUPPORT – percentage of care – whether child was living with the mother – whether actual care changed – date of revocation – date of notification – date of effect – date when mother ceased to provide care for the child – Reviewable decision set aside and substituted

[MCKC and Child Support Registrar](#) (Child support second review) [2021] AATA 4676 (16 December 2021); P Ranson, Member

CHILD SUPPORT – care percentage determination – date of effect – where parents agree as to percentage of care – where Registrar notified more than 28 days after change – legislation amendments – decision set aside and substituted

[Winkles and Child Support Registrar](#) (Child support) [2021] AATA 4493 (21 September 2021); M Kennedy (Presiding), Member and M Manetta, 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 affirmed

[Bambra and McBeth](#) (Child support) [2021] AATA 4494 (7 October 2021); M Martellotta, 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

[Carwardine and Copleston](#) (Child support) [2021] AATA 4492 (30 September 2021); M Martellotta, Member

CHILD SUPPORT – non-agency payment – prescribed payment for orthodontic treatment – payment correctly credited – decision under review affirmed

[Scruton and Tichenor](#) (Child support) [2021] AATA 4490 (22 October 2021); S Cullimore, Member

CHILD SUPPORT – percentage of care – care change notification was actually application for administrative assessment – decision under review set aside and sent back with directions

Citizenship

[Balladraf and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 4733 (17 December 2021); M J McGrowdie, Senior Member

CITIZENSHIP – application for citizenship by conferral – assessment of ‘good character’ as required by the legislation – incorrect information contained in the application for citizenship – decision of Minister’s delegate refusing the application affirmed

[David and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 4665 (16 December 2021); D J Morris, Senior Member

CITIZENSHIP – application for citizenship by conferral – where applicant has been approved for the grant of citizenship – applicant advised he has 12 months to make the pledge of commitment – common ground that applicant did not make pledge – discretion then enlivened to cancel approval – delegate of Minister cancels approval of citizenship – two grounds – failure to make pledge of commitment within 12 months – not satisfied applicant likely to reside or continue to reside in Australia or maintain close and continuing association with Australia – supervening event of global pandemic – closure of national border – cancellation of citizenship ceremonies – assessment of applicant’s circumstances – satisfied that while enlivened discretion should not have been exercised – decision under review set aside

PRACTICE AND PROCEDURE – where two witnesses have lodged substantially similar statutory declarations – where not in contemplation that the two witnesses’ evidence should be tested against each other – where expeditious for the two witnesses to give evidence concurrently – where parties to proceedings do not object – concurrent evidence given

[JHLD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 4780 (22 December 2021); D J Morris, Senior Member

CITIZENSHIP – citizenship by conferral – applicant former resident of Iran – no evidence applicant has citizenship of any country – applicant holds protection visa – applicant applied for citizenship – certain requirements satisfied – delegate of minister not satisfied of applicant’s identity therefore prohibited from approving – other considerations not assessed – consideration of evidence – applicant has provided copies of several documents carrying photographs of him over the years – applicant has provided copies of other documents sourced from Iran – satisfaction as to identity of applicant – satisfaction as to good character of applicant – decision set aside and new decision substituted with directions

Kaka Soltani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2021] AATA 4684 (9 December 2021); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – whether the Tribunal is satisfied of the Applicant’s identity – no documents prior to arrival in Australia – significant inconsistencies in life story – unexplained wealth – financial transfers to Iran – Tribunal not satisfied of Applicant’s identity – decision affirmed

Liang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2021] AATA 4622 (14 December 2021); S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the applicant meets the requirements for conferral – whether consideration can be delayed – whether the prohibition for the grant of citizenship pursuant to subsection 24(5) of the Australian Citizenship Act 2007 (Cth) is enlivened – relevant facts and circumstances considered – relevant law and policy considered – decision under review affirmed

Poudel and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2021] AATA 4644 (15 December 2021); R West, Member

CITIZENSHIP – application refused under s 24(6) of the Citizenship Act – pending proceedings for an offence against an Australian law – proceedings pending at time of hearing – no reasonable prospect of success – application dismissed

RBSM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2021] AATA 4630 (14 December 2021); The Hon. D Cowdroy AO QC, Deputy President

RESUMPTION OF CITIZENSHIP – previous renunciation of citizenship – whether renunciation was to avoid significant hardship or detriment – definition of ‘significant hardship or detriment’ – whether employment prospects were limited by possession of Australian citizenship – decision affirmed

Compensation

Harriss and Comcare (Compensation) [2021] AATA 4605 (13 December 2021); A E Burke AO, Member

COMPENSATION – household services – cleaning – accepted condition – occupational overuse syndrome – reduced household services – ceased household services – reasonable standard of home maintenance – no present liability – decisions affirmed

Italiano and Commonwealth Bank of Australia (Compensation) [2021] AATA 4758 (17 December 2021); Dr D Cremean, Senior Member

COMPENSATION – entitlement to compensation – review of determinations that employer was not liable to pay compensation under s 14 of the SRC Act – whether applicant suffered back/shoulder injury – whether injury occurred at work – decision under review set aside and remitted for reconsideration – whether applicant suffered psychological injury – depression – decision under review affirmed

[Murray and Australian Offshore Solutions Pty Ltd](#) (Compensation) [2021] AATA 4750 (17 December 2021); D Mitchell, Member

COMPENSATION – accepted injury – left shoulder injury – decision to cease incapacity payments – whether applicant was incapacitated from undertaking pre injury work to the same rank or level – integrated rating – AMSA issued certification of fitness for duty – permanent reduction in range of movement – creditability of Applicant – decision under review affirmed

[Santiago and Australian Postal Corporation](#) (Compensation) [2021] AATA 4662 (13 December 2021); M Griffin QC, Senior Member

COMPENSATION – Applicant employed as Senior Postal Services Officer – Applicant developed condition of moderate aggravation of De Quervain’s tenosynovitis – whether Applicant continued to suffer De Quervain’s tenosynovitis – whether this was related to her work with Respondent – decision under review set aside and substituted

Education and Research

[Nakhle and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 4763 (21 December 2021); J C Kelly, Senior Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for remission – where application for remission was not made until after the end of the application period – whether requirement to make the application before the end of the application period can be waived – decision affirmed

Freedom of Information

[Australian Conservation Foundation and Secretary, Department of Agriculture, Water and the Environment](#) (Freedom of information) [2021] AATA 4619 (14 December 2021); A Maryniak QC, Member

FREEDOM OF INFORMATION – request for access to documents – obtained in confidence exemption under section 45(1) – section 47E(d) public interest conditional exemption relating to substantial adverse effect on the proper and efficient conduct of Commonwealth agency – decision refusing access affirmed in part and remitted in respect of Document 1

[Patrick; Secretary, Department of Defence and](#) (Freedom of information) [2021] AATA 4627 (14 December 2021); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – review of decision of Department of Defence that documents are wholly exempt – documents relate to Final Cost Estimate Template submitted for the Future Submarine Competitive Evaluation Process – documents exempt under section 45 of the Freedom of Information Act 1982 – “required by law” clauses do not displace section 45 – an action for breach of confidence may arise from a contractual breach of confidence – consideration of whether an action for breach of confidence requires detriment – the decision granting access to the requested information is set aside and substituted with the decision that the information is exempt from disclosure

Industrial Law

[Camm and Secretary, Attorney-General's Department](#) [2021] AATA 4608 (2 December 2021); J Rau SC, Senior Member

EMPLOYMENT – fair entitlements guarantee – entitlement to redundancy payment – whether companies associated entities – whether Applicants were employed by a small business – payment in lieu of notice – decision of fair entitlements guarantee affirmed – decision of payment in lieu of notice set aside and substituted

Migration

[Amos and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4774 (25 November 2021); T Tavoularis, Senior Member

MIGRATION – mandatory cancellation of the Applicant's Class BB Subclass 155 Resident Return visa – Migration Act 1958 (Cth) s 501CA – Applicant fails to pass the character test – substantial criminal record – sentenced to a term of imprisonment for 12 months or more – whether there is another reason why the cancellation should be revoked – application of Direction No. 90 – where Applicant a citizen of England – decision under review affirmed

[Chapagai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) 4735 (Migration) [2021] AATA (17 December 2021); 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 – expectations of the Australian community – impediments to removal – strength, nature and duration of ties to Australia – decision set aside and substituted

[Dawson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4604 (10 December 2021); Senior Member K Millar

MIGRATION – mandatory cancellation of Transitional (Class BF) visa under section 501CA – 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 – decision under review set aside and substituted

[Manebona and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4680 (17 December 2021); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BC Subclass 100 Spouse 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 – breaches of domestic violence orders – decision under review affirmed

[MQKW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 4667 (19 November 2021); Senior Member L Kirk

MIGRATION – mandatory cancellation – failure to pass the character test – Direction 90 – primary considerations – protection of Australian community – best interests of minor children – expectations of Australian community – other considerations – impediments if removed from Australia – temporary visa holder – links to Australian community – decision affirmed

Onwong'a and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 4631 (14 December 2021); R Reitano, Member

VISA CANCELLATION – mandatory cancellation under s 501CA – whether an intensive corrections order counts as ‘imprisonment’ for the purposes of s 501 – whether there is another reason to revoke – protection of the Australian community – drink driving offences – expectations of the Australian community – strength, nature of duration of ties – outstanding study to be completed – decision under review affirmed

Ozerski and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 4775 (6 December 2021); T Tavoularis, Senior Member and Professor D Ben-Tovim, Member

MIGRATION – mandatory cancellation of the Applicant's Class BB Subclass 155 Resident Return visa – Migration Act 1958 (Cth) s 501CA(4) – Applicant fails to pass the character test – substantial criminal record – sentenced to a term of imprisonment for 12 months or more – whether there is another reason why the cancellation should be revoked – application of Direction No. 90 – where Applicant a citizen of Poland – international non-refoulement obligations – mental illness – decision under review affirmed

VNPC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 4628 (15 December 2021); S Boyle, Deputy President

MIGRATION – delegate refused to grant Applicant a visa (Migration Act s 501(1)) – delegate not satisfied that Applicant passes the character test – whether Tribunal should exercise discretion to refuse to grant the visa in the circumstances – Direction 90 applies – Australia owes the Applicant protection obligations – legal and practical consequences of a decision not to grant the visa (Migration Act ss 197C and 198) – considerations against granting visa outweigh considerations in favour of granting visa – reviewable decision affirmed

YYZQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 4647 (15 December 2021); Dr S Fenwick, Senior Member

MIGRATION – Mandatory visa cancellation – national of India – Bridging C (Subclass 030) visa – failure to pass character test – family violence offending – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 90 applied – decision affirmed

Saputra (Migration) [2021] AATA 4615 (25 October 2021); J Longo, Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 802 (Child) – full-time study since turning 18 – valid reasons for delay – completed junior high school in home country then came to Australia on visitor visa – not eligible for TAFE so undertook English classes – now enrolled in secondary education – statutory construction – break during secondary studies, not between secondary and post-secondary – decision under review remitted

Nguyen (Migration) [2021] AATA 4578 (17 November 2021); M Bourke, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – sponsorship limitation requirement – compelling circumstances – sponsorship permission less than five years after a Partner visa application – more than five years have passed at the time of decision – child born of the relationship – decision under review remitted

[Kim](#) (Migration) [2021] AATA 4582 (18 November 2021); B Cullen, Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – applicant convicted of an offence – no conviction recorded – consideration of discretion – further serious charges not particularised in cancellation – procedural fairness – decision under review set aside

[De Caro](#) (Migration) [2021] AATA 4706 (19 November 2021); W Stooke, Member

MIGRATION – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – genuine student – genuine temporary entrant – specialist agriculture and conservation courses – satisfactory academic progress – significant family ties in Italy – decision under review remitted

National Disability Insurance Scheme

[Charters and National Disability Insurance Agency](#) [2021] AATA 4762 (21 December 2021); J C Kelly, Senior Member and M Griffin QC, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME - access to the scheme – disability requirements not met – whether applicant meets early intervention requirements – where applicant has permanent impairments under s 25(1) – Ehlers-Danlos Syndrome – Narcolepsy – whether provision of early intervention supports is likely to reduce the applicant's future needs for supports in relation to disability – decision affirmed

[CYHY and National Disability Insurance Agency](#) [2021] AATA 4751 (20 December 2021); K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision approving statement of participant supports – child participant has autism spectrum disorder, generalised anxiety disorder, ADHD and social (pragmatic) communication disorder – participant requests provision of and funding for a trained and accredited assistance dog – whether support is reasonable and necessary – whether criteria under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) are met – Tribunal satisfied requested support is reasonable and necessary - reviewable decision set aside and remitted to Respondent with directions

[FNFW and National Disability Insurance Agency](#) [2021] AATA 4681 (17 December 2021); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – whether requested supports are reasonable and necessary pursuant to sub-section 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – capital budget for home modifications – decision under review affirmed

[Foster and National Disability Insurance Agency](#) [2021] AATA 4738 (17 December 2021); F Meagher, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether applicant meets disability requirements – Neurogenic Overactive Bladder – inability to void bladder – whether impairments substantially reduce functional capacity – whether impairments affect applicant's capacity to undertake social interaction or self-care – whether applicant likely to require support under NDIS for lifetime – decision set aside and substituted

[McPherson and National Disability Insurance Agency](#) [2021] AATA 4682 (17 December 2021); Dr C Huntly, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary support – participant plan – whether support can be approved – defibrillator considered – decision under review affirmed

[Snoxell and National Disability Insurance Agency](#) [2021] AATA 4731 (17 December 2021); Dr S Fenwick, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – applicant with mobility issues – whether NDIA should fund a lift – whether funding the support is consistent with Support for Participant Rules and operational Guidelines – decision under review affirmed

National Security

[QDJM and Director-General of Security](#) [2021] AATA 4761 (15 December 2021); P Britten-Jones, Deputy President and R Cameron, Senior Member and C Furnell, Senior Member

NATIONAL SECURITY – adverse security assessment – recommendation for cancellation of visa – acts of foreign interference – meaning of clandestine – applicant is a risk to security within the meaning of s 4 of the Australian Security Intelligence Organisation Act 1979 (Cth) – decision affirmed

Practice and Procedure

[Brindabella Christian Education Limited and Minister for Education and Youth](#) [2021] AATA 4629 (25 November 2021); Senior Member D O'Donovan

PRACTICE AND PROCEDURE – objection to production of summons material whether summons is fishing exercise – whether summons is oppressive – whether summons is relevant – summons set aside

[Huynh and Australian Postal Corporation](#) (Compensation) [2021] AATA 4677 (3 December 2021); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – worker's compensation – jurisdiction – whether application constitutes reviewable decision pursuant to section 62 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – Tribunal does not have jurisdiction – application dismissed

[Amidiong-Otyaluk and Australian Capital Territory](#) (Compensation) [2021] AATA 4777 (22 December 2021); L Kirk, Senior Member

PRACTICE AND PROCEDURE – reinstatement application – application dismissed for no appearance – consideration of Applicant's conduct to date – whether prejudice to parties – merits of substantive review applications – reinstatement allowed.

[VJCB; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 4732 (17 December 2021); D J Morris, Senior Member

PRACTICE AND PROCEDURE – application for second review of Social Services and Child Support Division decision by General Division of tribunal – second review application accompanied by request for stay order – respondent charged with criminal offence – dispute by parties about whether alleged offence relevant to tribunal proceedings – potential detriment to parties – tribunal satisfied on what evidence is before it that charge laid is not remote – requirement of witness to answer questions – requirement modified if answer might tend to incriminate person – balancing objective of expeditious proceedings with fairness to parties – detriment to parties if Tribunal hearing precedes resolution of Court matter – greater detriment to applicant in this case – stay order made – written reasons provided – non-publication order issued

[Walker and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 4603 (3 December 2021); W Frost, Member

PRACTICE AND PROCEDURE – dismissal for lack of jurisdiction – decision not reviewable by the Tribunal – application dismissed

Professions and Trades

[Bebawy and Migration Agents Registration Authority](#) (Migration) [2021] AATA 4632 (15 December 2021); I R Molloy, Deputy President

MIGRATION AGENTS – migration agents registration – cancellation of migration agent registration – whether the agent is a person of integrity – whether the agent is a fit and proper person to provide immigration assistance – whether the agent is honest – whether the agent dealt with his or her clients competently, diligently and fairly – decision affirmed

Refugee

[2107326](#) (Refugee) [2021] AATA 4589 (30 August 2021); J Marquard, Member

REFUGEE – protection visa – Zimbabwe – particular social group – homosexual or bisexual men – persons who cannot afford treatment – high risk of contracting COVID-19 – decline of medical infrastructure due to corruption – looting of donated resources – denial of access to basic services – potential statelessness – risk of blackmail and extortion by police – misplaced passport and birth certificate – impact of criminal record and lengthy absence on citizenship – third country protection – Southern African Development Community (SADC) – Common Market for Eastern and Southern Africa (COMESA) – decision under review remitted

[1813714](#) (Refugee) [2021] AATA 4588 (7 September 2021); J Pennell, Senior Member

REFUGEE – protection visa – Ethiopia – political opinion – opposition to government – supporter of Ginbot 7 – first applicant's father's political activities – member of the same family unit – race – Amhara – religion – Orthodox Christian – particular social group – failed asylum seeker – attendance at ESAT fundraising events in Australia – Ethiopian Satellite Television (ESAT) – increased tolerance for political dissent – removal of Ginbot 7 from terrorist list – Ginbot 7 disbanded – decision under review affirmed

[2108056](#) (Refugee) [2021] AATA 4645 (15 September 2021); J Marquard, Member

REFUGEE – protection visa – Sudan – religion – mixed religious marriage – applicant convicted of manslaughter of his wife – fear of revenge killing – threats to family members – attacks by Muslim extremist groups – recruitment attempts by the Muslim Brotherhood – travel blacklist – detention – decision under review affirmed

[1803673](#) (Refugee) [2021] AATA 4642 (21 September 2021); A Murphy, Member

REFUGEE – protection visa – Iraq – particular social group – women in Iraq – educated, professional woman who has actively advocated for women’s rights in Iraq – political opinion – commitment to women’s advocacy – Gender-based violence – no jurisdiction in relation to the second named applicant – membership of the same family unit – decision under review remitted

[1810829](#) (Refugee) [2021] AATA 4673 (21 September 2021); N Burns, Member

REFUGEE – protection visa – Iraq – imputed political opinion – anti-militia – pro-Iraqi government – pro-western – fear of harm from Shia militia – Asa’ib Ahl al-Haq (AAH) – particular social group – family’s occupation and applicant’s work for company with contracts with international companies – perceived as a wealthy person – threats from militia after member arrested – attempted kidnapping, assault and extortion of father or brother – wife and children killed in bomb blast – remaining family members internally displaced – mental health and treatment – credible witness and detailed and consistent claims and evidence – complementary protection – lack of effective state protection – not reasonable to relocate – decision under review remitted

[2014138](#) (Refugee) [2021] AATA 4747 (15 October 2021); A Grant, Member

REFUGEE – protection visa – Pakistan – Federal Court remittal – failure to consider relevant claim – political opinion – anti-Taliban – particular social group – supporter and member of the Awami National Party (ANP) – ANP campaign worker – participation in the Village Defence Committee (VDC) – emergence of Taliban rule in Afghanistan – state protection – internal relocation – decision under review remitted

[1711750](#) (Refugee) [2021] AATA 4737 (25 October 2021); M Moustafine, Member

REFUGEE – Protection visa – Kyrgyzstan – political profile – work for European organisation – support of LGBT activism – imputed anti-government political opinion – perceived as pro-Western supporter – credibility – decision under review affirmed

Social Services

[Alchaar and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4646 (15 December 2021); L Rieper, Member

SOCIAL SECURITY – disability support pension – whether the applicant’s impairments have been fully treated and stabilised – whether the applicant’s impairments attract 20 points or more on any one relevant Impairment Table – whether the applicant’s impairments constitute a continuing inability to work – decision under review set aside and remitted

[Byrne and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 4746 (20 December 2021); W Frost, Member

SOCIAL SECURITY – Receipt of compensation payments – compensation lump sum – Disability Support Pension – JobSeeker Payment – Preclusion Period – s1184K, “special circumstances” discretion – meaning of “special circumstances” – no evidence that special circumstances exist – decision under review affirmed.

[Caelho and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 4607 (13 December 2021); B Pola, Senior Member

SOCIAL SECURITY – pensions, benefits, and allowances – claim for disability support pension rejected – whether applicant’s conditions were fully diagnosed, fully treated, and fully stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – whether applicant participated in a program of support – no participation exemption established – decision affirmed

SOCIAL SECURITY – mobility allowance – whether applicant unable to use public transport without substantial assistance – whether applicant engaged in voluntary work for at least 15 hours per week on a continuing basis or was undertaking job search activities – contradictory medical evidence regarding ability to use public transport – decision under review affirmed

[Calayini and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 4664 (16 December 2021); C J Furnell, Senior Member

SOCIAL SECURITY – Parenting Payment Single – overpayment – debt raised – whether unexplained deposits are income – whether appropriate not to treat unexplained deposits as income – whether debt due to the Commonwealth – whether limitation period applies – whether any debt should be written off or waived – loan – community saving scheme – two deposits not ordinary income – debt may be due in respect of income not taken into account – limitation period does not prevent recovery – circumstances not such that any debt should be written off or waived – decision under review set aside and remitted to respondent for reconsideration

[Close and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 4678 (17 December 2021); K Parker, Member

SOCIAL SECURITY – carer payment – overpayments – debt raised – whether debt owed to the Commonwealth – whether debt should be waived or written off – whether portion or all of the debt has arisen due to sole administrative error of the Commonwealth – whether “special circumstances” exist – failure to declare increases in partner’s income and to declare gross income – Applicant declared annual income for the purpose of Family Tax Benefits (FTB) – whether the debtor has capacity to repay the debt – deductions from FBT payments – Decision Under Review affirmed

[CWYF and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 4759 (21 December 2021); R Maguire, Member

SOCIAL SECURITY – Disability support pension – Whether applicant suffered a physical, intellectual or psychiatric impairment – Where applicant suffers from spinal, upper and lower limb and mental health conditions – Whether conditions fully diagnosed in the qualification period – Whether conditions fully treated and stabilised in qualification period – Whether applicant’s impairment is 20 points or more under the impairment tables – Where overall impairment arising from fully diagnosed, fully treated, and fully stabilised conditions is 5 points – Decision under review affirmed

[Fellows and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4626 (14 December 2021); Brigadier AG Warner AM LVO (Retd), Member

SOCIAL SECURITY – disability support pension – whether the Applicant met eligibility requirement for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffers from permanent impairments that attract 20 points or more under the Impairment Tables – Impairment Table 1 – Functions requiring Physical Exertion and Stamina – chronic fatigue syndrome – Impairment Table 7 – Brain Function – Applicant found not to have 20 or more impairment points – Reviewable Decision affirmed

[Flynn and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4674 (17 December 2021); R West, Member

SOCIAL SECURITY – disability support pension – fibromyalgia – nausea/dizziness – frontal lobe atrophy – bowel disturbance – mood disorder – 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

[French and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4779 (22 December 2021); W Frost, Member

SOCIAL SECURITY – whether entitled to parenting payment – social security payment start date – deemed claims – whether payments can be backdated - whether special circumstances – registering of intention to claim – coronavirus provisions – decision under review affirmed

[Inston and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4601 (25 October 2021); D Cox, Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for mobility allowance – whether correct decision to cancel and regrant payment – whether Applicant satisfies the travel test

[Pereira Dos Santos and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4663 (16 December 2021); Senior Member B Pola

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

[Redman and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4679 (19 November 2021); A E Burke, AO Member

SOCIAL SECURITY – Newstart payment – overpayment – undeclared earnings – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – whether special circumstances – decision under review affirmed

[Sesalim and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4783 (22 December 2021); R Cameron, Senior Member

SOCIAL SECURITY – disability support pension – qualification for payment – conditions of anxiety, depression and cervical canal stenosis – post traumatic stress disorder – whether impairment attracts a rating of 20 points or more under impairment Tables – eligibility for unlimited portability – applicant did not meet qualifying criteria – decision set aside and substituted

[Taifalos and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 4625 (14 December 2021); P J Clauson AM, Senior Member

SOCIAL SECURITY – Disability Support Pension – Whether medical conditions fully diagnosed, fully treated and fully stabilised – Whether 20 points or more under the Impairment Tables during the Relevant Period – Where points cannot be assigned under the Impairment Tables – Decision under review affirmed

Taxation

[Oberg and Commissioner of Taxation](#) (Taxation) [2021] AATA 4606 (13 December 2021); Senior Member Dr M Evans-Bonner

INCOME TAX – whether taxpayer is a resident of Australia – income tax years ending 30 June 2015 to 30 June 2018 – employment in Indonesia and Mongolia – residency according to ordinary concepts test – summary principles in *Harding v Commissioner of Taxation* [2019] FCAFC 29 – reviewable decision affirmed

[Physiotherapy Rehab Centre Pty Ltd and Commissioner of Taxation](#) (Taxation) [2021] AATA 4760 (17 December 2021); B J McCabe, Deputy President

PROCEDURE – expedited hearing – jobkeeper payments – section 19 of the Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 – expedited timetable to ensure proceedings are brought to a timely end – expedited hearing granted.

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
Boglari and Ron Finemore Transport Service Pty Ltd	[2021] AATA 3320
CYTW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3887
Guttridge and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2099

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
DCR19 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 933	[2021] FCAFC 229 [2020] FCA 501
Fonoti v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 866	[2021] FCA 1553
Oke v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1306	[2021] FCA 1567
Pitman v Commissioner of Taxation	[2020] AATA 5308	[2021] FCAFC 230
Yildiz v Migration Agents Registration Authority	[2020] AATA 3744	[2021] FCA 1550



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