



AAT Bulletin

Issue No. 28/2020

16 November 2020

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

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

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AAT Recent Decisions

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

Child Support

[ZGCJ and Child Support Registrar](#) (Child support second review) [2020] AATA 4481 (9 November 2020); Dr M Evans-Bonner, Senior Member

CHILD SUPPORT – percentage of care – whether change in pattern of care – whether existing determination of care should be revoked – when actual care changed – date of revocation – date of notification – date of effect – child engaged in full-time employment – date when mother ceased to provide care for child – whether special circumstances existed that prevented Father lodging objection – whether misleading information from the Department prevented Applicant from lodging objection within time – AAT1 decision varied

[Cowden and Cowden](#) (Child support) [2020] AATA 4296 (1 September 2020); W Budiselik, Member

CHILD SUPPORT – non-agency payment – prescribed payment for payees share of home loan – payment correctly credited – decision under review affirmed

[Lowry and James](#) (Child support) [2020] AATA 4304 (4 September 2020); H Schuster, Member

CHILD SUPPORT – particulars of the administrative assessment – adjusted taxable income – better information available at time objection was considered – decision under review set aside and substituted

[Marchand and Christian](#) (Child support) [2020] AATA 4403 (2 September 2020); K Buxton, Member

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

[Martell and Martell](#) (Child support) [2020] AATA 4286 (7 September 2020); M Baulch, Member

CHILD SUPPORT – particulars of the administrative assessment – determination of adjusted taxable income – late lodged tax returns – whether retrospective adjustment should occur – no special circumstances – decision under review affirmed

[Steffen and Dustin](#) (Child support) [2020] AATA 4300 (4 September 2020); P Jensen, Member

CHILD SUPPORT – percentage of care – determination of the likely pattern of care from the start of the administrative assessment – decision under review affirmed

Citizenship

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

(Citizenship) [2020] AATA 4425 (5 November 2020); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is of good character – domestic violence – good behaviour bond – applicant claims he did not know Australian law – Citizenship Policy – Australian Citizenship Procedural Instructions – where applicant has limited insight or remorse into offending – decision under review affirmed

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

(Citizenship) [2020] AATA 4509 (10 November 2020); Senior Member J C Kelly

CITIZENSHIP – application for citizenship by conferral – rejection of citizenship application – citizenship test – eligibility requirements for citizenship – whether applicant has a permanent or enduring physical or mental incapacity – consideration of medical evidence – decision under review affirmed

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

(Citizenship) [2020] AATA 4479 (10 November 2020); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant has satisfied paragraph 21(2)(h) – good character requirement – Citizenship Policy – meaning of ‘good character’ – enduring moral qualities – domestic violence – decision under review set aside and remitted

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

(Citizenship) [2020] AATA 4416 (7 October 2020); Senior Member M J McGrowdie

CITIZENSHIP – application for citizenship by conferral – whether the applicant holds a permanent visa – whether or not Special Category (TY-444) visa should be regarded as a permanent visa – Special Category (TY-444) visa not to be regarded as a permanent visa – applicant does not hold a permanent visa – decision under review affirmed

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

(Citizenship) [2020] AATA 4427 (6 November 2020); Senior Member A Nikolic AM CSC

CITIZENSHIP – eligibility – application for Australian citizenship by conferral refused – whether applicant of good character – manslaughter conviction overseas – domestic violence offending in Australia – intentionally cause injury – unlawful assault – contravene family violence intervention order – Citizenship Policy – Australian Citizenship Procedural Instructions – applicant not of good character at time of deciding citizenship application – character references do not outweigh offending – decision under review affirmed

Compensation

[Crick and Comcare](#) (Compensation) [2020] AATA 4483 (9 November 2020); Dr P McDermott RFD, Deputy President

COMPENSATION – determination that Comcare no longer liable to pay compensation to the employee for accepted injuries under section 16 and section 19 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – lumbosacral (joint) (ligament) sprain of unspecified site of hip & thigh (right) – aggravation of displacement of intervertebral disc-lumbar – aggravation of disc degeneration L4-L5/L5-S1 (bilateral) – adjustment disorder with mixed anxiety and depression – whether applicant continues to suffer the effects of the compensable injuries – whether injury, being a disease, continues to be contributed to, to a significant degree, by employment – decision under review affirmed

[Faulks and BIS Industries Limited](#) (Compensation) [2020] AATA 4357 (2 November 2020); Senior Member D O'Donovan and Dr P Wilkins, Member

COSTS – Workers' compensation – three reviewable decisions set aside – making a decision in substitution for the reviewable decision that is more favourable to the claimant – whether Tribunal ought to exercise its discretion to order that only part of the claimant's costs be paid by the responsible authority – whether respondent incurred additional and unnecessary costs as a result of the way the applicant ran his case – respondent ordered to pay applicant's costs in all three proceedings

[JMLW and Comcare](#) (Compensation) [2020] AATA 4354 (2 November 2020); S Taglieri SC, Member and Dr R Walters, Member

COMPENSATION – whether the Applicant still suffers symptoms and/or effects from a compensable injury – whether liability exists for a new injury – no longer suffering the effects of the compensable injury – no liability for new injury – entitlement to payment of household services prior to date of reviewable decision

[Ross and Comcare](#) (Compensation) [2020] AATA 4350 (2 November 2020); Dr M Evans-Bonner, Senior Member

COMPENSATION – Workers' Compensation – Commonwealth employee – whether liability should be accepted under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether the Applicant suffers from an injury – degenerative osteoarthritis condition aggravated by workplace incident – stress related fracture to right hip which resulted in the need for a hip replacement – whether a disease – whether an injury other than a disease – whether an ailment – aggravation of an ailment – causation – whether contributed to, to a significant degree, by employment – Reviewable Decision affirmed

[The Executor of the Estate of the Late DMLC and Military Rehabilitation and Compensation Commission](#) (Compensation) [2020] AATA 4588 (9 November 2020); Deputy President J W Constance

COMPENSATION – compensation for injuries resulting in death – prescribed child – meaning of receiving full-time education – significance of formal education status – where Ms A has a medical condition which prevents enrolment in a full-time course load – where Ms A enrolled in only subject in the relevant period – history of Ms A’s engagement in course work – where Ms A engaged in full-time education within the limitations of her medical condition – where Ms A engaged in no other activities than her education – decision set aside and remitted

Freedom of Information

[Warren: Chief Executive Officer, Services Australia and](#) (Freedom of information) [2020] AATA 4557 (9 November 2020); Deputy President S A Forgie

FREEDOM OF INFORMATION – review of decision of Australian Information Commissioner that documents are not exempt – whether documents conditionally exempt under section 47F of the Freedom of Information Act 1982 – whether access would involve unreasonable disclosure of personal information – whether public interest in releasing names and phone numbers – decision set aside and substituted

Industrial Law

[Bower and Secretary, Attorney-General's Department](#) [2020] AATA 4353 (30 October 2020); Deputy President RI Hanger AM QC

FAIR ENTITLEMENTS GUARANTEE – redundancy pay – whether Applicant entitled to an advance under the Fair Entitlements Guarantee Act 2012 for redundancy pay – where governing instrument for Applicant’s redundancy pay entitlement is the Fair Work Act 2009 – where Applicant’s employer was a small business employer at the time written notice of termination was given – decision under review affirmed

[Mackay and Secretary, Attorney General’s Department](#) [2020] AATA 4554 (12 November 2020); Senior Member D R Davies

EMPLOYMENT ENTITLEMENTS – Fair Entitlements Guarantee Act 2012 (Cth) – advance paid to employee – reconsideration of own motion by secretary – decision that employee was not eligible for advance paid – whether applicant was an employee of the relevant company or another company – tripartite labour hire agreement – applicant not an employee of the relevant company – decision under review affirmed

Migration

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

(Migration) [2020] AATA 4563 (12 November 2020); Deputy President Boyle

MIGRATION – Migration Act 1958 (Cth) – mandatory visa cancellation – s 501CA(4) – another reason why the cancellation decision should be revoked – Direction 79 – protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – attitude towards and violence against women – abuse of Tribunal member and counsel in hearing – best interests of minor children – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

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

(Migration) [2020] AATA 4561 (10 November 2020); Senior Member B J Illingworth

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision under review set aside

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

(Migration) [2020] AATA 4586 (13 November 2020); The Hon John Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – where offending very serious – where there is a low risk of reoffending – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – best interests of minor children – non-refoulement obligations – impediments to removal – decision set aside and substituted

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

(Migration) [2020] AATA 4418 (4 November 2020); S Burford, Member

MIGRATION – Migration Act 1958 (Cth) – decision of delegate of Minister not to revoke mandatory cancellation of visa – whether the Applicant passes the character test – substantial criminal record – drug offences – domestic violence – traffic offences – Applicant does not pass the character test – whether there is another reason why the Cancellation Decision should be revoked – Direction No 79 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community – expectations of the Australian community – non-refoulement – strength, nature and duration of ties – Applicant arrived in Australia as a fifteen year old – extent of impediments if removed to Myanmar – impact of COVID-19 pandemic – Tribunal satisfied there is another reason why the decision to cancel that Applicant’s visa should be revoked – reviewable decision set aside and substituted

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

(Migration) [2020] AATA 4429 (4 November 2020); Senior Member M Griffin QC

MIGRATION – mandatory cancellation – failure to pass the character test – assault – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – non-refoulement obligations – South Sudan – strength, nature and duration of ties to Australia – decision set aside and substituted

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

(Migration) [2020] AATA 4558 (13 November 2020); Deputy President A G Melick AO SC

MIGRATION – refusal to revoke cancellation of Child (Subclass 802) visa – whether the Applicant passes the character test – whether there is another reason why the original decision should be revoked – protection of Australian community – nature and seriousness of conduct – risk to Australian community – risk of re-offending – best interests of minor children – expectations of Australian community – decision under review affirmed

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

(Migration) [2020] AATA 4430 (4 November 2020); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of a minor child – expectations of the Australian community – other considerations – decision affirmed

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

(Migration) [2020] AATA 4536 (11 November 2020); Deputy President B W Rayment OAM QC

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – where offending was non-violent – whether to exercise discretion under Direction No. 79 – protection of the Australian community – where history of offending involved drugs – where applicant is no longer influenced by drugs – where likelihood of reoffending is low – best interests of minor children – where applicant has multiple minors that would be affected – other considerations – strength, nature and duration of ties – where applicant’s extended family is in Australia – extent of impediments if removed – where applicant has better prospects of rehabilitation in Australia – decision set aside and substituted

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

(Migration) [2020] AATA 4587 (13 November 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Child (Class AH) (Subclass 101) 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. 79 – violent offending – mental illness – decision under review affirmed

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

(Migration) [2020] AATA 4414 (4 November 2020); R Reitano, Member

MIGRATION – non-revocation of mandatory cancellation of Applicant’s Class BF Transitional (Permanent) visa – where visa was cancelled under s 501(3A) because Applicant did not pass character test – two notification letters – first notification letter posted to last known address of applicant – whether applicant made representations within the prescribed 28 day time period – representations made outside of prescribed time – power to consider whether to revoke the mandatory cancellation decision under s 501CA(4) not enlivened – decision under review affirmed

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

(Migration) [2020] AATA 4560 (11 November 2020); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Resident Return (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. 79 – decision under review affirmed

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

(Migration) [2020] AATA 4535 (11 November 2020); Senior Member M Griffin QC

MIGRATION – mandatory visa cancellation – failure to pass character test – assault – no prior convictions before arriving in Australia – protection of the Australian community – mental health considerations – no relevant minor children in Australia – expectations of the Australian community – other considerations – decision set aside and substituted

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

(Migration) [2020] AATA 4511 (10 November 2020); W Frost, Member

MIGRATION – decision of the delegate to refuse to grant the applicant a visa pursuant to subsection 501(1) of the Migration Act 1958 – whether the applicant passes the character test – where the applicant has a substantial criminal record pursuant to subsection 501(7) of the Migration Act 1958 – applicant does not pass the character test – whether the discretion to refuse to grant the applicant a visa should be exercised – application of Direction No 79 – protection of the Australian community – best interests of minor children – expectations of the Australian community – contribution by way of employment history and volunteer work – ties to Australian community – whether the applicant will face financial hardship or emotional distress if removed – whether the other considerations outweigh the primary considerations – other considerations do not outweigh primary considerations – discretion to refuse to grant the applicant a visa exercised – decision under review affirmed

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

(Migration) [2020] AATA 4431 (2 November 2020); Deputy President Britten-Jones

MIGRATION – refusal to grant Partner visa – whether the applicant is of good character – whether the applicant failed to pass s 501(6)(d) character test – whether to exercise discretion to refuse – risk to the Australian community – nature of criminal conduct not serious and of limited duration – applicant reformed – applicant proved himself by his conduct to be of good character – considerations in Direction No. 79 do not favour exercising of discretion to refuse the applicant a visa – decision set aside and remitted

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

(Migration) [2020] AATA 4537 (11 November 2020); Senior Member T Tavoularis and R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category 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. 79 – decision under review affirmed

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

(Migration) [2020] AATA 4426 (7 October 2020); Dr N A Manetta, Senior Member

MIGRATION – mandatory visa cancellation – protection visa – whether cancellation should be revoked – serious criminal offence – aggravated sexual assault – primary considerations – protection of Australian community – nature and seriousness of conduct – community expectations – other considerations – international non-refoulement obligations – decision under review set aside and new decision substituted

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

(Migration) [2020] AATA 4564 (9 November 2020); Senior Member B Pola

MIGRATION – Non-revocation of mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass character test – whether there is another reason to revoke the mandatory cancellation decision – consideration and application of Ministerial Direction No 79 – decision under review is affirmed

[1916717](#) (Migration) [2020] AATA 4361 (23 July 2020); A Murphy, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information in protection visa application – previously included in an offshore humanitarian visa application under a different identity – previously known by a different name – family composition – facial image comparison – consideration of discretion – grant of protection visa not based on incorrect information – non-refoulement obligations – Hazara Shia from Afghanistan – security situation in Ghazni province, Afghanistan – state protection – internal relocation – decision under review set aside

[Atoi](#) (Migration) [2020] AATA 4521 (30 October 2020); D Dragovic, Senior Member

MIGRATION – Temporary Activity (Class GG) visa – Subclass 408 (Temporary Activity) – adequate means of support during stay – professional sports contract – sign-on payment, match payments and bonuses, health insurance and perks – decision under review remitted

[NGUYEN](#) (Migration) [2020] AATA 4376 (2 September 2020); K Raif, Senior Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – health criteria – second applicant's disease or condition likely to require care or services and result in significant cost to Australian community – assessment by medical officer of commonwealth – divorce and second applicant's return to home country – authenticity of divorce – no jurisdiction for second applicant – other members of family unit meet health requirement – decision under review remitted

[Verma](#) (Migration) [2020] AATA 4542 (5 August 2020); R Maguire, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – no substantive visa at time of application – compelling reasons to waive Schedule 3 criteria – family health issues and bereavement – impact of COVID 19 on travel to India – family's practical reliance upon the applicant – decision under review remitted

[ZHAN](#) (Migration) [2020] AATA 4495 (8 September 2020); M Cooke, Senior Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – ground for cancellation – incorrect information in visa application – past employment details – bogus document – employer reference – alleged malfeasance by agent – consideration of discretion – information material to assessment of visa application – best interest of children – integrity of the Business visa program – decision under review affirmed

National Disability Insurance Scheme

[Soliman and National Disability Insurance Agency](#) [2020] AATA 4478 4478 (9 November 2020); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – lumbar and cervical spine impairments – shoulder impairments – persistent depressive disorder – section 24 – whether the applicant meets the disability requirements – whether the impairments are permanent – where Tribunal finds only mental health impairment is permanent – where there is no substantial reduction in functional capacity – inconsistent evidence of functional capacity – whether the applicant needs the NDIS for life – section 25 – early intervention supports – decision under review affirmed

Practice and Procedure

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

(Migration) [2020] AATA 4552 (13 November 2020); Senior Member A Nikolic AM CSC

PRACTICE AND PROCEDURE – Application for review of visa refusal decision under s 501(1) of the Migration Act 1958 (Cth) – whether decision reviewable – proceeding abated by reason of applicant’s death – application for review dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Knight and Commonwealth Ombudsman](#) (Freedom of Information) [2020] AATA 4480 (16 October 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – summons – request to issue summons – meaning of for the purposes of a proceeding – whether documents have evidentiary value – requested documents relate to research and development of applicant’s case – no evidentiary value – request to issue summons refused

[NWCB and National Disability Insurance Agency](#) [2020] AATA 4555 (9 November 2020); Deputy President S A Forgie

PRACTICE AND PROCEDURE – implied undertaking – power of Tribunal to waive implied undertaking – meaning of Part 5 of the General Practice Direction made under s 18B of the Administrative Appeals Tribunal Act 1975 – whether production of documents compelled – implied undertaking waived where documents where production of documents compelled

Professions and Trades

[Blazejczyk and Australian Securities and Investments Commission](#) [2020] AATA 4352 (2 November 2020); Senior Member R Olding and P Ranson, Member

PROFESSIONAL SERVICES – financial services – banning order – where Applicant prohibited from provision of any financial services for five years – where Applicant accepted banning and prohibition period but sought to limit scope of banning to “personal advice” to “retail clients” – whether limited or permissive banning order appropriate – reviewable decision affirmed

[Catacouzinos and Victorian Building Authority](#) [2020] AATA 4553 (12 November 2020); Senior Member R Cameron

MUTUAL RECOGNITION – application of Mutual Recognition Act 1992 (Cth) – Queensland registration not equivalent to the Victorian registration – Commercial Builder (Limited to Structural fit out work) refused – Commercial Builder (Limited to non-structural fit out work) granted – activities carried out under each registration in Queensland and Victoria are substantially not the same – decision under review affirmed

[Khurana and Migration Agents Registration Authority](#) [2020] AATA 4482 (9 November 2020); Deputy President J W Constance

MIGRATION AGENTS REGISTRATION – review of decision to cancel registration – where applicant’s employee received clients’ money into her personal account – where applicant aware employee acting dishonestly – where applicant’s supervision and control of her employee was insufficient – where applicant failed to appreciate her failure to comply with the Code of Conduct – where applicant breached the Code of Conduct – Tribunal satisfied applicant not a fit and proper person to give immigration assistance – appropriate sanction – decision set aside and substituted

Refugee

[1614144](#) (Refugee) [2020] AATA 4348 (10 August 2020); M Foster, Member

REFUGEE – protection visa – Bangladesh – particular social group – indigenous Chakma person from the Chittagong Hill Tracts (CHT) – religion – Buddhist – political opinion – indigenous rights activist – protests against human rights violations against the Jumma people – family members’ affiliation with the Shanti Bahini – fear of harm from the army, Bengali Muslim settlers, and Islamic fundamentalists – credibility concerns – inconsistent and vague evidence – delay in raising claims – voluntary returns to receiving country – mental health issues – interpreter/language issues – harm faced by indigenous peoples in the CHT – internal relocation – decision under review affirmed

[1621210](#) (Refugee) [2020] AATA 4525 (25 August 2020); Dr C Huntly, Member

REFUGEE – protection visa – Uganda – imputed political opinion – employment with an international non-government organisation – credibility concerns – voluntary returns to Uganda – delay in seeking protection – worked for a well-known business figure in Uganda – human trafficking involving child soldiers – past harm suffered – motivation of perpetrators – random acts of thuggery and intimidation – Australian citizen daughter – ‘right to enter and reside’ in a third country – South African Development Community (SADC) – Common Market in Eastern and Southern Africa (COMESA) – non-permanent right of residence – decision under review affirmed

[1802556](#) (Refugee) [2020] AATA 4550 (16 September 2020); J Silva, Member

REFUGEE – cancellation – protection visa – Iran – ground for cancellation – incorrect information in visa application – citizenship status – claimed statelessness – Iranian citizen – consideration of discretion – grant of visa based on incorrect information – ongoing credibility concerns – contributions to Australian community – carer for disabled person – time elapsed since the non-compliance – best interest of child – effect of consequential cancellations – non-refoulement obligations – Faili Kurd ethnicity – failed asylum seeker – religion – claimed conversion to Christianity – decision under review set aside

[1821043](#) (Refugee) [2020] AATA 4462 (1 July 2020); J Redfern, Deputy President

REFUGEE – protection visa – Malaysia – non-appearance before the Tribunal – proper hearing invitation – application dismissed

[1821043](#) (Refugee) [2020] AATA 4464 (13 July 2020); J Redfern, Deputy President

REFUGEE – protection visa – Malaysia – non-appearance before the Tribunal – application for reinstatement – personal and contact details updated – application reinstated

[1821043](#) (Refugee) [2020] AATA 4463 (2 September 2020); J Redfern, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – Malaysia – application for protection on basis the basis of the refugee and complementary protection criterion – applicant claims to fear harm from loan sharks – consideration of refugee criterion in s 36(2)(a) of the Migration Act 1958 – consideration of complementary protection criteria in s 36(2)(aa) of the Migration Act 1958 – claims rejected – applicant found to not be a person in respect of whom Australia has protection obligations under s 36 of the Migration Act 1958 (Cth) – decision under review affirmed.

[2001388](#) (Refugee) [2020] AATA 4529 (16 July 2020); Dr C Huntly, Member

REFUGEE – protection visa – complementary protection – member of a particular social group – culturally accepted violence against girls and women – female genital mutilation – country information – practice illegal but widespread – no effective state protection – born and raised in Australia – father faces retribution from criminal gang – itinerant lifestyle and lack of support networks – cumulative effect of risk factors – parents and sibling's separate application – decision under review remitted

[2001814](#) (Refugee) [2020] AATA 4531 (25 August 2020); J Pennell, Senior Member

REFUGEE – Protection Visa – South Sudan – claims to be stateless – race – ethnic Dinka – national of South Sudan – particular social group – person suffering from physical and mental health issues – father is a rebel fighter – mental health issues – extensive criminal record – carrier of hepatitis B – not culturally assimilated as a Dinka tribal member – decision under review remitted

Social Services

[Ciullo and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 4534 (9 November 2020); Senior Member B J Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – whether Applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether Applicant’s conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[Chand and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 4365 (3 November 2020); S Evans, Member

SOCIAL SECURITY – Disability Support Pension – Newstart Allowance – rejection of applications – whether applicant was a member of a couple – financial aspects of relationship – nature of commitment – social aspects of relationship – sexual relationship – nature of household – decision under review affirmed

[Coren and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 4415 (4 November 2020); Senior Member D Cremean

SOCIAL SECURITY – disability support pension – conditions including mental health condition – whether fully treated and diagnosed – qualification period – whether severe functional impact – DSP entitlement – Decision set aside and substituted

[Gentile and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 4582 (11 November 2020); The Hon. M Groom, Senior Member

SOCIAL SECURITY – Disability Support Pension – calculation of start date of payment – not prevented from lodging claim form – decision affirmed

[Gutierrez and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 4351 (2 November 2020); S Evans, Member

SOCIAL SECURITY – parenting payment – whether Applicant was overpaid parenting payment – whether the overpayment is a debt due to the Commonwealth – whether the debt due can be written off or waived – debt not recoverable – administrative error – special circumstances – decision under review affirmed

[HSBC and Secretary, Department of Social Services](#) (Social services second review) [2020]
AATA 4417 (4 November 2020); G Hallwood, Member

SOCIAL SECURITY – Pensions, benefits and allowances – Family Tax Benefit – Running away from home not “an event” preventing return – “Reasonable steps” to return the child to mother’s care – Whether FTB child is not in the care of anyone with the legal responsibility – Whether FTB child ceased to be in mother’s care – Whether FTB child returned to mother’s care – Decision under review is affirmed

[Levandovskaya and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4477 (6 November 2020); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability support pension – several conditions including depression and anxiety, osteoarthritis – whether fully diagnosed, treated and stabilised – conditions were not fully treated and stabilised as at the qualification period – no points rating able to be assigned – decision under review affirmed

[Naylor and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4532 (11 November 2020); Dr I Alexander, Senior Member

SOCIAL SECURITY – disability support pension – eligibility – previously eligible then cancelled – physical and psychiatric impairments – hepatitis C – diabetes – arthritis – heart and lung disease – anxiety and depression – whether impairments fully diagnosed, treated and stabilised – whether impairments attract 20 or more points – impairment tables – decision under review affirmed

[Paiker and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4533 (11 November 2020); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – whether the Applicant had an impairment rating of 20 points or more under a single Impairment Table – Impairment Tables 1, 2, 3, 7 – rheumatoid arthritis, peripheral neuropathy, depression – Applicant found to have a severe impairment rating – Reviewable Decision set aside and substituted

[Potter and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4428 (5 November 2020); Senior Member PJ Clauson AM

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Social Security (Administration) Act 1999 (Cth) – Disability Support Pension – DSP – Whether the applicant's impairments are worth twenty or more points – whether the applicant's conditions were fully diagnosed, treated and stabilised – decision affirmed

[Riveiro; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 4530 (11 November 2020); Dr L Bygrave, Member

SOCIAL SECURITY – age pension – where the respondent should be paid age pension at single or partnered rate – member of a couple – where respondent's partner is retired and not able to access social security – section 24 discretion – special reason – whether couple able to pool resources – financial difficulty – respondent's situation not uncommon or exceptional – decision under review set aside and substituted

[Rogers and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4559 (12 November 2020); D Mitchell, Member

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

[Russell and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4583 (13 November 2020); Senior Member J C Kelly

SOCIAL SECURITY – disability support pension – cancellation – eligibility – whether impairments fully diagnosed, treated and stabilised – whether impairments attract 20 or more points – impairment tables – level of functional impact of impairment – decision under review affirmed

[Ryan: Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 4368 (3 November 2020); Deputy President A G Melick AO SC

SOCIAL SECURITY – claim for pension bonus – rejection – should the Secretary extend time for the Respondent to lodge claim for pension bonus – exercise of discretion to extend time – wide discretion exercised – decision affirmed

[Townsend and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 4556 (12 November 2020); S Taglieri SC, Member

SOCIAL SECURITY – disability support pension – rejection – qualification – whether the Applicant had permanent conditions and/or impairments during the qualification period – whether the Applicant had an impairment rating of at least 20 points – permanent degenerative back condition – no permanent psychological condition – requirements for disability support pension not satisfied – decision under review affirmed

Taxation

[Lambourne and Commissioner of Taxation](#) (Taxation) [2020] AATA 4562 (12 November 2020); D Mitchell, Member

TAXATION – income tax – deductions – employee – work-related clothing expenses – other work related expenses – incurred – in the course of deriving assessable income – substantiation of expenses – administrative penalty – whether failure to take reasonable care – whether penalty should be remitted – decision under review affirmed

Veterans' Affairs

[Whittaker and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 4476 (9 November 2020); S Evans, Member

VETERANS' AFFAIRS – eligibility for Gold Card – nuclear test participant – British Commonwealth Occupation Force participant – whether applicant was Australian resident at the time – Maralinga area – Royal Air Force – decision under review 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
Dunasemant and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4239
FGBP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3816
Gan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4236
Mack; Secretary, Department of Social Services and	[2020] AATA 4204
QKJY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2689

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Al-Huda Pty Limited v Secretary, Department of Education, Skills and Employment	[2020] AATA 2002	[2020] FCA 1613
DGPZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 115	[2020] FCA 1569
Stewart v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1257	[2020] FCAFC 196

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 30 October 2020, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

Use of walking aids as a factor in rotator cuff syndrome -

<https://www.legislation.gov.au/Details/C2020G00885>

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

Rotator cuff syndrome - No. 101 of 2014

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

Rotator cuff syndrome - No. 100 of 2014

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

Notification of Investigations (where there is no existing Statement of Principles)

On 30 October 2020, the AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

Transverse myelitis - <https://www.legislation.gov.au/Details/C2020G00886>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **30 November 2020**:

Adhesive capsulitis of the shoulder (Reasonable Hypothesis) - No. 72 of 2020

<https://www.legislation.gov.au/Details/F2020L01376>

Adhesive capsulitis of the shoulder (Balance of Probabilities) - No. 73 of 2020

<https://www.legislation.gov.au/Details/F2020L01377>

Conjunctivitis (Reasonable Hypothesis) - No. 76 of 2020

<https://www.legislation.gov.au/Details/F2020L01395>

Conjunctivitis (Balance of Probabilities) - No. 77 of 2020

<https://www.legislation.gov.au/Details/F2020L01397>

Dengue virus infection (Balance of Probabilities) - No. 79 of 2020

<https://www.legislation.gov.au/Details/F2020L01380>

Dengue virus infection (Reasonable Hypothesis) - No. 78 of 2020

<https://www.legislation.gov.au/Details/F2020L01379>

Inflammatory bowel disease (Balance of Probabilities) - No. 91 of 2020

<https://www.legislation.gov.au/Details/F2020L01389>

Inflammatory bowel disease (Reasonable Hypothesis) - No. 90 of 2020

<https://www.legislation.gov.au/Details/F2020L01388>

Malignant neoplasm of the cervix (Balance of Probabilities) - No. 81 of 2020

<https://www.legislation.gov.au/Details/F2020L01383>

Malignant neoplasm of the cervix (Reasonable Hypothesis) - No. 80 of 2020

<https://www.legislation.gov.au/Details/F2020L01381>

Otitic barotrauma (Balance of Probabilities) - No. 87 of 2020

<https://www.legislation.gov.au/Details/F2020L01403>

Otitic barotrauma (Reasonable Hypothesis) - No. 86 of 2020

<https://www.legislation.gov.au/Details/F2020L01404>

Peripheral artery disease (Reasonable Hypothesis) - No. 70 of 2020

<https://www.legislation.gov.au/Details/F2020L01374>

Peripheral artery disease (Balance of Probabilities) - No. 71 of 2020

<https://www.legislation.gov.au/Details/F2020L01375>

Photocontact dermatitis (Balance of Probabilities) - No. 83 of 2020

<https://www.legislation.gov.au/Details/F2020L01384>

Photocontact dermatitis (Reasonable Hypothesis) - No. 82 of 2020

<https://www.legislation.gov.au/Details/F2020L01382>

Spinal adhesive arachnoiditis (Balance of Probabilities) - No. 75 of 2020

<https://www.legislation.gov.au/Details/F2020L01393>

Spinal adhesive arachnoiditis (Reasonable Hypothesis) - No. 74 of 2020

<https://www.legislation.gov.au/Details/F2020L01391>

Tinnitus (Balance of Probabilities) - No. 85 of 2020

<https://www.legislation.gov.au/Details/F2020L01386>

Tinnitus (Reasonable Hypothesis) - No. 84 of 2020

<https://www.legislation.gov.au/Details/F2020L01385>

Toxic vestibulopathy (Balance of Probabilities) - No. 89 of 2020

<https://www.legislation.gov.au/Details/F2020L01396>

Toxic vestibulopathy (Reasonable Hypothesis) - No. 88 of 2020

<https://www.legislation.gov.au/Details/F2020L01394>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from **30 November 2020**:

Intervertebral disc prolapse - No. 92 of 2020

<https://www.legislation.gov.au/Details/F2020L01390>

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 30 November 2020**:

Adhesive capsulitis of the shoulder - No. 7 of 2012

<https://www.legislation.gov.au/Details/F2012L00014>

Adhesive capsulitis of the shoulder No. 8 of 2012

<https://www.legislation.gov.au/Details/F2012L00016>

Atherosclerotic peripheral vascular disease - No. 23 of 2012

<https://www.legislation.gov.au/Details/F2012L00454>

Atherosclerotic peripheral vascular disease - No. 24 of 2012

<https://www.legislation.gov.au/Details/F2012L00456>

Conjunctivitis - No. 1 of 2012

<https://www.legislation.gov.au/Details/F2012L00005>

Conjunctivitis - No. 2 of 2012

<https://www.legislation.gov.au/Details/F2012L00006>

Dengue fever - No. 14 of 2012

<https://www.legislation.gov.au/Details/F2012L00444>

Dengue fever - No. 13 of 2012

<https://www.legislation.gov.au/Details/F2012L00443>

Inflammatory bowel disease - No. 20 of 2012

<https://www.legislation.gov.au/Details/F2012L00452>

Inflammatory bowel disease - No. 19 of 2012

<https://www.legislation.gov.au/Details/F2012L00449>

Malignant neoplasm of the cervix - No. 40 of 2012

<https://www.legislation.gov.au/Details/F2012L01354>

Malignant neoplasm of the cervix - No. 39 of 2012

<https://www.legislation.gov.au/Details/F2012L01353>

Otitic barotrauma - No. 36 of 2012

<https://www.legislation.gov.au/Details/F2012L00947>

Otitic barotrauma - No. 35 of 2012

<https://www.legislation.gov.au/Details/F2012L00945>

Photocontact dermatitis - No. 109 of 2011

<https://www.legislation.gov.au/Details/F2011L01744>

Photocontact dermatitis - No. 108 of 2011

<https://www.legislation.gov.au/Details/F2011L01741>

Spinal adhesive arachnoiditis - No. 117 of 2011

<https://www.legislation.gov.au/Details/F2011L01749>

Spinal adhesive arachnoiditis - No. 116 of 2011

<https://www.legislation.gov.au/Details/F2011L01748>

Tinnitus - No. 34 of 2012

<https://www.legislation.gov.au/Details/F2012L00944>

Tinnitus - No. 33 of 2012

<https://www.legislation.gov.au/Details/F2012L00942>



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