



AAT Bulletin

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

It is recommended that the Bulletin be read 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

[WWYY and Child Support Registrar](#) (Child support second review) [2021] AATA 38 (22 January 2021); K Parker, Member

CHILD SUPPORT – review of care percentage determinations – actual care varied from arrangements as provided for in Court orders – conflicting evidence of extent of actual care – nomination of relevant “care period” by which to assess extent of actual care – comparison of different care records – decision under review set aside – care percentage determinations revoked – new care percentage determination made to reflect actual care – date of effect of new care percentage determination

[Alves and Alves](#) (Child support) [2020] AATA 5564 (2 November 2020); A Ducrou, 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 – date of effect – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist – decision under review affirmed

[Bacon and Child Support Registrar](#) (Child support) [2020] AATA 5561 (5 November 2020); S Letch, Member

CHILD SUPPORT – application for extension of time – departure determination – no satisfactory explanation for the lengthy delay – some merit – prejudice to the other parent due to long delay – extension of time refused

[Haby and Jobe](#) (Child support) [2020] AATA 5563 (4 November 2020); H Schuster, 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

[Larkson and Larkson](#) (Child support) [2020] AATA 5575 (4 November 2020); M Douglas, Member

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

CHILD SUPPORT – date of effect of objection decision – whether there were special circumstances that prevented the objection being lodged in time – special circumstances did not exist – decision under review affirmed

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

[Saunderson and Saunderson](#) (Child support) [2020] AATA 5573 (3 November 2020); M Martellotta, 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

Citizenship

[Chaang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 72 (2 February 2021); Deputy President J Sosso

CITIZENSHIP – review of decision to refuse the applicant’s application to renounce Australian citizenship under s 33 of the Australian Citizenship Act 2007 – whether applicant a national or citizen of a foreign country at the time of application – decision under review set aside – applicant’s renunciation of Australian citizenship approved

[Hadri and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 41 (25 January 2021); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal – good character requirement – drug use – resist officer – negligent driving – effluxion of time – decision under review set aside and remitted

[John and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 77 (1 February 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether prohibition under subsection 24(3) applies – satisfaction as to the identity of the applicant – Bidoon – claim of statelessness – whether applicant citizen of Iraq or Kuwait – meaning of identity – pillars of identity – decision under review set aside and remitted

[Merzaei and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 39 (22 January 2021); Mr S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – satisfaction as to identity – insufficient evidence regarding identity of the Applicant – limited primary documentation – reviewable decision affirmed

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

(Citizenship) [2021] AATA 81 (25 January 2021); Senior Member B Pola

CITIZENSHIP – application for citizenship by conferral – application for citizenship refused – whether Applicant’s identity satisfied under s24 of the Australian Citizenship Act 2007 (Cth) – decision under review affirmed

Oliveira Abitante and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2021] AATA 68 (29 January 2021); Dr P McDermott RFD, Deputy President

CITIZENSHIP – Whether Applicant is of Good Character – Criminal History – Traffic Offences – Fraudulent Statements on Citizenship Application – Decision Affirmed

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

(Citizenship) [2021] AATA 84 (3 February 2021); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is of good character – domestic violence – good behaviour bond – Australian Citizenship [Policy Statement] – Australian Citizenship Procedural Instructions – decision under review affirmed

Compensation

Chick and Comcare (Compensation) [2021] AATA 37 (22 January 2021); L Rieper, Member

COMPENSATION – whether the Applicant suffered an injury or aggravation of disease – ceased liability for medical expenses and incapacity for work – whether Comcare is liable to pay compensation – Applicant found to suffer injuries – injuries found to be resolved prior to ceased liability – decision under review affirmed

De Tarle and Comcare (Compensation) [2021] AATA 94 (3 February 2021); Dr I Alexander, Senior Member

WORKERS’ COMPENSATION – whether the Applicant’s employment contributed to, to a significant degree, to the aggravation of the Applicant’s pre-existing psychiatric condition – decision under review affirmed

Mizzau and TNT Australia Pty Ltd (Compensation) [2021] AATA 74 (1 February 2021); Deputy President J W Constance

WORKERS’ COMPENSATION – exacerbation of social anxiety disorder and depression – whether Applicant suffered an ailment or aggravation of an ailment – whether the ailment or aggravation of an ailment was contributed to, to a significant degree by his employment – whether the disease was suffered as a result of reasonable administrative action by the Respondent – where informal meetings between Applicant and his manager – where Applicant requested to attend formal meeting – where Applicant requested postponement of meeting to ensure his preferred support person could attend – where request refused – where Applicant directed to attend and that failure to do so may result in termination of his employment – where Applicant placed on performance improvement plan without the benefit of having his preferred support person of choice – where administrative action not taken in a reasonable manner – where exacerbation of social anxiety disorder and depression suffered as a result of the administrative action – decision set aside and substituted

[Nguyen-Kieu and Australian Postal Corporation](#) (Compensation) [2021] AATA 61 (28 January 2021); Senior Member L Kirk and Dr P Fricker, Member

COMPENSATION – Worker’s Compensation – Commonwealth employee – whether liability should be accepted under sections 16, 19 and 29 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – chronic rotator cuff impingement with wear of the bursal surface of the postero-superior rotator cuff - whether the Applicant suffers from an injury – 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 set aside

[Oliver and Comcare](#) (Compensation) [2021] AATA 86 (4 February 2021); Deputy President G Humphries AO and Dr P Wilkins, Member

Workers Compensation – arm condition affecting shoulder, elbow, wrist - whether condition is an injury or disease – whether disease was contributed to, to significant degree, by employment – inconsistent medical evidence and diagnoses – decision affirmed

[Saad and Comcare](#) (Compensation) [2021] AATA 91 (4 February 2021); R Maguire, Member

COMPENSATION – Safety, Rehabilitation and Compensation Act - Liability for injury – Liability to compensate for medical treatment - whether impairment is the result of injury or degeneration – whether employment significantly contributed to impairment – temporary aggravation of ailment – decisions affirmed

PRACTICE AND PROCEDURE – Jurisdiction - Administrative Appeals Tribunal Act – time for lodging an application for review – when is an application for review lodged – whether an application can be lodged before the reviewable decision is rendered – what constitutes an application for review – Tribunal can not review decision until an application for review is lodged after that decision was rendered

Conflict of Laws

[Gardner and Board of Professional Engineers of Queensland](#) [2021] AATA 93 (03 February 2021); D Mitchell, Member

MUTUAL RECOGNITION – application of mutual recognition principles where - mutual recognition of occupations between States – recognition of Certifier – fire safety (previously known as C10 – Accredited Certifier – Fire Safety Engineering Compliance) and Registered Professional Engineer in the area of fire safety between New South Wales and Queensland – the equivalence of occupations – equivalence by condition – decision under review set aside

Migration

[Baradas and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 5579 (23 December 2020); Dr N A Manetta, Senior Member

MIGRATION – Mandatory cancellation of visa under s501 of Migration Act 1958 – Applicant convicted of two counts of unlawful sexual intercourse – Primary considerations – extremely low risk of reoffending - interests of minors - Decision under review set aside and decision substituted that visa cancellation be revoked

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

(Migration) [2021] AATA 133 (3 February 2021); M O'Loughlin, Member

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – serious offending against women – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – risk of re-offending – other considerations – strength, nature and duration of ties – risk of harm if returned – decision under review affirmed

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

(Migration) [2021] AATA 75 (4 January 2021); Senior Member L Kirk

MIGRATION – cancellation of Applicant's Class TY, Subclass 444 Special Category (Temporary) visa – citizen of New Zealand – failure to pass character test – domestic violence offences – whether there is another reason to revoke the visa cancellation – Direction No. 79 – primary considerations – other considerations – decision under review affirmed

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

(Migration) [2021] AATA 70 (28 January 2021); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special 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

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

(Migration) [2021] AATA 87 (2 February 2021); Dr N A Manetta, Senior Member

MIGRATION – Refusal to grant protection visa – Applicant convicted of serious criminal offences – Delegate considers applicant is "a danger to the Australian community" under section 36(1C)(b) of Migration Act 1958 – Whether applicant such a danger – Consideration of expert reports – Low risk of recidivism – Decision under review set aside and decision substituted that applicant is not a danger to the Australian community

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

(Migration) [2021] AATA 59 (28 January 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – mental illness – family breakdown – assault – applicant as victim of domestic violence – deceit and credibility – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to return – decision set aside and substituted

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

(Migration) [2021] AATA 134 (5 February 2021); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – criminal record – aggravated armed robbery – driving offences – Direction No. 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to New Zealand – impact of COVID – 19 pandemic – reviewable decision affirmed

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

(Migration) [2021] AATA 66 (29 January 2021); Mr S Evans, Member

MIGRATION – mandatory visa cancellation – failure to pass character test – whether there is another reason to revoke the original visa cancellation decision – consideration of Direction No. 79 – protection of the Australian community – best interests of minor children – expectations of the Australian community – decision under review affirmed

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

(Migration) [2021] AATA 62 (27 January 2021); Deputy President J Sosso

MIGRATION – non-revocation of mandatory cancellation of a Class BB Subclass 155 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 – consideration of Australia’s international non-refoulement obligations – decision under review affirmed

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

(Migration) [2021] AATA 40 (7 January 2021); Senior Member D O’Donovan

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – substantial criminal record under s 501(7) – whether discretion in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – consideration of non-refoulement obligations – strength nature and duration of ties – impediments to establishing and maintaining basic living standards if applicant removed – giving meaningful consideration to risk of harm – decision affirmed

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

(Migration) [2021] AATA 80 (1 February 2021); S Burford, Member

MIGRATION – Migration Act 1958 (Cth) – is the Tribunal satisfied that the Applicant passes the character test – whether the Applicant would engage in the conduct identified in s 501(6)(d)(i) – Direction no. 79 – Annex A – application of the character test – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – reviewable decision affirmed

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

(Migration) [2021] AATA 78 (1 February 2021); R Bellamy, Member

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

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

(Migration) [2021] AATA 60 (19 January 2021); Senior Member A Nikolic AM CSC

MIGRATION – visa refusal – citizen of India – Skilled Independent (Permanent) (Class SI) Visa – whether Applicant passes s 501(6)(d) of character test – whether Applicant poses a risk of harm to the Australian community – criminal offending of limited duration eight years ago – no convictions recorded – no reoffending – consideration of Ministerial Direction No. 79 – decision set aside

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

(Migration) [2021] AATA 73 (2 February 2021); Mr R Reitano, Member

MIGRATION – cancellation of Applicant’s Class BB Subclass 155 Five Year Resident Return Visa – Applicant is a citizen of the United Kingdom – failure of the character test – whether there is another reason to revoke the visa cancellation – Direction No. 79 – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – decision under review set aside and substituted

1918501 (Migration) [2020] AATA 5321 (9 October 2020); M Bourke, Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 802 (Child) – holder of a substantive visa – becoming the dependent child of an Australian relative – financially dependent on the sponsor – sponsor became an Australian citizen – citizenship or visa status of the sponsor – last application for a substantive visa – decision under review remitted

1932917 (Migration) [2020] AATA 5477 (1 October 2020); J Meyer, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – member of the family unit – wholly or significantly financially reliant upon the primary applicant – money transfers – secondary applicant is deaf – family financial arrangements – family head – usually resident in the same household – decision under review remitted

Dos Santos Ludgero (Migration) [2020] AATA 5464 (5 November 2020); M Kennedy, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – internationally recognised record of exceptional and outstanding achievement in a sport – Brazilian Jiu Jitsu (BJJ) athlete – emerging talent – athlete’s progress governed by a coach – limitations on international organisation and accreditation – limited international competition opportunities – decision under review affirmed

MRT Investments Pty Ltd (Migration) [2020] AATA 5383 (22 October 2020); K McNamara, Member

MIGRATION – nomination of a position – Direct Entry Nomination stream – position of Retail Manager – tasks assessed as those of Retail Supervisor – actively and lawfully operating business – updated evidence of business operations – financial capacity to employ the nominee for at least 2 years – terms and conditions of employment – manager’s full autonomy over store’s management and operations – decision under review set aside

Rakhra (Migration) [2020] AATA 5409 (18 December 2020); K Raif, Senior Member

MIGRATION – cancellation – Partner (Provisional) (Class UF) – Subclass 309 (Spouse (Provisional)) – criminal offence – finding of guilt and fine without conviction recorded – state Sentencing Act provides that such finding is not to be taken as conviction for any purpose – no provision in Migration Act to distinguish state Act – ground for cancellation not made out – decision under review set aside

National Disability Insurance Scheme

[TYKL and National Disability Insurance Agency](#) [2021] AATA 135 (2 February 2021); K Buxton, Member

NATIONAL DISABILITY INSURANCE SCHEME – application for review of decision to approve statement of supports in participant plan – whether supports are reasonable and necessary – assistance dog – decision under review set aside and remitted

Passports

[LFRS and Minister for Foreign Affairs](#) [2021] AATA 79 (2 February 2021); D Mitchell, Member

PASSPORT – application for passport – child under 16 years – parent refused consent – whether special circumstances exist – whether no contact between child and non-consenting parent – whether child’s welfare would be adversely affected if not able to travel internationally – decision to refuse to issue passport affirmed

Practice and Procedure

[Clinnick and Australian Securities and Investments Commission](#) (Taxation) [2021] AATA 71 (1 February 2021); Deputy President B J McCabe

PRACTICE AND PROCEDURE – application for reinstatement under section 42A(1) of the Administrative Appeals Tribunal Act 1975 – application for extension of time under section 29(7) of the Administrative Appeals Tribunal Act 1975 - whether application dismissed in error – whether the effect of incorrect legal advice and medical conditions amount to an error under s 42A(1) – whether an examination for relevant circumstances support the granting of an extension of time – applications refused.

[Hashim and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 58 (28 January 2021); Senior Member A Poljak

PRACTICE & PROCEDURE – jurisdiction question – decision refusing application for Australian citizenship by conferral – general eligibility criteria – whether Tribunal can determine applicant’s eligibility under incapacity criteria – where incorrect application form used by Applicant – Tribunal does not have jurisdiction

[Holland and National Disability Insurance Agency](#) [2021] AATA 92 (2 February 2021); Deputy President J W Constance

PRACTICE AND PROCEDURE – JURISDICTION – where Applicant requested internal review of November 2018 plan – where Agency did not make an internal review decision until July 2020 – where Respondent agreed Tribunal had jurisdiction in respect of the November 2018 statement of participant supports – where Respondent argued that there was no utility in the Tribunal reviewing the November 2018 supports as the plan had been replaced by later plans and no payments were outstanding – manner of seeking an extension of supports pending the finalisation of an application for review by the Tribunal – section 42D of the Administrative Appeals Tribunal Act 1975 (Cth) – where Agency processes are unduly complicated and confusing – where Tribunal has jurisdiction to review supports

[Knudson and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 63 (28 January 2021); Senior Member A Poljak

PRACTICE & PROCEDURE – application for dismissal of substantive application – section 42B AAT Act – no reasonable prospects of success – substantive proceedings concern application to re-credit FEE-HELP debt – applicant completed the requirements of the units – threshold requirement not met – application dismissed

[McGuid and Tax Practitioners Board](#) [2021] AATA 64 (28 January 2021); Ms G Lazanas, Senior Member

PRACTICE AND PROCEDURE – application for stay of decision – termination of tax agent registration and imposition of three year ban – whether conditional stay should be granted pending decision on application for review – factors relevant to the granting of a stay – prospects of success – consequences if stay not granted – public interest – consequences for respondent in carrying out its functions depending upon whether a stay is granted or not – whether substantive application would be rendered nugatory if stay order were not granted – stay application refused

[McVeigh and National Disability Insurance Agency](#) [2021] AATA 69 (29 January 2021); Deputy President F Meagher

PRACTICE AND PROCEDURE – Jurisdiction – National Disability Insurance Scheme – whether Tribunal has jurisdiction to review decision made under subsection 29(1)(b) of the National Disability Insurance Scheme Act (Cth) – nonreviewable decision – no jurisdiction

[Singh and Commonwealth Ombudsman](#) [2021] AATA 54 (27 January 2021); Mr S Evans, Member

PRACTICE AND PROCEDURE – application for confidentiality order – direct contact details – information not materially relevant – risk of harm to individuals – whether public interest requires disclosure – application for confidentiality order granted

[Twentyman and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 89 (4 February 2021); Mr S Evans, Member

PRACTICE AND PROCEDURE – interlocutory application for an extension of time to lodge an application for review – objection to the granting of an extension of time – whether it is reasonable in all the circumstances – where delay was not significant – explanation for the delay – awareness of appeal rights – whether there was any prejudice – merits of the substantive matter – other avenues for relief – application for an extension of time refused

Refugee

[1617394](#) (Refugee) [2020] AATA 5435 (12 November 2020); D Connolly, Member

REFUGEE – Protection Visa – India – homosexual woman – sexual orientation – Hindu Brahmin family – mental health issues – applicant may be forced into a heterosexual marriage – victim of an honour killing – relocation not possible – third country protection not available – decision under review remitted

[1700708](#) (Refugee) [2020] AATA 5362 (17 December 2020); S Roushan, Senior Member

REFUGEE – protection visa – Lebanon – religion – Australia-born child of moderate Sunni Muslims from conservative families – parents’ opposition to male circumcision, female genital mutilation and religious radicalism – political opinion – father member of political parties – credibility – inconsistent, misleading and untruthful evidence – applicant circumcised despite parents’ claimed opposition – parents’ and siblings’ previous protection application refused and refusal affirmed – country information on general security and political and sectarian tensions – decision under review affirmed

[1724454](#) (Refugee) [2020] AATA 5609 (9 December 2020); T Flood, Member

REFUGEE – cancellation – Subclass 866 (Protection) visa – Iraq – incorrect information provided in protection application – applicant’s brother holds a legitimate Iranian passport – applicant was born in Iran and not Iraq – brother’s passport is fraudulent – credibility concerns – applicant is an Iranian citizen – in a relationship with an Australian citizen – applicant has contributed to the community through volunteer work – best interests of the child – decision under review set aside

[2004284](#) (Refugee) [2020] AATA 5505 (9 November 2020); S Baker, Member

REFUGEE – protection visa – El Salvador – Federal Circuit Court remittal – imputed political opinion – threatened into low-level political activity – jailed and tortured, released after Amnesty International involvement – long residence in Australia on humanitarian program, visa cancelled after criminal offences – mother and daughter in Australia, no remaining relatives in home country – country information – end of civil war and government’s actions against gangs – fear of harm as elderly returnee with health conditions – mandatory COVID-19 quarantine – availability of adequate medical treatment – ability to subsist, access to social security – risks to population generally – decision under review affirmed

[2008031](#) (Refugee) [2020] AATA 5376 (11 November 2020); A Younes, Senior Member

REFUGEE – cancellation – protection visa – China – incorrect information in application – identity of applicant’s father – denied knowledge of identity and whereabouts – effect of father’s identity on protection claims – one-child policy – second child born out of wedlock – role of applicant’s former migration agent – applicant is a minor – best interests of the child – decision under review set aside

Social Services

[Debs and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 42 (25 January 2021); Ms A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether insufficient medical evidence provided – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review set aside

[Doneski and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 55 (27 January 2021); Mr R West, Member

SOCIAL SECURITY – disability support pension – rotator cuff injury and subacromial bursitis- left talus exostosis and severe left ankle pain – lumbar disc prolapse at L5/S1, sciatica to the left thigh and leg, and loss of cervical lordosis - chronic fatigue-depression - anxiety – whether conditions fully treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Hartwell and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 65 (1 February 2021); Senior Member D Cremean

SOCIAL SECURITY - Disability support pension – several conditions including spinal pain, lumbar pain and depression and anxiety-whether fully diagnosed, treated and stabilised—corroboration—program of support whether severe impairment-whether continuing incapacity to work - decision under review affirmed

[Huang and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 83 (29 January 2021); K Parker, Member

SOCIAL SECURITY – claim for disability support pension – applicant has several physical and mental health conditions – whether conditions fully diagnosed, treated and stabilised as at qualification period and likely to persist for more than two years – applicant’s conditions were not permanent and did not attract impairment ratings under the Impairment Tables – decision affirmed

[Kovacevic and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 76 (28 January 2021); G Hallwood, 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 – whether applicant exempt from program of support - whether applicant had a continuing inability to work – decision under review set aside

[Krejcir and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 82 (25 January 2021); 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

[Luff and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 85 (3 February 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances, benefits – whether Applicant overpaid age pension – whether debt due to Commonwealth – whether debt should be recovered – unrealisable asset – whether a loan is an assessable asset – write off – sole administrative error established – whether a change in circumstances – whether obligation to notify – draft financial statement provided to Centrelink – special circumstances – debt waived in full – decision of authorised review officer, as varied by the AAT1 set aside and substituted

[Manos and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 88 (2 February 2021); Senior Member B Pola

SOCIAL SECURITY – disability support pension – portability – whether applicant qualifies for unlimited portability of DSP – whether applicant has a severe impairment – decision under review affirmed

[Merson and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 90 (28 January 2021); Ms A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – ankylosing spondylitis – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision under review affirmed

[Poyton and Secretary, Department of Social Services](#) (Social services second review) [2021]
AATA 67 (29 January 2021); Senior Member P J Clauson AM

SOCIAL SECURITY – Newstart Payment – cancellation resulting from protracted ineligibility – whether Secretary correctly exercised discretion to cancel the Applicant’s payment – whether cancellation discretion was exercised reasonably – whether decision accounted for relevant considerations – whether statutory pre-requisites were enlivened at time of making decision – whether it is correct and preferable to exercise the discretion - decision affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Grima and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5074
Hojbota and Secretary, Department of Social Services	[2020] AATA 5185
Taylor and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 19
VFWQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4849
WQRJ and Minister for Home Affairs	[2018] AATA 3854

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Barque Institute Pty Ltd v Tertiary Education Quality and Standards Agency	[2020] AATA 70	[2021] FCA 39
H2O Exchange Pty Ltd v Innovation and Science Australia	[2019] AATA 4195	[2021] FCA 11
Kwatra v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2633	[2021] FCA 58
VXQB v Child Support Registrar	[2020] AATA 697	[2021] FCA 48



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