



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

[Buchanan and Buchanan](#) (Child support) [2020] AATA 5839 (14 December 2020); M Martellotta, Member

CHILD SUPPORT – percentage of care – what was the pattern of care from the date of the application for administrative assessment – decision under review set aside and substituted

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

[Reddy and Sharma](#) (Child support) [2020] AATA 5827 (30 November 2020); S Letch, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – income, property and financial resources of paying parent – paying parent already assessed to pay fixed annual rate – no ground for departure – application to depart was properly refused – decision under review affirmed

[Pulaski and Pulaski](#) (Child support) [2020] AATA 5831 (1 December 2020); J D'Arcy, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate reconciliation – identity fraud resulting in incorrect estimate reconciliation – decision set aside and sent back with direction to reconcile estimates of income

[Szabo and Szabo](#) (Child support) [2020] AATA 5842 (8 December 2020); T Bubutievski, Member

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

[Minami and Minami](#) (Child support) [2020] AATA 5841 (15 December 2020); W Budiselik, Member

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

Citizenship

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

(Citizenship) [2021] AATA 204 (11 February 2021); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – good character requirement – domestic violence – single instance 13 years prior – good behaviour bond – spent conviction – failure to disclose – decision set aside and remitted

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

(Citizenship) [2021] AATA 221 (16 February 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 – Applicant arrived in Australia in 2010 as an irregular maritime arrival – reviewable decision affirmed

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

(Citizenship) [2021] AATA 203 (9 February 2021); Mr M Kennedy, Member

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to identity – no primary or secondary identity documentation – decision under review affirmed

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

(Citizenship) [2021] AATA 160 (11 February 2021); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant is a person of good character – Australian Citizenship Policy Statement – Citizenship Procedural Instruction 15 – failure to disclose – contravention of apprehended violence order – domestic violence – good behaviour bond – where applicant demonstrated genuine remorse and engaged with mental health and support services – decision under review set aside and remitted

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

(Citizenship) [2021] AATA 206 (12 February 2021); Brigadier AG Warner, AM LVO (Retd), Member

CITIZENSHIP – application for citizenship by conferral – national of the United Kingdom – refusal of application – whether Tribunal satisfied of Applicant's good character – UK offending – failure to make complete declaration in Application for Citizenship – Australian conviction and sentence for aggravated assault occasioning bodily harm – whether Applicant meets onus to show why conviction and sentence should not be prima facie evidence – reviewable decision affirmed

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

(Citizenship) [2021] AATA 165 (9 February 2021); Senior Member DJ Morris

CITIZENSHIP – refugee from Myanmar – identity of applicant – desirability of consistency in application of policy – unsatisfactory explanation for inconsistencies in life story – inconsistent evidence given to Department and in oral evidence – importance of statutory declarations – lack of documents with origins before applicant settled in Australia – reasonable satisfaction of identity not reached – decision under review affirmed

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

(Citizenship) [2021] AATA 162 (10 February 2021); Ms K. Parker, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether Tribunal is satisfied that Applicant “of good character” – Applicant convicted of two offences committed in 2011 and sentenced to imprisonment for 18 months – no further convictions recorded since 2011 – consideration of time that has elapsed since criminal offending and other indicators as to the Applicant’s character – decision under review affirmed

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

(Citizenship) [2021] AATA 163 (2 February 2021); Dr N A Manetta, Senior Member

CITIZENSHIP – Applicant’s application for citizenship refused – Whether applicant is of “good character” under s 21(2)(h) of the Australian Citizenship Act 2007 – Applicant committed offences under the influence of alcohol – Applicant suffering mental illness – Lapse of time since offending – Decision under review set aside and decision substituted that the applicant is of good character

Compensation

ZZRP and Comcare (Compensation) [2021] AATA 137 (22 January 2021); Deputy President JW Constance

WORKERS’ COMPENSATION – depressive disorder – anxiety state – whether Respondent liable to compensate the Applicant in respect of the cost of medical treatment – whether Applicant incapacitated for work as a result of the compensable injuries – whether Applicant suffered an injury – application of Hannaford principle – where workplace incident ceased to make a significant contribution to the condition suffered by the Applicant – decision affirmed

Freedom of Information

Dreyfus and Attorney-General (Commonwealth of Australia) (Freedom of information) [2021] AATA 249 (17 February 2021); Justice McKerracher

FREEDOM OF INFORMATION – Legal Professional Privilege – Request for access to legal advice and associated documents provided to the Attorney-General – claim of implied waiver – whether privilege was impliedly waived by conduct inconsistent with the maintenance of legal professional privilege

Industrial Law

Akinsanya and Secretary, Attorney-General's Department [2021] AATA 172 (9 February 2021); Ms A E Burke AO, Member

FAIR ENTITLEMENTS GUARANTEE – whether applicant was eligible to receive an advance under the Fair Entitlements Guarantee Act 2012 – applicant resigned more than six months before appointment of insolvency practitioners – assessment of basis of applicant’s resignation – whether employer was insolvent at the time of termination of the applicant’s employment – meaning of insolvency – indicia of insolvency – whether end of applicant’s employment due to insolvency of employer – decision affirmed

[Buckley and Secretary, Attorney-General's Department](#) [2021] AATA 210 (12 February 2021); Mrs JC Kelly, Senior Member

EMPLOYMENT ENTITLEMENTS – whether applicant is entitled to an advance under the Fair Entitlements Guarantee Act 2012 (Cth) – where applicant received workers' compensation payments following an injury at work – where employer was insolvent when the applicant's employment ended – whether the end of the employment was due the insolvency of the employer – where applicant's employment ended because the employer did not have light work for him following injury – decision under review affirmed

[Waheed and Secretary, Attorney-General's Department](#) [2021] AATA 248 (17 February 2021); Mr R West, Member

FAIR ENTITLEMENTS GUARANTEE – winding up – excluded employee – whether Applicant a director within the meaning of s 556 of the Corporations Act – decision affirmed

Migration

[Aikon Mensah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 181 (9 February 2021); Member W Frost

MIGRATION – discretion to refuse to grant a Partner (Temporary) (Class UK) visa under section 501(1) of the Migration Act 1958 (Cth) – where visa was refused under s 501(1) because applicant did not pass the character test – substantial criminal record under s 501(6) – whether discretion in s 501(1) to refuse to grant Applicant the Visa should be exercised – considerations in Direction No 79 – risk of re-offending – the protection and expectations of Australian community – consideration of non-refoulement obligations – impact on family members – reviewable decision set aside and substituted – Tribunal declines to exercise discretion to refuse to grant applicant a Visa under subsection 501(1)

[Anderson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 205 (11 February 2021); Senior Member CJ Furnell

MIGRATION – applicant held Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – failed the character test – consideration of Direction No. 79 – Part C – primary considerations – protection of the Australian community – the best interests of minor children in Australia – expectations of the Australian community – other considerations – strength, nature and duration of ties – impact on Australian business interests – extent of impediments if removed – decision under review set aside – revocation of the mandatory cancellation of applicant's visa

[CXST and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 222 (15 February 2021); Emeritus Professor PA Fairall, Senior Member

MIGRATION – Migration Act 1958 – mandatory visa cancellation – section 501(3A) – application of Direction No. 79 – weighing of primary and other considerations – safety of the Australian community – expectations of the Australian community – second cancellation – armed robbery – heroin addiction – methadone treatment – no evidence as to treatment options if removed – rehabilitation – duty of Respondent to provide information – decision under review set aside and substituted

De Veyra and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 223 (16 February 2021); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – assault on a taxi driver – grievous bodily harm – 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 – Applicant is a 31 year old man who arrived in Australia as a 13-year-old child – extent of impediments if returned to the Philippines – impact of COVID-19 pandemic – reviewable decision affirmed

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

(Migration) [2021] AATA 164 (11 February 2021); Mrs J C Kelly, Senior Member

MIGRATION – mandatory cancellation – protection of the Australian community – where offences involved domestic violence – where criminal offending very serious – where a real risk the Applicant will reoffend – best interests of minor children in Australia affected by the decision – where Applicant's children present during offending – where interests of the Applicant's minor children favour revocation – expectations of the Australian community – where offending of such a serious nature the Australian community would expect non-revocation – strength, nature and duration of ties – extent of impediments if removed – decision affirmed

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

(Migration) [2021] AATA 250 (5 February 2021); Mr R Maguire, Member

MIGRATION – Migration Act 1958 (Cth) – refusal to grant Bridging Visa E (Class WE) – Applicant applied for Partner (Temporary) (Class UK) and Partner (Residence) (Class BS) Visa – where Applicant does not pass character test – whether there is another reason to not exercise discretion to refuse visa – consideration of Ministerial Direction No.79 – decision under review affirmed

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

(Migration) [2021] AATA 218 (12 February 2021); Deputy President Britten-Jones

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 – the applicant has five minor children under the age of seven and has lived in Australia for most of his life – there is a low risk of further offending - the interests of minor children and the strength, nature and duration of ties outweigh the primary considerations of the protection and expectations of the Australian community - decision set aside

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

(Migration) [2021] AATA 168 (9 February 2021); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the visa cancellation should be revoked – Ministerial Direction No. 79 applied – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – international non-refoulement obligations – impediments to removal – decision set aside and substituted

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

(Migration) [2021] AATA 255 (18 February 2021); Senior Member A Nikolic AM CSC

MIGRATION – Visa cancellation – citizen of El Salvador – non-revocation of mandatory visa cancellation – Class BF Transitional (Permanent) visa – sexual offending against a child – failure to pass character test – Part C of Ministerial Direction No. 79 applied – reviewable decision affirmed

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

(Migration) [2021] AATA 179 (10 January 2021); Senior Member DJ Morris

MIGRATION – applicant held Global Special Humanitarian visa – applicant born in Sudan – threshold question about country of reference – country of reference now South Sudan – visa mandatorily cancelled under s 501(3A) of Migration Act – applicant concedes fails statutory character test – is there another reason to revoke the mandatory cancellation of the visa – consideration of Direction No. 79 – Part C – primary considerations – protection of the Australian community – nature and seriousness of offending – serious sexual crime – risk of re-offending – best interests of affected minor children – can the best interests of an unborn child be considered under this part of the Direction – expectations of the community – other considerations – non-refoulement obligations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

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

(Migration) [2021] AATA 169 (10 January 2021); Dr S Fenwick, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of PRC – Bridging (Class WA) (subclass 010) visa – single conviction – failure to pass character test – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

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

(Migration) [2021] AATA 209 (10 February 2021); Deputy President Boyle

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – two-day rule – ss 500(6H) and 600(6J) – hearing date vacated – Direction 79 – primary and other considerations – risk to the Australian community – Applicant not credible witness – failure to accept responsibility for offending – best interests of minor children – lack of relevant evidence – strength, nature and duration of ties to Australia – impact on victims – extent of impediments if returned to New Zealand – Applicant is a 24-year-old man who arrived in Australia as a 14-year-old child – Applicant sentenced to 14 months imprisonment for possession of stolen or unlawfully obtained property – reviewable decision affirmed

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

(Migration) [2021] AATA 254 (18 February 2021); Dr S Fenwick, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Vietnam – Class BS Subclass 801 (Partner) visa – single instance of offending – failure to pass character test – another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision set aside and substituted

O’Dowd and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2021] AATA 225 (7 January 2021); Mr A McLean Williams, 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

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

(Migration) [2021] AATA 180 (8 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

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

(Migration) [2021] AATA 142 (12 January 2021); Dr NA Manetta, Senior Member

Mandatory cancellation of visa under s501 of Migration Act 1958 – Applicant sentenced to imprisonment for driving while disqualified and while having an excess blood alcohol level – Primary considerations – Past criminal record – Risk of reoffending very low – Unusual circumstances of most recent offending – Other considerations – Interest of elderly parents in maintaining relationship with applicant – Decision under review set aside and decision substituted that visa cancellation be revoked

Ouk (Migration) [2020] AATA 5549 (18 November 2020); D Dragovic, Senior Member

MIGRATION – Temporary Activity (Class GG) visa – Subclass 408 (Temporary Activity) – sponsor did not meet requirements of a religious institution – tax exemption – religious objectives of the sponsoring institution – Religious Worker requirements – religious institution – decision under review affirmed

Mya (Migration) [2020] AATA 5553 (18 December 2020); Deputy President J Redfern

MIGRATION – Medical Treatment (Visitor) (Class UB) (Subclass 602) visa – whether applicant has a genuine intention to stay temporarily in Australia – consideration of intention to maintain ongoing residence in Australia – no specified medical treatment – whether applicant is unfit to depart – request to refer application to the Minister for Ministerial Intervention – decision under review affirmed

Wang (Migration) [2021] AATA 47 (11 January 2021); K Raif, Senior Member

MIGRATION – cancellation – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – application for or grant of visa in contravention of Act or another law – holder of contributory parent visa limited to applying for certain visa classes – discretion to cancel visa – advised by department that she could apply for partner visa – visa granted in error – substantial delay in issuing notice of intention to consider cancellation – immediate family, permanent resident husband and citizen child in Australia – potential hardship to applicant and husband and best interests of child – decision under review set aside

[Patel](#) (Migration) [2021] AATA 98 (15 January 2021); M Kennedy, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 Regional Sponsored Migration Scheme – Temporary Residence Transition stream – position of Customer Service Manager – nomination approved upon review – position located in regional Australia – metropolitan Perth no longer classified – application of Migration Regulation amendments – decision under review remitted

National Disability Insurance Scheme

[QHFQ and National Disability Insurance Agency](#) [2021] AATA 256 (18 February 2021); Mr I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME - applicant is a child – parents separated – interim arrangements for joint care of the applicant – whether the applicant’s NDIS Plan should be self-managed or plan managed - reviewable decision set aside and substituted

Practice and Procedure

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

[JLXY and National Disability Insurance Agency](#) [2021] AATA 144 (2 February 2021); Deputy President BW Rayment OAM QC

PRACTICE AND PROCEDURE – application for release from implied undertaking – where applicant had withdrawn from proceedings – where utility of documents not presently known – where application should be considered when utility of evidence can be determined more precisely – application dismissed

[Lee and Decision Maker](#) [2021] AATA 211 (4 February 2021); Dr P McDermott RFD, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – whether Order as to manner of proceedings made by a Judge of the Federal Court of Australia reviewable by this Tribunal – no jurisdiction conferred upon Tribunal to review Orders of a Judge of the Federal Court of Australia – application dismissed under subsection 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

Professions and Trades

[Dodd & Dodd Group Pty Ltd and Minister for the Environment](#) [2021] AATA 215 (11 February 2021); Deputy President Boyle

HAZARDOUS WASTE – refusal to grant special permit under Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth) – Australia’s obligations under Basel Convention – export of used lead acid batteries – export to Republic of Korea – recycling and reclamation of metals and metal compounds – whether hazardous waste could be disposed of safely and efficiently in Australia – whether disposal consistent with environmentally sound management of waste – commercial impact consideration weighed – Tribunal exercises discretion under reg 16(4) to refuse to grant export permit – reviewable decision affirmed

[Goel and Building Services Board](#) (WA) [2021] AATA 171 (10 February 2021); Senior Member M Griffin QC

MUTUAL RECOGNITION – equivalence of occupations – domestic building work – imposition of conditions – application of Mutual Recognition Act 1992 (Cth) – WA registration – Victoria registration – decision under review affirmed

[S & T Income Tax Aid Specialists Pty Ltd Trading as Alpha Tax Aid and Tax Practitioners Board](#) [2021] AATA 161 (5 February 2021); Senior Member A Poljak

TAX AGENT – termination of registration – whether the applicant failed to comply with subsection 30-10(7) of the Code of Professional Conduct – where the applicant repeatedly failed to render tax agent services in a competent manner – where the applicant failed to make sufficient enquiries and failed to substantiate work-related deductions on numerous occasions – where the applicant failed to take reasonable steps to ensure that taxation laws were applied correctly in the circumstances – where the applicant failed to have knowledge of when deductions were allowable under the taxation laws – whether termination was the appropriate sanction – whether termination of registration in the public interest – decision under review affirmed

Refugee

[1712169](#) (Refugee) [2020] AATA 5545 (27 November 2020); D McCulloch, Member

REFUGEE – Protection Visa – Kenya – murder of the applicant’s father and grandfather – political opinion – absconding from SLDF training – not being supportive of beliefs of the SLDF – effective protection not available – relocation not reasonable – decision under review remitted

[1709680](#) (Refugee) [2020] AATA 5610 (30 November 2020); C Huntly, Member

REFUGEE – protection visa – Libya – particular social group – returnee with special vulnerabilities – Westernized or progressive girls – imputed political opinion – Government programs – members of the family unit – sexual and gender based violence – fear of abduction – decision under review remitted

[1619584](#) (Refugee) [2020] AATA 5581 (10 December 2020); J Marquard, Member

REFUGEE – protection visa – South Africa – race – white South African – targeted for crime – discrimination on the basis of race – access to employment, social or health services – affirmative action in favour of black South Africans – particular social group – elderly people – victim of crime on numerous occasions – random and non-selective in nature – complementary protection criteria – torture, cruel or inhuman treatment or punishment – inability to access jobs, services or treatment – intention of the state – arbitrary deprivation of life – elements of capriciousness, inappropriateness, injustice or lack of predictability – risk of crime faced by the population generally – state protection – compassionate circumstances – serious, ongoing and irreversible harm to an Australian citizen – carer for a disabled Australian citizen – Ministerial Intervention requested – decision under review affirmed

[1832858](#) (Refugee) [2020] AATA 5614 (11 December 2020); M Hawkins, Member

REFUGEE – protection visa – Iraq – imputed political opinion – pro-Ba’athist – supporter of previous regime – political opinion – anti-corruption whistleblower – member of particular social group – persons having worked at a senior level of a government department, being aware of corrupt practices and having the capacity to expose that corruption – first applicant’s and father’s work for government departments – threats and attacks – returnee, scholarship holder and educated professional – anti-militia social media activity in Australia – no access to state protection – credibility – inconsistent evidence – delay in applying for protection – social media activity not solely for purpose of enhancing protection claims – members of family unit – decision under review remitted

[1932525](#) (Refugee) [2020] AATA 5544 (18 December 2020); J Pennell, Senior Member

REFUGEE – protection Visa – Lebanon – Federal Court remittal – complementary protection criterion – subject of an order for death penalty – ordeal in prison – cruel and inhuman condition of the prison – legitimacy of the Order – involvement with members of an extremist organisation – necessary intent to cause significant harm – decision under review remitted

[1713796](#) (Refugee) [2021] AATA 43 (7 January 2021); T Flood, Member

REFUGEE – protection visa – Zimbabwe – particular social group – women who support and sympathise with LGBTI persons – family members of brother who is homosexual – fear of gender-based violence and female genital mutilation – harassment and threats by family members, including ex-husband – prevalence of domestic violence – country information on government, church and societal attitudes to homosexuality, and women’s rights – consistent, credible and compelling evidence – decision under review remitted

Social Services

[Al Tajir and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 202 (11 February 2021); Ms M East, Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant’s disability support pension was correctly cancelled – whether the Applicant met the eligibility requirements for disability support pension at the Cancellation Date – whether conditions fully diagnosed, treated and stabilised – post-traumatic stress disorder, major depression, ischaemic heart disease, left knee condition and other conditions – assigning impairment ratings – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

[Cocks and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 207 (9 February 2021); Mr I Thompson, Member

SOCIAL SECURITY – disability support pension – whether the applicant's conditions were fully diagnosed, fully treated and fully stabilised at the date of the claim or within 13 weeks – decision under review affirmed

[CVETKOVSKI and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 167 (10 February 2021); Mr 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 stabilised during the qualification period – whether applicant's conditions stabilised – whether applicant's conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[Early and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 139 (8 February 2021); Ms D K Grigg, Member

SOCIAL SECURITY – Disability Support Pension – DSP – whether medical condition fully diagnosed, fully treated and fully stabilised – whether severe impairment - decision under review set aside

[Humphreys and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 136 (8 February 2021); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – coronary artery disease – depression – post-traumatic stress disorder – morbid obesity – left wrist condition – other conditions – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – decision under review affirmed

[Imielski and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 208 (12 February 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – Age Pension – international social security agreements – social security agreement between Australia and the Republic of Poland – Applicant's receipt of the Polish disability and age pensions – appointment of the correspondence nominee – allegation of breach of the European General Data Protection Regulation – allegation of breach of the Racial Discrimination Act 1975 (Cth) – whether debt should be recovered – writing off debt – waiver of debt arising from sole administrative error – whether there was sole administrative error – waiver of debt in special circumstances – whether special circumstances exist – reviewable decision is affirmed

[Kingswood and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 166 (9 February 2021); Ms M East, Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – whether the Applicant's conditions were fully diagnosed, treated and stabilised – chronic pain/osteoarthritis, shoulder condition and other conditions – assigning impairment ratings – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

[KRZX and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 253 (18 February 2021); Senior Member A Poljak

SOCIAL SECURITY – disability support pension – post traumatic stress disorder – spinal condition – upper limb condition – obstructive sleep apnoea – lower limb condition – whether the applicant's conditions rate 20 points or more under the Impairment Tables – decision under review affirmed

[Mahfoud and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 140 (5 February 2021); Mr S Evans, Member

Social Security – receipt of lump sum compensation payment – preclusion period – discretion to treat whole or part of compensation payment as not having been made – whether special circumstances exist – no special circumstances found – decision under review affirmed

[Michaelides and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 245 (16 February 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

[Petojevic and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 141 (11 January 2021); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – mental health conditions – adjustment disorder with mixed depression, anxiety – whether impairments fully diagnosed, fully treated and fully stabilised – where applicant had not taken prescribed medication or undertaken psychological treatment – where impairment rating cannot be assigned – physical condition – arthritis – where insufficient evidence to assign impairment rating – where self-reports of applicant insufficient – decision under review affirmed

[Ramirez and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 216 (12 January 2021); Mr S Barton, Member

DISABILITY SUPPORT PENSION – DSP – Impairment Tables – applicant does not meet impairment rating requirement – unlimited portability – decision under review affirmed

[Whitby and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 170 (9 February 2021); Ms 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

[Xin and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 246 (15 February 2021); Senior Member A Poljak

SOCIAL SECURITY – Austudy – Newstart Allowance – debt – overpayment of benefit – employment income under-declared – whether debt can be written off – whether debt can be waived – sole administrative error – special circumstances – decision under review affirmed

Taxation

[ZCSB and Commissioner of Taxation](#) (Taxation) [2021] AATA 138 (5 February 2021); Senior Member L Kirk

TAXATION – Release from particular liabilities in cases of serious hardship – Two stage process – Whether Applicant would suffer ‘serious hardship’ if required to pay tax debt – income/outgoings test – assets/liabilities test – Whether discretion to release Applicant should be engaged – Reviewable Decision affirmed

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
PKZM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5190
Pitman and Commissioner of Taxation	[2020] AATA 5308
RJFB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 40
TGWR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5076

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
MBJY v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 4055	[2021] FCAFC 11 [2020] FCA 1161
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v LJTZ	[2020] AATA 3356	[2021] FCA 92
Noy v Secretary, Department of Social Services	[2019] AATA 4420	[2021] FCA 83
Okoh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3313	[2021] FCA 84
QSBL v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2018] AATA 2074	[2021] FCA 78
Tran v Minister for Immigration, Migrant Services and Multicultural Affairs	[2020] AATA 1423	[2021] FCA 75
Warren v Secretary, Attorney-General's Department	[2019] AATA 95	[2021] FCA 89

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

[\[2020\] AATA 38](#)

[\[2021\] FCAFC 10](#)

[\[2020\] FCA 1060](#)



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