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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

[PCHH and Child Support Registrar](#) (Child support second review) [2022] AATA 165 (7 February 2022); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – special circumstances – interim care determination – Federal Court parenting orders – COVID-19 Lockdowns – illness – decision set aside and substituted

[Arterton and Wilbur](#) (Child support) [2021] AATA 5209 (7 December 2021); S De Bono, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – annualised income correctly applied – decision under review affirmed

[Campion and Shorrock](#) (Child support) [2021] AATA 5183 (21 December 2021); M Douglas, Member

CHILD SUPPORT – non-agency payment – whether payment made to a third party in lieu of child support – whether payment made directly to a parent – intention of both parents – decision under review set aside and substituted

[Genge and Ambler](#) (Child support) [2022] AATA 230 (4 January 2022); T Hamilton-Noy, 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

[MacTavish and Weatherwax](#) (Child support) [2021] AATA 5211 (21 December 2021); Senior Member R Ellis

CHILD SUPPORT – percentage of care – date of effect provisions – special circumstances exist – discretion should be exercised – decision under review set aside and substituted

[Roper and Child Support Registrar](#) (Child support) [2022] AATA 229 (13 January 2022); H Moreland, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – date of effect of the tribunal's decision – no special circumstances exist that prevented the application for review being lodged in time – tribunal declines to make a determination under subsection 95N(2) – decision under review set aside and substituted

Citizenship

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

(Citizenship) [2022] AATA 206 (11 February 2022); R Maguire, Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Applicant’s identity satisfied under s 24 of the Australian Citizenship Act 2007 (Cth) – meaning of identity – application of Citizenship Procedural Instructions – decision under review affirmed

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

(Citizenship) [2021] AATA 260 (15 February 2022); Senior Member C Puplick AM

CITIZENSHIP – refusal of a citizenship application – where the applicant does not satisfy the 12-month residence requirement – whether the decision-maker should use its discretion to treat a period of time as one where the applicant was resident – whether the applicant would have satisfied the 12-month residence requirement but for an administrative error – no administrative error – possible error by professional peak body – whether the applicant would suffer significant hardship or disadvantage as a result of not being considered a resident for a period – no significant hardship or disadvantage – decision affirmed

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

(Citizenship) [2022] AATA 198 (11 February 2022); Senior Member D J Morris

CITIZENSHIP – applicant seeks citizenship by descent – applicant is citizen of Papua New Guinea – claim that parents were Australian citizens by virtue of being born in Territory of Papua – delegate refuses application on basis not satisfied a parent was Australian citizen at time of applicant’s birth – delegate also not satisfied of identity of applicant – constitutional history of Papua New Guinea – consideration of documents of applicant – applicant’s parents not born in Papua – parents born in New Guinea – parents became Papua New Guinea citizens at Independence – applicant born after Independence – fatal to application for citizenship by descent – not necessary to consider whether satisfied of identity of applicant – observations on personal documents provided – decision under review affirmed

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

(Citizenship) [2022] AATA 175 (3 February 2022); Senior Member Dr N A Manetta

CITIZENSHIP – whether Tribunal satisfied of applicant’s identity – applicant had been party to false applications for entry to Australia in the past – applicant maintained spurious explanation before Tribunal – relevance of Policy documents to Tribunal’s review – meaning of “satisfy” – Tribunal satisfied of applicant’s identity on facts

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

(Citizenship) [2022] AATA 222 (14 February 2022); R Maguire, Member

CITIZENSHIP – citizenship by conferral – character test – whether Applicant is of good character – dishonest – misleading information – untruthful information – using false name – declaring under false name – Applicant not of good character – decision affirmed

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

(Citizenship) [2022] AATA 161 (4 February 2022); Senior Member C Puplick AM

CITIZENSHIP – refusal of a citizenship application – whether the applicant is of good character – where the applicant has provided false or misleading information – where the applicant has

maintained false or misleading information in order to obtain a particular immigration status – where status of other applications called into question – decision affirmed

[Tial and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 225 (16 February 2022); Senior Member D J Morris

CITIZENSHIP – applicants for citizenship by conferral – applicants are citizens of Myanmar – applicants satisfy certain requirements – delegate of minister not satisfied of applicants' identity – delegate therefore prohibited from approval – applicants seek review by Tribunal – applications are heard together – consideration of Citizenship Procedural Instructions relating to assessment of identity – biometric evidence – oral evidence of life story of applicants – documents provided – Tribunal satisfied prohibition does not apply – decisions under review set aside and each remitted with direction

[Watkins and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 224 (10 February 2022); W Frost, Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant is likely to reside or continue to reside in Australia and maintain a close and continuing association with Australia – spouse of Australian citizen – lengthy periods of absence from Australia in four year period before citizenship application – whether discretion should be exercised to treat Applicant as having been present in Australia as a permanent resident during periods of absence – Tribunal not satisfied Applicant had close and continuing association with Australia – decision under review affirmed

Compensation

[Chimungeni-Brassington and Comcare](#) (Compensation) [2022] AATA 219 (15 February 2022); Mr S Webb, Member

WORKERS COMPENSATION – physical injuries resulting from fall at work – claim for compensation – subsequent notification of right shoulder condition – jurisdiction – scope of claim – frank injury or disease – onset and diagnosis of symptoms – employment contribution not established to a significant degree – progress of degenerative condition – aggravation – not established condition made worse by employment – decision affirmed

[Keillor and Comcare](#) (Compensation) [2022] AATA 228 (15 February 2022); Deputy President J Sosso

COMPENSATION – Whether Comcare is liable to compensate the Applicant pursuant to s. 14 of the Safety, Rehabilitation and Compensation Act 1988 – Whether the performance management process contributed, in a significant degree, to the Applicant's disease – Whether the performance management process was a reasonable administrative action – decision under review set aside

[Mudaliar and Comcare](#) (Compensation) [2022] AATA 220 (16 February 2022); Senior Member C Puplick AM

COMPENSATION – entitlement to compensation – whether employer was liable to pay compensation under s 14 of the Safety Rehabilitation and Compensation Act 1988 (Cth) – whether nature of employment caused condition, injury, or illness – whether condition is a result of natural aging or constitutional predisposition – decision affirmed

[Pickering and Linfox Australia Pty Ltd](#) (Compensation) [2022] AATA 221 (14 February 2022); The Hon. J Pascoe AC CVO, Deputy President

WORKERS COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – does the Applicant suffer from an ‘ailment’ as defined in the Act – psychiatric condition – whether the Applicant’s ailment was contributed to ‘to a significant degree’ by his employment, such that he had a disease and therefore an injury under the Act – whether the disease was suffered as a result of a ‘reasonable administrative action’ taken in a ‘reasonable manner’ with respect to the Applicant’s employment, such that it is excluded from the definition of ‘injury’ under the Act – decision set aside and substituted

[Rodway and Comcare](#) (Compensation) [2022] AATA 163 (7 February 2022); R West, Member

WORKER COMPENSATION – s 14 of the Safety, Rehabilitation and Compensation Act 1988 – psychological injury – adjustment disorder with mixed anxiety and depression – incapacity for work – whether reasonable administrative action taken in a reasonable manner – decision set aside

[Salerno and Comcare](#) (Compensation) [2022] AATA 196 (11 February 2022); Dr S Fenwick, Senior Member

COMPENSATION – accepted claim for allergy or sensitivity to volatile organic hydrocarbons (VOCs) – subsequent denial of liability upon reconsideration – nature of symptoms experienced – whether statutory tests for disease or injury satisfied – tests not satisfied – decision under review affirmed

[White and Australian Capital Territory](#) (Compensation) [2022] AATA 199 (11 February 2022); S Webb, Member

WORKERS COMPENSATION – accepted psychological injury – incapacity for work – medical treatment – determination of no present liability – nature of determination – requirement for a claim – liability to pay compensation distinguished from entitlement to be paid compensation – effects of accepted injury not persisting – over-reporting of symptoms – extent of subsequent incapacity for work not established as a result of injury – requirement for medical treatment in relation to injury not established – decision affirmed

Migration

[Ba and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 191 (9 February 2022); Deputy President Boyle and Dr C Huntly, Member

MIGRATION – s 501CA(4) of the Migration Act – decision not to revoke mandatory cancellation of visa – Applicant fails character test – Direction 90 considered – Applicant is a citizen of the Islamic Republic of Mauritania – numerous breaches of family violence restraining orders – numerous driving offences – there is not another reason to revoke the visa cancellation – reviewable decision affirmed

[Bristowe and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) AATA 200 (11 February 2022); R Reitano, Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – 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 –

impediments to removal – whether deteriorating relationship with New Zealand constitutes an other consideration – decision affirmed

[Butko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 217 (10 January 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – substantial criminal record – primary considerations including interests of minor children – drug-related offences – on balance revocation of cancellation decision preferable decision on evidence adduced before Tribunal – decision under review set aside

[Du Toit and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 212 (14 February 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – whether the Applicant’s conduct constitutes family violence – best interests of the Applicant’s minor daughter – expectations of the Australian community – extent of impediments if removed to South Africa – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 48-year-old man who first arrived in Australia on a tourist visa in 2000 – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted

[GSMY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 263 (9 February 2022); M O’Loughlin, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review affirmed

[KQDV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 210 (10 February 2022); Deputy President P 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 – applicant poses low risk of reoffending – other considerations – ties to the Australian community and extent of impediments if removed outweigh primary considerations – decision under review set aside.

[Liu and Migration Agents Registration Authority](#) [2022] AATA 215 (14 February 2022); Senior Member R Cameron

MIGRATION AGENTS REGISTRATION – breach of the migration agents code of conduct – is the applicant of integrity or otherwise not a fit and proper person to give immigration assistance – correct of preferable sanction – decision set aside and substituted

[LMHK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 166 (7 February 2022); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XE Subclass 790 Safe Haven Enterprise visa – where Applicant does not pass the character test – whether there is another reason

to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – domestic violence – decision under review affirmed

[Lukasa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 192 (25 January 2022); R Maguire, Member

MIGRATION – non-revocation of mandatory cancellation – Class XB (Subclass 200) Refugee Visa – citizen of Sudan – where the Applicant does not pass the character test by virtue of his “substantial criminal history” – whether there is “another reason” to revoke the mandatory cancellation – consideration of Ministerial Direction No 90 – history of violent and drug offences, family violence, assault/obstruct police and other offences – non-refoulement obligations not enlivened – decision under review affirmed

[Morgan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 189 (9 February 2022); Senior Member D J Morris

MIGRATION – applicant is citizen of New Zealand – visa cancelled on character grounds – sexually based offending involving a child – late document submitted – ministerial direction No. 90 – relevant primary considerations – protection of Australian community – best interests of minor children in Australia – three Australian citizen children with significant health needs – expectations of Australian community – extent of impediments if removed – impact on victims – links to Australian community – applicant has resided in Australia for long period – risk of reoffending – decision under review is affirmed

[PFKJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 172 (7 February 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – protection visa refused – whether applicant is a danger to the Australian community – guardianship order – scheduled under mental health legislation – serious health issues – social isolation – decision set aside and remitted

[QDWQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 226 (4 February 2022); The Hon. D Cowdroy AO QC, Deputy President, Senior Member A Nikolic AM CSC, and M Kennedy, Member

MIGRATION – citizen of Afghanistan – mandatory visa cancellation – Class BB Subclass 155 Five Year Resident Return visa – substantial criminal record – failure to pass the character test – Ministerial Direction No. 90 applied – nature and seriousness of offending conduct – other serious conduct – risk of reoffending – inconsistencies in evidence–insight and remorse–protection of the Australian community – best interests of children – family violence – expectations of the Australian community – non-refoulement obligations – impediments to removal – strength, nature and duration of ties – objection to exhibit taken into evidence after conclusion of hearing – reviewable decision affirmed

[Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 216 (20 January 2022); M O'Loughlin, Member

MIGRATION – decision of delegate of Minister to cancel Class VB Subclass 887 Skilled Regional (Residence) – where Applicant does not pass the character test – Applicant has substantial criminal record – Best interests of minor children – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

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

(Migration) [2022] AATA 264 (3 January 2022); Senior Member A Nikolic AM CSC

MIGRATION – visa refusal Skilled (Provisional) (Class VC) Visa – citizen of India – failure to pass good character test – exercise of discretion – non-refoulement obligations – COVID-19 – persistent inconsistencies in account of offending – false information in Statutory Declaration – Ministerial Direction No. 90 applied – reviewable decision affirmed

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

(Migration) [2022] AATA 213 (11 February 2022); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – Class TY Subclass 444 Special Category (Temporary) visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record - Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – Impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – decision under review set aside

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

(Migration) [2022] AATA 262 (4 February 2022); Senior Member B J Illingworth

MIGRATION – Non-revocation of mandatory cancellation of a Special Category (Class TY) (subclass 444) visa – where Applicant does not pass the character test – serious criminal record - whether “another reason” to revoke visa cancellation – Ministerial Direction 90 – decision affirmed

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

(Migration) [2022] AATA 202 (10 February 2022); Deputy President Boyle

MIGRATION – Migration Act s 501CA(4) – decision of delegate of Minister not to revoke mandatory cancellation of visa – applicant fails character test – whether there is “another reason” to revoke the mandatory cancellation – Direction 90 applied – applicant sentenced to total effective sentence of three years and nine months’ imprisonment – applicant convicted of 40 counts of stealing and fraud-related crimes – there is “another reason” to revoke the mandatory cancellation – reviewable decision set aside and substituted

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

(Migration) [2022] AATA 164 (7 February 2022); Dr L Bygrave, Member

MIGRATION – Migration Act 1958 (Cth) – refusal of temporary protection visa under s 501(1) because applicant did not pass character test – whether applicant would engage in conduct identified in s 501(6)(d)(i) – Direction No. 90 – Annex A – primary considerations – protection of the Australian community – family violence – best interests of minor children – expectations of the Australian community – other considerations – international non-refoulement obligations – effect of impediments – impact on victims – links to the Australian community – decision set aside and remitted

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

(Migration) [2022] AATA 190 (28 January 2022); Senior Member L Kirk

MIGRATION – Class XA subclass 866 Permanent Protection visa – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – decision affirmed

[2108762](#) (Migration) [2021] AATA 5196 (17 December 2021); Senior Member J Pennell

MIGRATION – cancellation – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – incorrect information provided in visa application – English proficiency – claim of 5 years of secondary or higher education delivered in English – most education in English but last two years of secondary schooling in Punjabi – discretion to cancel visa – claim that information provided by former agent but responsibility conceded – test scores insufficient to meet alternative requirement – study and work history – value of work to employer during COVID-19 restrictions – shortages of skilled staff – decision under review set aside

[Echereodo](#) (Migration) [2022] AATA 250 (1 February 2022); M Bishop, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – visa applicant staying in Australia over 12 months – exceptional circumstances – visa applicant assisting daughter after childbirth – visa applicant overstayed her last visit due to exceptional circumstances in pandemic – return to Nigeria for family funeral – demands on health care workers – decision under review remitted

[Elliott](#) (Migration) [2022] AATA 238 (25 January 2022); N Dougall, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – false or misleading information given in visa application – criminal convictions not declared – applicant notified department of incorrect answer – elapse of time and penalties of fines, driving disqualification and suspended sentence, not imprisonment – compassionate or compelling circumstances to waive criterion – applicant informed Australian employer of criminal record – value of skilled work to employer not compelling – extensive and regular assistance to an Australian family compelling or compassionate – decision under review remitted

[Javid](#) (Migration) [2022] AATA 130 (17 January 2022); Senior Member M Cooke

MIGRATION – cancellation – Child (Migrant) (Class AH) – Subclass 117 (Orphan Relative) – Federal Circuit Court remittal – incorrect information and bogus document provided with visa application – information that father missing and mother deceased at time of application – mother's purported death certificate – both parents now known to be alive and living in third country – discretion to cancel visa – young age and true belief at time of application – did not inform department when correct information became known – money transfers to parents by applicant and sponsor – hardship if visa cancelled – employment, co-mortgage of property and community involvement – never lived in country of citizenship and no legal right to live in third country with parents and wife – treatment of refugees in third country and conditions in country of citizenship – ethnicity and religion – Hazara Shi'a – country information – possibility of applying for protection visa – decision under review set aside

[Manhom](#) (Migration) [2022] AATA 128 (18 January 2022); P Vlahos, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – secondary visa applicants – dependent and member of the family unit – sister of the primary visa applicant – no adoption arrangements – Power of Attorney – recording of births and adoptions in South Sudan – customary adoption – substantial financial reliance on the sponsor – money transfers to the applicant's school – decision under review remitted

National Disability Insurance Scheme

[Boicovitis and National Disability Insurance Agency](#) [2022] AATA 204 (9 February 2022); Senior Member R Cameron

NATIONAL DISABILITY INSURANCE SCHEME – should the applicant receive funding for a single occupancy apartment – preference is to live alone – severe impairment – high physical support needs – same right to realising potential as other members of the community – same rights as others to respect their worth, dignity, and right to live free from abuse and neglect – same right to determine their own best interest – age and capabilities – social interaction – broader community values – decision set aside and substituted

[Brockett and National Disability Insurance Agency](#) [2022] AATA 214 (14 February 2022); K Parker, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision approving statement of participant supports – adult participant with partial hearing and vision impairments – participant requests provision of and funding for hearing aids with particular features – whether support is “reasonable and necessary” – whether criteria under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) are met – whether requested hearing aids are most appropriately funded under the National Disability Insurance Scheme – consideration of supports available under Hearing Supports Program offered by Hearing Australia – Decision Under Review affirmed

[Kennedy and National Disability Insurance Agency](#) [2022] AATA 265 (18 February 2022); Senior Member R Cameron

NATIONAL DISABILITY INSURANCE SCHEME – should the applicant receive funding for a two-bedroom, one resident apartment – second bedroom to accommodate his children to stay overnight – storage equipment – space for workstation – accommodation for carers or other supports to stay overnight – whether supports are “reasonable and necessary” – consideration of the Special Disability Accommodation Price Guide – Special Disability Accommodation Rules – the National Disability Insurance Scheme Act – supporting his goals and maximising independence - decision set aside and substituted

[Marcello and National Disability Insurance Agency](#) [2022] AATA 162 (4 February 2022); K Parker, Member and D Connolly, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – Applicant suffered pontine stroke with extensive haemorrhage – Applicant in persistent state of unconsciousness – Applicant in rehabilitation ward at public hospital - request for supports to facilitate Applicant being cared for in his home valued at \$1,979,015.55 per annum – whether requested supports are “reasonable and necessary supports” – consideration of criteria under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) – whether supports should not be provided or funded due to application of Rule 5.1(a) of the National Disability Insurance Scheme (Supports for Participants) Rules 2013 (Cth) – whether requested supports are likely to cause harm to Applicant or to pose a risk to others – consideration of other supports to be provided for and funded under the Applicant’s statement of participant supports – Applicant is 64 years old – consideration of s 29(1)(b) of the NDIS Act Decision Under Review set aside and remitted with directions – subject to consent of Applicant’s wife and Hospital discharge, provision made for services to assist the Applicant’s wife to identify a suitable residential care facility, payment of all out of pocket fees and expenses of Applicant residing at residential care facility, and services of tracheostomy nurse to provide tracheostomy care at residential care facility

[RTRH and National Disability Insurance Agency](#) [2022] AATA 205 (9 February 2022); S Webb, Member

NATIONAL DISABILITY INSURANCE SCHEME – statements of participant supports – assessment of reasonable and necessary supports – transport – additional day-to-day living costs attributable to disability support needs – decisions varied

PRACTICE AND PROCEDURE – jurisdiction – decision of a reviewer – internal review of CEO’s approval of a statement of participant supports – effect of serial participant plans on Tribunal jurisdiction – statutory requirements for commencement and cessation of a plan – bar on variation of a plan once it is in effect – plan issued to give effect to internal review decision without plan review does not engage plan replacement provisions – where plan replacement provisions not engaged previous plan continues to have effect – merits review of a decision distinguished from statutory procedure for review of a participant’s plan – substitution of decisions – decision of reviewer taken to be or substituted for decision of original decision-maker – plan not varied by substitution of decision on merits review – where an approved statement of participant supports is confirmed, varied or substituted on internal review the Tribunal’s jurisdiction runs in the period the statement has effect under a plan

Practice and Procedure

[Dale Pharmacy Group Pty Ltd and Australian Community Pharmacy Authority](#) [2022] AATA 203 (1 February 2022); Deputy President B W Rayment OAM QC

Practice and Procedure – application for Extension of Time – application not in compliance with National Health (Australian Community Pharmacy Rules) Determination 2018 – secondary application to respondent if granted will make present application moot, application for extension of time refused

[Grice and Respondent](#) [2022] AATA 259 (11 January 2022); Dr P McDermott RFD, Deputy President

PRACTICE AND PROCEDURE – Jurisdiction – Superannuation legislation – Transitional provisions – Application for review of a decision of the Commissioner of Superannuation – Whether the decision of the Commissioner of Superannuation is reviewable by the Tribunal – No jurisdiction to review decision – Application for review dismissed

[Hanel and Comcare](#) (Compensation) [2022] AATA 261 (16 February 2022); Senior Member B J Illingworth

JURISDICTION – Section 57 Notice under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – Independent Medical Examination – objection to Notice – does Applicant have reasonable excuse – Suspension – Tribunal has no jurisdiction

[Hoff and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 209 (11 February 2022); Deputy President S Boyle

PRACTICE AND PROCEDURE – jurisdiction – request for adjournment – Migration Act 1958 (Cth) – s 500(6B) – Migration Regulations 1994 (Cth) – decision of delegate of the Minister not to revoke mandatory cancellation of visa – application for review lodged out of time – Tribunal cannot extend time – Administrative Appeals Tribunal Act 1975 (Cth) – s 42A(4) – Tribunal satisfied no jurisdiction – application dismissed

[Majok and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 207 (10 February 2022); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – application for an extension of time – citizenship by conferral refusal on character grounds – 28-day period has elapsed – where extent of delay not reasonably explained – where there is no reasonable prospect of success – application refused

[McDermott and Comcare](#) (Compensation) [2022] AATA 195 (9 February 2022); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – interlocutory application – worker’s compensation – application to split the hearing to canvas certain issues of the matter first – application is refused

[Walsh and Comcare](#) (Compensation) [2022] AATA 158 (4 February 2022); D Mitchell, Member

PRACTICE AND PROCEDURE – implied undertaking – whether implied undertaking applies in relation to use of documents for claims management purposes – release from implied undertaking required where documents used for collateral or ulterior purposes – no release required as use was not for collateral or ulterior purposes

Refugee

[1803772](#) (Refugee) [2021] AATA 5175 (28 October 2021); M Hawkins AM, Member

REFUGEE – protection visa – Ethiopia – political opinion – participation in protests and expressions of opinions in university classes and job training – beatings and expulsion from training – suspected as member of banned opposition group – detained, tortured and warned – study in third country without applying for protection there – little corroborative evidence – applied for protection shortly before tourist visa due to cease – country information and post-hearing submissions – recent deterioration in conditions and current tensions and conflicts – no public political profile and fear of harm on political grounds unfounded – Amharic ethnicity – no harm to family – profile as educated Amhara – test of real risk, not remote – chance extends to all areas and effective protection measures not available – decision under review remitted

[1804288](#) (Refugee) [2021] AATA 5198 (11 November 2021); N Burns, Member

REFUGEE – cancellation – protection visa – Jordan – Federal Circuit Court remittal – ground for cancellation – incorrect information in visa application – non-appearance before the Tribunal – claimed fear of harm – homosexual man – evidence of marriage to a woman – bogus document – psychological report – credibility concerns – consideration of discretion – grant of visa based on incorrect information – decision under review affirmed

[1813550](#) (Refugee) [2021] AATA 5174 (2 November 2021); M McAdam, Member

REFUGEE – protection visa – Lebanon – Federal Circuit Court remittal – member of particular social group – divorced woman with little economic or social support – husband’s abuse after second (concurrent) marriage, divorce and attempted reconciliation, and continuing expectations – parents living in different area and siblings in other countries – generally clear and consistent evidence – country information – general political, economic and social conditions, and women’s rights – effective state protection not available – decision under review remitted

[1824036](#) (Refugee) [2021] AATA 5178 (28 November 2021); P Haag, Member

REFUGEE – protection visa – Ethiopia – race – Amhara – political opinion – anti-government activism – father died after imprisonment – applicant’s work for non-government organisation – threats to applicant and family – detention, interrogation and abuse – credible witness – improved conditions under new government – recent full-scale armed ethnic conflict and volatile conditions – decision under review remitted

[1826771](#) (Refugee) [2021] AATA 5131 (16 November 2021); Dr N Manetta, Senior Member

REFUGEE – protection visa – Pakistan – religion – Shia – race – Hazara – applicant’s safety dependent on internal relocation – worsening conditions for Shia in Pakistan – effective protection measures – decline in security situation – religious violence – increase of extremist sentiment – decision under review set aside

[1906187](#) (Refugee) [2021] AATA 5173 (8 December 2021); Dr D Dragovic, Senior Member

REFUGEE – cancellation – protection visa – Iran – ground for cancellation – incorrect information in visa application – applicant’s identity – citizenship status – consideration of discretion – visa grant based on incorrect information – time elapsed since the non-compliance – impact of cancellation on family members – applicant’s wife from a family of prominent pro-Arab rights campaigners – best interests of the child – youngest child an Australian citizen whilst rest of family are Iranian citizens – conversion to Christianity – recourse to non-refoulement review – decision under review set aside

[1907296](#) (Refugee) [2021] AATA 5179 (31 October 2021); F Simmons, Member

REFUGEE – protection visa – Iran – religion – applicant rejected Islam and converted to Christianity – limited activity in home country – arrested and mistreated for unrelated reasons – some activity in Australia – relationship with Australian citizen – fear of harm from authorities and family – mental health – serious mental illness, little or no insight into condition, refusal to engage with service providers and guardianship order – returned failed asylum seeker – country information – real chance of attracting adverse attention of authorities on grounds of mental health – claim on grounds of religion not considered further – procedural history – no appearance at hearing – decision under review remitted

[1919848](#) (Refugee) [2021] AATA 5137 (1 December 2021); N Burns, Member

REFUGEE – protection visa – Venezuela – political opinion – membership and activity in local government administration and opposition political parties – threats and attack by government supporters – mental health – colleagues and family members jailed or left country – detailed, consistent and plausible evidence – country information – economic and political conditions, and status of returnees during COVID-19 pandemic – real chance of persecution in all areas of country – decision under review remitted

[1923143](#) (Refugee) [2021] AATA 5143 (25 November 2021); A Murphy, Member

REFUGEE – cancellation – protection visa – Afghanistan – ground for cancellation – incorrect information in visa application – other names known by – age and date of birth – personal contacts in Australia – Australian visa history – included in paternal cousin’s Global Special Humanitarian visa application under a different name – consideration of discretion – knowingly provided the incorrect information – incorrect information had little or no bearing on grant of visa – Hazara Shia – non-refoulement obligations – liable to prolonged immigration detention – decision under review set aside

[2006884](#) (Refugee) [2021] AATA 5199 (1 November 2021); J Marquard, Member

REFUGEE – Protection visa – United Kingdom – persecution from ex-partner’s family – sexual assault – issues with social services and the law – mental health issues – marriage to Australian citizen – decision under review affirmed

[2112154](#) (Refugee) [2021] AATA 5170 (30 November 2021); R Shanahan, Member

REFUGEE – cancellation – Subclass 866 (Protection) visa – Iran – visa-holder had voluntarily returned to Iran on two occasions – incorrect information provided in protection application – homosexuality – fabricated claim – applicant is of no interest to authorities in Iran – drug offences – decision under review affirmed

Social Services

[Becke and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 159 (4 February 2022); 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

[Ghanem and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 160 (4 February 2022); R Reitano, Member

SOCIAL SECURITY – carer payment debt – carer allowance debt – change in circumstances that might affect continued qualification for payment – whether the Secretary is required to waive the debt – administrative error – good faith – decision set aside and another decision substituted

[Hollan and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 211 (14 February 2022); 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 – Applicant satisfied DSP criteria – determination of period of payment eligibility – whether payment is arrears limited – decision under review set aside and substituted

[Kenneth Musgrove as Joint Administrator, Trustee and Beneficiary of the Estate of the late Helen Musgrove and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 208 (11 February 2022); Senior Member A Poljak

SOCIAL SECURITY – age pension – where age pension continued to be paid after death – debt raised – whether the debt was correctly raised and if so, who, if anyone, has a debt to the Commonwealth – whether all or part of the debt may be waived or written off – decision under review affirmed

[Khadem and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 218 (16 February 2022); Mr S Evans, Member

FAMILY ASSISTANCE AND SOCIAL SECURITY – Family tax benefit – whether the applicant and her husband faced special circumstances which prevented the lodgement of income tax returns

before the requisite deadline – relevant legislation and cases considered – relevant material considered – decision under review affirmed

[McKenzie-McHarg and Secretary, Department of Health](#) [2022] AATA 168 (7 February 2022); K Parker, Member

AGED CARE – determination of value of Applicant’s assets under s 44.26C of the Aged Care Act 1997 (Cth) for purpose of calculating means-tested care fees – whether Applicant’s principal residence should be disregarded – application of s 44.26A(6)(b) – whether carer occupied principal residence with Applicant during two-year period before Applicant entered residential aged care – whether alleged \$350,000 loan made to Applicant as claimed by his representative and if so, whether claimed interest accrued on that alleged loan – insufficient verifiable and objective documentary evidence – false evidence given to Tribunal – credibility issues – Decision Under Review set aside and remitted with directions that Applicant’s principal home not to be disregarded when determining the value of his assets, and not to be reduced by the value of an alleged loan and alleged accrued interest because the Tribunal has found that the alleged loan was not made to the Applicant as claimed by his representative

[Simmons and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 167 (7 February 2022); B Cullen, Member

SOCIAL SECURITY – disability support pension – DSP – periodic compensation payments – whether the Applicant’s income protection insurance payments fall within the definition of “compensation” contained in s.17(2)(d) of the Social Security Act 1991 – whether “special circumstances” exist, pursuant to s.1184K of the Act, which would justify treating all or part of the Applicant’s income protection insurance payments as not having been made

[Steel and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 194 (11 February 2022); S Barton, Member

SOCIAL SECURITY – disability support pension – whether the Applicant met the eligibility requirements for a disability support pension – fully treated and stabilised – Qualification Period – assigning impairment ratings – Applicant’s PTSD fully diagnosed – Applicant’s PTSD not fully treated or stabilised – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

[Tanaskovski and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 258 (18 February 2022); Senior Member C Puplick AM

SOCIAL SECURITY – age pension – payments made at the single rate – asset test – whether the applicant is a member of a couple – decision set aside and remitted

Taxation

[Mobbs and Commissioner of Taxation](#) (Taxation) [2022] AATA 201 (10 February 2022); Senior Member R Olding

TAXATION – INCOME TAX – whether director’s fees, and share issues in lieu of director’s fees, derived by the director or by the director’s company said to have made the services of director available – where no written agreement, board minutes, annual reports or other documentary evidence of contracts with director’s company – decision affirmed

TAXATION – ADMINISTRATIVE PENALTY – whether taxpayer exercised reasonable care – where taxpayer’s treatment in returns said to be rational – where no evidence of degree of care exercised – whether penalty should be remitted – decision affirmed

[North Australian Contracting Pty Ltd and Commissioner of Taxation](#) [2022] AATA 223 (16 February 2022); Senior Member R Olding

CORONAVIRUS ECONOMIC RESPONSE PACKAGE – JOBKEEPER SCHEME – where applicant carried out construction fit-out services for large building companies and an associated company carried out similar services for smaller building companies – where staff moved between an associated company and the applicant according to the nature of contracts undertaken – whether applicant and associated company carried on the same business – decision affirmed

[Whiddon and Commissioner of Taxation](#) (Taxation) [2022] AATA 197 (10 February 2022); Senior Member R Olding

TAXATION – INCOME TAX – whether gain on complex share exchange transaction revenue or capital in nature – where applicant conceded the transaction was a commercial transaction – whether applicant had not insignificant purpose of obtaining profit notwithstanding that the shares received were to be held for an extended period – held gain is income according to ordinary concepts – whether applicant a resident of Australia – where applicant handed back key to Monaco residence, returned to Australia but departed again for a temporary period ending after relevant time – held applicant a resident – decision affirmed

TAXATION – ADMINISTRATIVE PENALTY – whether applicant exercised reasonable care – where Commissioner initially adopted same position as applicant regarding whether the transaction was on revenue account – where there was little evidence regarding the conduct leading to the shortfall in the return - whether appropriate to remit penalty – 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
Manebona and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4680
Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4308
SXNC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4510
THYM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4364
VNPC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4628

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Alpert v Secretary, Department of Defence	[2020] AATA 1632	[2022] FCA 54
Cau v Victorian Building Authority	[2020] AATA 4851	[2022] FCA 45
Commissioner for Fair Trading (NSW) v PCBQ	[2021] AATA 1436	[2022] FCA 59
Commissioner of Taxation v Coronica	[2021] AATA 1225 [2021] AATA 745	[2022] FCA 72
Ellison v Comcare	[2020] AATA 698	[2022] FCA 95
Gan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4236	[2022] FCA 91 [2021] FCA 375
Guruge v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4670	[2021] FCAFC 233 [2021] FCA 630

Military Rehabilitation and Compensation Commission v Dalgrin	[2020] AATA 5475	[2022] FCA 83
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v EPL20 & Anor	[2020] AATA 4266	[2022] HCASL 9 [2021] FCAFC 173
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Sillars & Anor	[2020] AATA 994	[2022] HCASL 9 [2021] FCAFC 174 [2020] FCA 1313
Onassys v Comcare	[2021] AATA 829	[2022] FCA 90
PYDZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1138	[2022] FCAFC 14 [2021] FCA 1050
Wills v Chief Executive Officer of the Australian Skills Quality Authority	[2020] AATA 4805	[2022] FCAFC 10

Jurisdiction and legislative changes

This section of the *Bulletin* provides a summary of significant legislative changes that affect the AAT, including changes and potential changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022

The *Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022* was passed by Parliament and received Royal Assent last week.

Key changes resulting from this legislation include:

- standardisation of the way parties must give evidence or produce documents in the Social Services and Child Support Division
- introduction of conferences to assist with case management in certain Social Services and Child Support Division.
- clarification about who will be automatically considered a party to certain applications
- changes to time limits to apply for reinstatement of an application on the basis that it was dismissed in error

With respect to the operation of the AAT, the new legislation will primarily affect the following pieces of legislation:

- *Administrative Appeals Tribunal Act 1975*
- *A New Tax System (Family Assistance) (Administration) Act 1999*
- *Child Support (Registration and Collection) Act 1988*
- *Commonwealth Electoral Act 1918*
- *Military Rehabilitation and Compensation Act 2004*
- *Paid Parental Leave Act 2010*
- *Social Security (Administration) Act 1999*

The AAT will undertake work to determine the appropriate approach for the new powers in the Social Services and Child Support Division and provide further updates as this work progresses.

You can monitor the [Federal Register of Legislation](#) for publication of the Act and the consequential amendments to legislation.