



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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Recent developments

Revised COVID-19 special measures practice directions now in effect

We have revised our [special measures practice directions](#) to reflect changes to Government health advice which have meant we are now able to deliver some of our services in-person.

The special measures practice directions were originally made in 2020 to support our operations while the pandemic impacted our services. The revised versions are now available on our [Practice directions, guides and guidelines](#) page for each of the following divisions:

- Freedom of Information, General and Veterans' Appeals Divisions
- Migration and Refugee Division
- National Disability Insurance Scheme Division
- Small Business Taxation and Taxation and Commercial Divisions
- Social Services and Child Support Division

There is [additional information](#) on our website about other ways COVID-19 has impacted our services.

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

[FWGS and Child Support Registrar](#) (Child support second review) [2021] AATA 305 (4 March 2021); L M Gallagher, Member

CHILD SUPPORT – percentage of care – whether there was a change in care – actual care – extent of care – pattern of care – special circumstances – decision under review affirmed

[GCKN and Child Support Registrar](#) (Child support second review) [2021] AATA 375 (24 February 2021); K. Parker, Member

CHILD SUPPORT – date of effect of new care percentage determination – notice of change of care given more than 28 days after date of determination – no discretion to ignore operation of relevant “date of effect” provisions – minor factual error in finding of date upon which the Applicant gave notice of change of care – decision varied to correct minor factual error

[QXPD and Child Support Registrar](#) (Child support second review) [2021] AATA 318 (26 February 2021); Senior Member C Puplick AM

CHILD SUPPORT – percentage of care – Court order – care period – actual care – regular care – cost percentages – revocation of percentage of care determination – decision under review affirmed

[Chandrasekhar and Tudor](#) (Child support) [2020] AATA 5825 (11 December 2020); S Letch, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – liable parent's necessary commitments of self-support – high costs of travel – a ground for departure established – decision to depart – decision under review set aside and substituted

[Gaekwad and Sidhu](#) (Child support) [2020] AATA 5828 (10 December 2020); Y Webb, Member

CHILD SUPPORT – percentage of care – determination of whether care exists – no care provided by either parent – decision under review affirmed

[Owens and Owens](#) (Child support) [2020] AATA 5844 (9 December 2020); J Longo, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – date of effect – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review affirmed

Citizenship

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

(Citizenship) [2021] AATA 322 (1 March 2021); Senior Member P J Clauson AM

CITIZENSHIP – application for conferral of Australian citizenship – whether Tribunal can be satisfied of applicant’s identity – were applicant claims to be stateless – were there is a paucity of supporting documentation – decision affirmed

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

(Citizenship) [2021] AATA 220 (12 February 2021); Mr M O’Loughlin, Member

CITIZENSHIP – Application for citizenship refused by the Minister under section 24(2) of the Australian Citizenship Act – Applicant 17 years old – Applicant seeking to attend university under corona-virus arrangements – Whether applicant satisfies requirement under the Australian Citizenship Policy – Whether the applicant will suffer hardship or disadvantage – Whether there is a cogent reason not to apply the Policy – Decision under review set aside and substituted with decision that applicant shall not be refused Australian citizenship

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

(Citizenship) [2021] AATA 394 (4 March 2021); Senior Member L Kirk

CITIZENSHIP – application for Australian citizenship by conferral – refusal to approve application – whether applicant has a permanent or enduring mental incapacity – depression – posttraumatic stress disorder – decision under review affirmed

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

(Citizenship) [2021] AATA 321 (25 February 2021); Senior Member M Griffin QC

CITIZENSHIP – application for Australian citizenship by conferral – whether applicant satisfies general residence requirement – where applicant is spouse of an Australian citizen – whether discretion should be exercised in applicant’s favour – whether demonstrated close and continuing association with Australia in four year period before making application – whether applicant likely to reside in or maintain close and continuing association with Australia – where applicant was offshore 1324 days four years prior to application – where when applicant returning to Australia is unknown – decision under review affirmed

[Marron-Fanning and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2021] AATA 377 (26 February 2021); Senior Member B J Illingworth

CITIZENSHIP – application for Australian citizenship– application for citizenship refused – drink driving and related offences – whether Tribunal is satisfied Applicant is of good character – decision under review affirmed

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

(Citizenship) [2021] AATA 319 (1 March 2021); Senior Member D. J. Morris

CITIZENSHIP – applicant satisfies various criteria for grant of Australian citizenship by conferral – applicant fails to complete citizenship test on several occasions – delegate refuses application – applicant claims permanent or enduring physical or mental incapacity to undertake test at time he applied for citizenship – consideration as to whether applicant had such incapacity – medical evidence – enduring mental incapacity found on medical evidence – enduring mental incapacity at time application for citizenship lodged not found – decision under review is affirmed

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

(Citizenship) [2020] AATA 5872 (27 November 2020); Mr A Maryniak QC, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether Applicant has satisfied paragraphs 21(2)(d), (e), (f) of Australian Citizenship Act – successful completion of citizenship test requirement – decision affirmed

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

(Citizenship) [2021] AATA 366 (1 February 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal – whether Applicant of good character – multiple traffic offences – whether regular pattern of offending showing disregard for the law – whether pattern of escalation of seriousness of offending – whether seriousness of offending detracted from good character – decision set aside and remitted

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

(Citizenship) [2021] AATA 368 (3 March 2021); Ms A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – Rohingya national – whether satisfied of identity of applicant – whether documentation was sufficient – whether made genuine attempt to obtain documentation from Myanmar - consideration of DFAT Country Information Report – whether satisfied of life story - whether the application for citizenship should be approved – life story remained consistent – Tribunal satisfied of identity – decision under review set aside and remitted

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

(Citizenship) [2020] AATA 5940 (3 December 2020); M Kennedy, Member

IMMIGRATION AND CITIZENSHIP – Application for Australian Citizenship – residence requirements – significant hardship or disadvantage – administrative error – border visa – subclass 155 visa – unlawful non-citizen – decision under review set aside and remitted

Compensation

Barry and Cleanaway Operations Pty Ltd (Compensation) [2021] AATA 369 (3 March 2021);

Senior Member R Cameron

COMPENSATION – anxiety insomnia - severe clinical depression - permanent impairment, psychological condition - pains to the umbilicus post-surgery – seroma - scar tissue - scarred and contracted mesh - paraumbilical hernia - whether that condition arose out of or during the course of employment - entitlement of compensation - reliability of Applicant's evidence - whether injury significantly contributed to by employment – decision affirmed

[BWFS and Comcare](#) (Compensation) [2021] AATA 324 (26 February 2021); Senior Member C. J. Furnell

Permanent impairment compensation – non-economic loss compensation – psychiatric condition – impairment is permanent – degree of impairment uncertain – remitted for reconsideration with direction

Medical treatment cost compensation – incapacity for work compensation – chronic pain syndrome – psychiatric condition – conditions ailments suffered by the applicant – conditions contributed to by applicant's employment – applicant continues to suffer effects of chronic pain syndrome condition – remitted for reconsideration with direction

Reviewable decision – scope – compensation for other injury not the subject of reviewable decision – liability to pay compensation for specific injury – compensation for other injury not issue before the decision maker – Tribunal cannot consider issue of compensation for other injury

Jurisdiction – s 62 Safety, Rehabilitation and Compensation Act 1988 – no reconsideration of determination – additional injury not before decision maker – no reviewable decision

[Fairall and Comcare](#) (Compensation) [2021] AATA 281 (24 February 2021); Deputy President J W Constance

WORKERS' COMPENSATION – exacerbation of depression and anxiety – whether the Applicant suffered a compensable injury for a limited period – whether meeting was reasonable administrative action conducted in a reasonable manner – where Applicant refused overtime in respect of a particular period – where Applicant did not possess a relevant skill set to undertake overtime in respect of that period – where meeting was held to advise the Applicant of this decision to refuse overtime – whether the meeting was operational rather than administrative action – where meeting related to the terms of the Applicant's engagement and her performance of the duties of her employment – where no evidence to suggest the manner in which the meeting was conducted was not reasonable – decision affirmed

[Foot and Comcare](#) (Compensation) [2021] AATA 317 (19 February 2021); Deputy President B W Rayment OAM QC

WORKERS' COMPENSATION – where applicant suffered left knee injury – whether injury occurred in the course of the applicant's employment – where alleged incident at work not reported by medical practitioners around time of incident – where injury arising from overtraining at a gym equally likely – decision under review affirmed

[Hamblin and Comcare](#) (Compensation) [2021] AATA 371 (16 February 2021); Mr A. Maryniak QC, Member

COMPENSATION – medical treatment – ongoing massage treatment – whether treatment is reasonable – decision affirmed

[Pearson and Prosecur Australia Pty Ltd](#) (Compensation) [2021] AATA 312 (25 February 2021); Deputy President Boyle

COMPENSATION – incapacity payments – liability to pay medical expenses – soft tissue injury affecting the neck shoulder musculature on the left – accepted condition – interlocutory applications made at the hearing – applications for dismissal – failure to provide evidence in accordance with directions – non-compliant SFIC – application for leave to admit documents into evidence – s 66 SRC Act – subjectively experienced symptoms without accompanying physiological change – reviewable decisions affirmed.

Education and Research

[Maxine Elizabeth Galpin, trading as Australian Online Racing Accreditation or A.O.R.A. and Australian Skills Quality Authority](#) [2021] AATA 309 (25 February 2021); K Parker, Member

VOCATIONAL EDUCATION AND TRAINING – cancellation of registered vocational education and training organisation – breach of conditions of registration under the National Vocational Education and Training Regulator Act 2011 (Cth) – non-compliance with Standards for Registered Training Organisations 2015 – inadequate assessment systems – assessment guides not adhered to when undertaking assessments – insufficient evidence of skills relied upon when recognition of prior learning assessment undertaken – training and assessment strategies and tools not prepared for new racing courses and Applicant not ready to deliver them – further professional development required of Applicant’s trainer and assessor in respect of delivering vocational education and training – Applicant does not meet conditions of registration and Tribunal considers considerable work needs to be done before Applicant will be compliant with all of the Standards and meet conditions of registration – whether Applicant ensured that its executive officer and high managerial agent complied with the “fit and proper person requirements” – Decision Under Review affirmed

Migration

[Au and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 372 (2 March 2021); Dr N A Manetta, Senior Member

Non-revocation of mandatory cancellation of visa under s 501(3A) of Migration Act 1958 -applicant sentenced to term of imprisonment – established history of criminal offending – misuse of drugs - Direction No. 79 – primary considerations – nature and seriousness of conduct – cumulative effect of reoffending - risk to Australian community – best interests of minor children – expectations of Australian community – other considerations – strength, nature and duration of ties - extent of impediments if removed - decision under review affirmed

[BNGP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 374 (2 March 2021); Deputy President B W Rayment OAM QC

MIGRATION – refusal to grant Protection (Class XA) visa – where applicant convicted of offences against his wife – whether discretion should be exercised – Direction No. 79 applied – where applicant was never sentenced to term of imprisonment – where applicant had not engaged in any further criminal conduct – whether in the best interest of minor children in Australia – where international non-refoulement obligations owed – whether applicant may face other harm if returned to South Sudan – where applicant has mental health issues and physical disability – decision under review set aside and remitted

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

(Migration) [2021] AATA 277 (18 February 2021); Senior Member B Pola

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

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

(Migration) [2020] AATA 5944 (16 December 2020); Senior Member B J Illingworth

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

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

[2021] AATA 276 (11 February 2021); Senior Member D J Morris

MIGRATION – applicant held Class TY Subclass 444 Special Category (Temporary) visa – applicant is citizen of New Zealand – preliminary matter – applicant submits documents less than two business days before hearing – substantial criminal record – applicant concedes fails 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 – extent of impediments if removed – other relevant matter – is the applicant an absorbed person – criteria for absorbed person visa not satisfied – decision under review affirmed

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

(Migration) [2020] AATA 5946 (17 November 2020); Senior Member K Millar

MIGRATION – mandatory cancellation of applicant’s visa – Class TY Subclass 444 Special Category Visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – decision set aside and substituted

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

(Migration) [2020] AATA 5941 (17 December 2020); M Kennedy, Member

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

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

(Migration) [2021] AATA 299 (24 February 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Special Category (Temporary) (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 – violent offending – decision under review affirmed

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

(Migration) [2021] AATA 376 (3 March 2021); Mr S Evans, Member

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record under s 501(7) – whether there is another reason to revoke the mandatory cancellation of the visa – Ministerial Direction No. 79 – primary considerations – protection of Australian community – best interests of minor children – expectation of the Australian community – other considerations – decision under review affirmed

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

(Migration) [2021] AATA 339 (26 February 2021); Chris Puplick AM, Senior Member

MIGRATION – mandatory cancellation of visa – failure to pass character test – substantial criminal record – whether there is another reason for the mandatory cancellation to be revoked – Direction no. 79 – primary considerations – protection of the Australian community – the best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – impact on victims – extent of impediments if removed – weighing of primary and other considerations – reviewable decision is affirmed

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

(Migration) [2021] AATA 273 (19 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 – non-refoulement obligations – applicant is stateless – consequence of non-revocation – whether removal would not be reasonably practicable – indefinite detention – decision affirmed

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

(Migration) [2021] AATA 288 (4 February 2021); A M Williams, Member

MIGRATION – refusal of application for Partner (Temporary) (Class UK) visa – applicant failed to pass the character test under section 501(6)(a) – whether the discretion in section 501(1) should be exercised – decision under review is affirmed

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

(Migration) [2021] AATA 283 (22 February 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

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

(Migration) [2021] AATA 320 (22 February 2021); Member M Kennedy

MIGRATION – mandatory cancellation of applicant's visa – applicant does not pass character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

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

(Migration) [2021] AATA 364 (1 March 2021); Senior Member D. J. Morris

MIGRATION – applicant is from South Sudan – applicant held Class BC Subclass 100 spouse visa – visa cancelled as delegate not satisfied applicant passed character test on basis of substantial criminal record as defined in Act: sentence or sentences of more than 12 months imprisonment – applicant made representations to different delegate that there was another reason mandatory cancellation should be revoked – applicant’s sentence reduced on appeal to 10 months – delegate concedes applicant no longer has substantial criminal record – delegate decides applicant still fails character test – delegate decides not another reason to revoke cancellation of visa – what decision is Tribunal reviewing – scope of review – consideration of character test – consideration of Direction No 79 – primary considerations – other considerations – decision under review is affirmed

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

(Migration) [2021] AATA 323 (22 February 2021); Member R Maguire

MIGRATION – cancellation of Class B Subclass 115 Five Year Resident Return Visa – where good character test is not satisfied – whether there is another reason to revoke the cancellation of the Applicant’s visa – whether Australia’s non-refoulement obligations are enlivened – decision affirmed

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

(Migration) [2021] AATA 336 (2 March 2021); Senior Member M Griffin QC

MIGRATION – mandatory cancellation of visa – failure to pass character test – multiple driving offences – domestic violence assault offences – accessory after a robbery – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – strength, nature and duration of ties – impact on victims – extent of impediments if removed – decision set aside and substituted

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

(Migration) [2021] AATA 337 (12 February 2021); Senior Member L Kirk

MIGRATION – mandatory visa cancellation – Class BS Subclass 801 Spouse visa – failure to pass character test – sexual intercourse without consent – aggravated sexual assault, inflict actual bodily harm on victim – drug and alcohol misuse – limited remorse and responsibility for offending – moderate to high risk of re-offending – Direction No. 79 – protection of the Australian community – best interests of Applicant’s minor child – expectations of the Australian community – strength, nature and duration of ties – impact on Australian business interests – impact on victims – extent of impediments if removed from Australia – decision affirmed

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

(Migration) [2021] AATA 395 (1 March 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a 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. 79 – lengthy history of offending – decision under review affirmed

[1920719](#) (Migration) [2020] AATA 5626 (23 September 2020); C Smolicz, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – satisfied as to the applicant’s identity – inconsistent details of children – inconsistent information regarding alleged son’s citizenship – Pakistani citizenship – applicant disclosed former husband’s true identity to Department – applicant pressured to include former husband’s son – tasker as obtained – family member in Australia – incorrect information in a previous protection visa application – decision under review set aside

[1908915](#) (Migration) [2020] AATA 5619 (22 December 2020); K Millar, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information in previous protection visa and citizenship applications – name, family members, death of father and visa and migration history – acknowledgment of incorrect information – discretion to cancel visa – circumstances of provision of incorrect information – present circumstances, life and work in Australia and wife and children in another country unlawfully – country information, treaties obligation assessment and non-refoulement – Hazara Shia Muslim – best interests of children – decision under review set aside

[1830270](#) (Migration) [2020] AATA 5700 (21 October 2020); N Goetz, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – not a genuine temporary entrant – health conditions due to motor vehicle accident – credibility issues – previous visa condition breaches – unlawful status – lived in Australia for 12 years – debt to Commonwealth – treatment can be obtained in South Korea – decision under review affirmed

[1833558](#) (Migration) [2020] AATA 5702 (22 October 2020); H Sanderson, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – not a genuine temporary entrant – use of visa to obtain ongoing residency – medical condition not urgent – no ongoing care required in Australia – can be obtained in home country – credibility issues – past breaches of visa conditions – decision under review affirmed

[Curry](#) (Migration) [2021] AATA 104 (19 January 2021); K McNamara, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – related position nomination refused – acquisition of nominating company by another company and applicant’s continuing work – review rights do not transfer to new owner/employer – refusal of position nomination affirmed – long-term, skilled and valued employee and genuine need for position – credible evidence – member of family unit – integration into community – unfair or unreasonable results of legislation – referred for ministerial consideration – decision under review affirmed

National Disability Insurance Scheme

[Danher and National Disability Insurance Agency](#) [2021] AATA 332 (2 March 2021); Deputy President F Meagher

PRACTICE AND PROCEDURE – interlocutory application that Applicant’s father not represent Applicant in proceedings – conflict of interests – pecuniary interest in outcome of proceedings – interim public guardian order – interlocutory application dismissed

[HKJQ and National Disability Insurance Agency](#) [2021] AATA 379 (19 February 2021); Deputy President J W Constance

NATIONAL DISABILITY INSURANCE SCHEME – access to Scheme – whether Applicant meets the access criteria – whether Applicant meets the early intervention requirements – panic disorder – agoraphobia – schizoaffective disorder – whether the impairments suffered by the Applicant result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the specified activities – weight to be given to varying opinions – where medical reports based on Applicant’s self-reporting – decision affirmed

[LZMX and National Disability Insurance Agency](#) [2021] AATA 378 (26 February 2021); Senior Member B J Illingworth

NATIONAL DISABILITY INSURANCE SCHEME – whether support is reasonable and necessary – whether NDIA should fund a lift – whether cost of support is reasonable – whether funding a lift is consistent with the Supports for Participants Rules and Operational Guidelines – whether a lift is a reasonable and necessary support within the context of s 34(1)(c) and (e) – Decision under review affirmed

[Schwartz and National Disability Insurance Agency](#) [2021] AATA 311 (19 February 2021); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – complex medical history – decision set aside and substituted

Practice and Procedure

[Australian Academy of Management & Science Pty Ltd and Australian Skills Quality Authority](#) [2021] AATA 335 (2 March 2021); Mrs J C Kelly, Senior Member

PRACTICE AND PROCEDURE – where stay order granted in relation to decision not to renew registration under NVR Act and decision not to renew CRICOS registration under ESOS Act – request for variation of stay order by Respondent – factors to be considered in deciding whether to vary conditions of stay order – stay variation granted

[Beslagic and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 286 (23 February 2021); R West, Member

EXTENSION OF TIME – disability support pension – appeal from decision of Social Services and Child Support Division – appeal lodged out of time – application for extension of time under s.29(7) of the AAT Act – no reasonable prospect of success – no proper explanation for delay – application refused

[FVKL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 306 (22 February 2021); Senior Member T Tavoularis

MIGRATION – no jurisdiction - notification of non-revocation decision - whether decision was properly notified – applicant serving a period in criminal custody - delegation of power under s 501G – whether any error in the notification can be cured by the deeming provision in reg 2.55(9) – application out of time - application dismissed

[Walker and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 338 (24 February 2021); W Frost, Member

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

[Walker and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 370 (17 February 2021); W Frost, Member

PRACTICE AND PROCEDURE – discretion to grant an extension of time to lodge application for review – statutory time limit for an application for review to be made – Tribunal has no jurisdiction - extension refused

[Williams and Members of the Companies Auditors Disciplinary Board](#) [2021] AATA 380 (17 February 2021); Deputy President Bernard J McCabe

CONFIDENTIALITY ORDERS – s 35 of the Administrative Appeals Tribunal Act 1975 (Cth) – whether affidavits and submissions constitute evidence given before the Tribunal – where commercial sensitive negotiations are detailed in those documents – where privacy and commercial interests of third parties are in issue – confidentiality orders partly granted

Refugee

[1705443](#) (Refugee) [2020] AATA 5728 (30 November 2020); L Hardy, Member

REFUGEE – protection visa – Pakistan – political opinion – membership of the Muslim Students' Federation (MSF) – religion – Muslim – student group physically clashed with other political groups – delay in applying for protection – inconsistent evidence – credibility issues – decision under review affirmed

[2007574](#) (Refugee) [2020] AATA 5739 (4 December 2020); J Pennell, Senior Member

REFUGEE – protection visa – Portugal – particular social group – people with mental health conditions and former drug addiction – multiple neurological disorders, brain injuries and mental health conditions – claim that health system in home country unable to provide care – impact of coronavirus – arrived in Australia as young child – visa and criminal history, mandatory cancellation of transitional permanent visa on character grounds and migration detention – capacity to subsist – country information about mental health and social security services – coronavirus not systematic or discriminatory – right to reside in other EU countries – decision under review affirmed

[1912744](#) (Refugee) [2020] AATA 5738 (10 December 2020); P Windsor, Member

REFUGEE – protection visa – China – beaten and threatened by loan shark – inconsistent and contradictory claims – vague and unconvincing evidence – credibility issues – decision under review affirmed

[1615121](#) (Refugee) [2020] AATA 5704 (14 December 2020); L Nicholls, Senior Member

REFUGEE – protection visa – China – religion – mainstream Protestant Christianity – leading role in an underground church – validity of s.438 certificate – internal deliberations of the Department – printing and copying of Christian materials – credibility concerns – church attendance in Australia – daughter's health condition – minor to moderate level of autism – decision under review affirmed

[2007184](#) (Refugee) [2021] AATA 313 (11 January 2021); T Flood, Member

REFUGEE – Protection Visa – Burundi – complementary protection – arrival as dependant on Woman at Risk visa – cancellation of visa due to claimed criminal charge – threats from ex-partner – risk of persecution in Burundi – unable to relocate – decision under review remitted

[1621682](#) (Refugee) [2021] AATA 310 (13 January 2021); J Marquard, Member

REFUGEE – Protection Visa – Liberia – fears forced initiation as Poro society leader – threats of death at refusal – Christian beliefs – credibility issues – applications for permanent residency shortly after arrival – decision under review affirmed

[1705690](#) (Refugee) [2021] AATA 381 (28 January 2021); D Creedon, Member

REFUGEE – protection visa – Malaysia – interfaith marriage – Muslim marriage to Christian – conversion to Christianity not allowed – no interest for both parties to convert – applicant’s influential father – international human right to marry and maintain individual religion – decision under review remitted

Social Services

[Ahamed and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 285 (22 February 2021); The Hon. M Groom, Senior Member

SOCIAL SECURITY – disability support pension – single rate or partner rate – whether living separately and apart on a permanent basis – whether special reasons – decision under review set aside

[Barnard and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 5947 (11 December 2020); Deputy President Britten-Jones

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension – decision under review set aside

[Carmody and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 334 (2 March 2021); Senior Member D.J. Morris

SOCIAL SERVICES – Benefits, payments and allowances – Disability Support Pension (DSP) – review of Social Services and Child Support Division decision – person previously held DSP – DSP suspended and then cancelled – whether person has impairment – single impairment being fully diagnosed, fully treated and fully stabilised at time of claim not in dispute – functional effect of impairment – whether person has continuing inability to work – allocation of points to impairment – allocation of points does not meet threshold for claim to progress – decision under review affirmed.

[Chadbourne; Secretary, Department of Social Services, and](#) (Social services second review) [2020] AATA 5945 (7 October 2020); Deputy President Britten-Jones

FAMILY ASSISTANCE AND SOCIAL SECURITY - Family Tax Benefit – School Kids Bonus- over payment – waiving all or part of a debt – victim of professional accounting advice- no special circumstances- set aside

Evans and Secretary, Department of Social Services (Social services second review) [2021]

AATA 280 (19 February 2021); W Frost, Member

SOCIAL SECURITY – pensions, benefits and allowances – disability support pension – eligibility for disability support pension – whether the applicant’s impairments are fully diagnosed, fully treated and fully stabilised - whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

Fonseka and Secretary, Department of Social Services (Social services second review) [2021]

AATA 282 (11 January 2021); Mr A Maryniak QC, Member

SOCIAL SECURITY – Austudy payment – debt – not a full-time student – no qualification for payment – activity test – overpayment – recoverable debt – oral decision – decision under review affirmed

FTCG and Secretary, Department of Social Services (Social services second review) [2021]

AATA 274 (19 February 2021); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – cervical spondylosis – whether applicant has an impairment rating of 20 points or more under the Impairment Tables – decision under review affirmed

Gunaydin and Secretary, Department of Social Services (Social services second review) [2021]

AATA 303 (21 January 2021); The Hon. M Groom, Senior Member

SOCIAL SECURITY – disability support pension – spinal condition – major depressive disorder and anxiety disorder – vertigo, asthma, diabetes and chronic pain – Impairment Tables – whether conditions fully diagnosed, treated and stabilised as at qualification period – reasonable treatment – spinal condition fully diagnosed, but not fully treated and stabilised – major depressive disorder and anxiety disorder no severe impairment fully diagnosed, but not fully treated and stabilised – other conditions not fully diagnosed, treated and stabilised – nil points – decision affirmed

Jafari and Secretary, Department of Social Services (Social services second review) [2020] AATA

5942 (11 December 2020); A Durkin, Member

Claim for Special Benefit – Eligible visa holder – waiting period – substantial change in circumstances beyond the person’s control – decision under review is affirmed

Mahon and Secretary, Department of Social Services (Social services second review) [2021]

AATA 373 (3 March 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions and benefits – age pension – suspension of age pension – whether the Applicant was a returned resident – portability – residency – whether the Applicant was a resident of Australia – factors to be taken into account to determine if a person is residing in Australia – whether Applicant given incorrect information by the Department – Applicant granted age pension as a returned resident but travelled outside Australia within a two year period – payment not portable – Reviewable Decision affirmed

[QBZG; Secretary, Department of Social Services and](#) (Social services second review) [2021]
ATA 331 (1 March 2021); K. Parker, Member

SOCIAL SECURITY – eligibility for youth allowance – claimant lives away from home at boarding school – whether claimant needs to live away from home for the purpose of education, training, searching for employment or doing anything else in preparation for employment – whether the likelihood of the claimant’s “getting employment” will be significantly increased if he lives away from home – consideration of family circumstances in claimant’s home town due to divorce of parents – consideration of educational and employment opportunities at boarding school compared to those in home town – significance of offer by boarding school of a partial bursary in respect of boarding school fees – no scholarship offered in respect of tuition fees – consideration of claimant’s academic performance and whether he had a special talent or area of excellence – decision set aside and substituted for decision that claimant not eligible for youth allowance

[Rylko; Secretary, Department of Social Services and](#) (Social services second review) [2021]
ATA 307 (25 February 2021); Senior Member D R Davies

SOCIAL SECURITY – claim for disability support pension – where claim for pension granted by AAT first review – application for AAT second review by Secretary – whether points can be awarded under impairment tables – whether condition fully diagnosed – condition not fully diagnosed on the medical evidence – decision under review set aside and substituted with decision that claimant is not qualified for disability support pension as at the Qualification Period

[Veres and Secretary, Department of Social Services](#) (Social services second review) [2020]
ATA 5939 (6 November 2020); A Durkin, Member

Age pension – Disability support pension – application of proportionality decision – Australian working life residence period - decision under review affirmed

Taxation

[BSRJ and Commissioner of Taxation](#) (Taxation) [2021] ATA 333 (26 February 2021); Senior Member R J Olding

TAXATION – GOODS AND SERVICES TAX (GST) – attribution of input tax credits – discretion to treat document as tax invoice – failure to account for increasing adjustment – decisions affirmed

TAXATION – ADMINISTRATIVE PENALTIES – base penalty amount – increase in base penalty amount – remission of administrative penalty – relevance of taxpayer engaging accountants to prepare returns – relevance of conduct in other tax periods – where taxpayer overpaid in some tax periods and underpaid in others – relevance of taxpayer’s net position across the tax periods – decisions set aside – penalties partly remitted

[Khan and Commissioner of Taxation](#) (Taxation) [2021] ATA 367 (3 March 2021); Senior Member L Hespe

TAXATION – income tax – allowable deductions – work-related expenses – self-education expenses – whether incurred in gaining or producing assessable income – decision under review affirmed

[ZBFF and Commissioner of Taxation](#) (Taxation) [2021] AATA 275 (2 February 2021); Deputy President B J McCabe

TAXATION – capital gains tax – transfer of property – contract of sale – terms of agreement – formally document an oral agreement – trust property – decision affirmed

Tribunals

[Sanderson and Decision Maker](#) [2021] AATA 284 (17 February 2021); Senior Member R Cameron

Australian Financial Complaints Authority – review – Corporations Act – Tribunal has no jurisdiction

Veterans' Affairs

[de Waard and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 316 (25 February 2021); D Mitchell, Member

VETERANS' AFFAIRS – special rate pension – relevant assessment period – incapacity from service-caused conditions – prevented from being able to continue to undertake remunerative work that he was undertaking – alone test – loss of salary or wages – date of effect of decision where application for review was made outside the 3 month window – decision under review set aside and new decision substituted

[Suckow and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 393 (4 March 2021); R CAMERON SENIOR MEMBER

VETERANS' AFFAIRS – disability pension – rate of assessment – neck and spinal conditions - whether accepted conditions render Applicant incapable of undertaking work for more than 8 hours per week – incapable of undertaking remunerative work over 8 hours – decision set aside and substituted – assessed at Special Rate

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
Chick and Comcare	[2021] AATA 37
De Tarle and Comcare	[2021] AATA 94
Mizzau and TNT Australia Pty Ltd	[2021] AATA 74
Poyton and Secretary, Department of Social Services	[2021] AATA 67

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Dunasemant v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4239	[2021] FCA 128
Nguyen v Minister for Home Affairs	[2018] AATA 4664	[2021] FCA 155
PQSM v Minister for Home Affairs & Anor	[2019] AATA 603	[2021] HCATrans 31 [2020] FCAFC 125 [2019] FCA 1540
Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4147	[2021] FCA 150
Wekerle v Department of Home Affairs (No 2)	[2019] AATA 630	[2021] FCA 173 [2020] FCA 1300



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