



Administrative  
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Bulletin

# AAT Bulletin

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

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

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# AAT Recent Decisions

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

## Child Support

[CJJQ and Child Support Registrar](#) (Child support second review) [2021] AATA 5283 (3 September 2021); G Hallwood, Member

CHILD SUPPORT – percentage of care – whether to revoke an existing care determination – whether there was a change of care percentage – whether special circumstances prevented lodgement of objection – date of effect – decision set aside and substituted

[Bayes and Bayes](#) (Child support) [2022] AATA 350 (18 January 2022); M Douglas, 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 varied

[Bolton and Child Support Registrar](#) (Child support) [2022] AATA 315 (20 January 2022); S De Bono, 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 provisions – whether there were special circumstances – no special circumstances exist – decision under review set aside and substituted

[Fritz and Payne](#) (Child support) [2022] AATA 317 (1 February 2022); P Jensen, Member

CHILD SUPPORT – non-agency payment – prescribed payment for school fees – discretion exercised not to credit – decision under review affirmed

[Molven and Kingsford](#) (Child support) [2022] AATA 318 (14 January 2022); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable incomes for past periods for the liable parent should be changed – conditions for changing income to higher income retrospectively – conditions for changing the incomes to lower amounts – decisions under review affirmed – decision in one matter set aside and substituted

[Tuckey and Giles](#) (Child support) [2022] AATA 312 (1 February 2022); P Jensen, Member

CHILD SUPPORT – particulars of the administrative assessment – whether a fixed annual rate of child support should not apply – income exceeds the allowable limit – the application for fixed annual rate not to apply should be refused – decision under review affirmed

## Citizenship

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

(Citizenship) [2022] AATA 360 (28 January 2022); R Reitano, Member

CITIZENSHIP – good character test – Applicant convicted and sentenced of indecent assault and unlawful sexual connection of a minor – Applicant denies offences committed – Applicant unremorseful in respect of offences committed – Tribunal could not conclude criminal convictions and sentence imposed were unsound – Tribunal cannot be satisfied the Applicant is of good character – decision affirmed

## Compensation

[LPJD and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2022]

AATA 275 (22 February 2022); L Kirk, Senior Member

COMPENSATION – Service personnel – Sexual assault leading to PTSD – Injury occurred while socialising with work colleagues outside of work hours – Re-exposure to perpetrator on base - Whether injury arose out of employment – Whether injury would not have occurred but for employment – Decision under review set aside

[Singh and Ron Finemore Transport Services Pty Ltd](#) (Compensation) [2022] AATA 344 (1 March 2022); A E Burke AO, Member

COMPENSATION – accepted anxiety contributed to a significant degree by employment – whether reasonable administrative action exclusion applies – condition arose from reasonable administrative action undertaken reasonably – decision affirmed

[WFJF and Comcare](#) (Compensation) [2022] AATA 346 (1 March 2022); A Poljak, Senior Member and Dr I Alexander, Senior Member

COMPENSATION – calculation of incapacity payments – what compensation the applicant is entitled to under s 19 – date of increase of the applicant's normal weekly earnings – whether the applicant is entitled to a further increase after increase due to Enterprise Bargaining Agreement – decisions under review set aside and remitted

## Corporations

[Frugniet and Australian Securities and Investments Commission](#) [2022] AATA 295 (22 February 2022); Bernard J McCabe, Deputy President and D O'Donovan, Senior Member

Banning order under National Consumer Credit Protection Act 2009 – whether ASIC has reason to believe that the applicant is not a fit and proper person to engage in credit activities – whether a banning order should be imposed – terms of the banning order that should be imposed – reliance on decisions of other tribunals to make findings – effect of amendment of relevant provisions after reviewable decision made – transitional provisions – varied decision

## Education and Research

[Sadouet and Secretary, Department of Education, Skills and Employment](#) [2021] AATA 5290 (10 August 2021); Dr N A Manetta, Senior Member

HIGHER EDUCATION SUPPORT – HECS-HELP debt – applicant unable to complete courses due to elbow condition and right hand injuries – applicant does not withdraw by census date – whether “special circumstances” exist – whether applicant’s circumstances made their full impact on or after the census date – whether circumstances are beyond the applicant’s control – whether circumstances make it impracticable to complete units of study – decision set aside and new decision substituted that “special circumstances” exist for the purposes of s 36-20(1)(d) of the Higher Education Support Act 2003 (Cth)

## Freedom of Information

[Australian Conservation Foundation Incorporated and Minister for the Environment](#) (Freedom of Information) [2022] AATA 307 (23 February 2022); Justice T Thawley, Deputy President

FREEDOM OF INFORMATION – costs – statutory interpretation – Freedom of Information Act 1982 (Cth) s 66(1)(a) – whether power to recommend to Minister that applicant’s costs of the proceedings be paid by the Commonwealth is enlivened – where application brought under s 57(1)(b) – meaning of ‘a decision of the Information Commissioner on an IC review’ – power not enlivened

[FMQR and Chief Executive and Principal Registrar, High Court of Australia](#) [2022] AATA 5254 (22 December 2021); The Hon. J Pascoe AC CVO, Deputy President

APPLICATION FOR RECUSAL – on the basis that the decision-maker may have had previous contact with the Respondent – whether the doctrine of waiver applies – whether there is significant prejudice to the parties – application is refused

## Migration

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

(Migration) [2022] AATA 268 (22 February 2022); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – Class BC Subclass 100 Partner 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 – special consideration – mandatory cancellation of visa revoked – decision under review set aside and substituted

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

(Migration) [2022] AATA 356 (1 March 2022); C Puplick AM, Senior 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 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – expectations of the Australian community – impediments to removal – strength, nature and duration of ties to Australia – decision affirmed

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

(Migration) [2022] AATA 345 (19 January 2022); A G Melick AO SC, Deputy President

MIGRATION – Revocation of cancellation of a Class BB Subclass 155 Five Year Return (Residence) – where Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – committed the act charged but is not guilty on the ground that he was insane at the time so as not to be responsible according to law – psychosis – substance use – decision under review is set aside and substituted

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

(Migration) [2022] AATA 340 (24 February 2022); C Puplick AM, Senior 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 90 – protection of the Australian community – family or domestic violence – best interests of minor children – expectations of the Australian community – non-refoulement obligations – situation in Afghanistan – impediments if removed – reality of removal – impact on victims – where victim is also a family member – strength, nature and duration of ties to Australia – decision set aside and substituted

**MCGQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 266 (16 February 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory cancellation of visa under s 501(3A) – refusal to revoke cancellation – protection of the Australian community – risk of reoffending – best interests of minor children – links to the Australian community – international non-refoulement obligations – potential return to Afghanistan – likelihood of indefinite detention – decision set aside and substituted.

**Monydeng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 363 (12 January 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa under section 501CA(4) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – risk of harm to the Australian community – decision under review affirmed

**Morales Alvarado and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 269 (7 February 2022); The Hon. D Cowdroy AO QC, Deputy President

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 – family violence committed by the non-citizen – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – applicant suffering from serious medical condition resulting in appointment of Guardian – decision set aside and substituted

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

(Migration) [2022] AATA 358 (15 February 2022); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of Partner (Residence) (Class BS) (Subclass 801) visa – where Applicant does not pass the character test – sentence of imprisonment exceeding twelve months – whether there is another reason to revoke the mandatory cancellation decision – consideration and application of Ministerial Direction No 90 – various drug-related and drink driving offences – decision under review affirmed

**Pillay and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 270 (21 February 2022); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BW Subclass 857 – Regional Sponsored Migration Scheme- 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 – where receiving country is South Africa – frequent offending and traffic infringements – decision under review affirmed

**Talafua and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 364 (27 January 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class TY (subclass 444) visa under section 501CA(4) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – interests of minor children – decision under review set aside

**1928559** (Migration) [2021] AATA 5229 (27 October 2021); J Owen, Senior Member

MIGRATION – Child (Residence) (Class BT) – Subclass 802 (Child) – dependent child – over 18 at time of application – relationships, study and work – two significant relationships not de facto or married – incapacitated for work due to loss of mental functions – borderline personality and major depressive disorders – not working or studying full-time at time of application or since – limited part-time work and study – drug use and criminal offences – intensive corrections order, restorative justice and mental health treatment – medical, psychological and corrective services reports – sponsor/father's and step-family's stability and support in Australia – mother now living in third country unable or unwilling to provide support – minimal support available in home country – decision under review remitted

**2014338** (Migration) [2021] AATA 5228 (20 October 2021); A McLean Williams, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – ground for cancellation – incorrect information in visa application – bogus document – employment reference – departmental verification checks – dob-in report – consideration of discretion – deliberate provision of a bogus document – visa grant partly based on claimed employment – subsequent conduct of the applicant – other instances of non-compliance – decision under review affirmed

**2112389** (Migration) [2022] AATA 282 (28 January 2022); R Gagliardi, Member

MIGRATION – cancellation – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – convicted of offences – employment in a skilled occupation – good character claims – relationship ceased – motivation to remain in Australia permanently – financial hardship – decision under review affirmed

**Cameron** (Migration) [2022] AATA 304 (2 February 2022); R Cumming, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – genuine temporary entrant – no current enrolment – delay in hearing of review application, during which time applicant was enrolled, studied and completed previous course – consent to decision without hearing – decision under review affirmed



[Malla](#) (Migration) [2022] AATA 355 (18 February 2022); T Quinn, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – genuine temporary entrant – incentives to return or remain – applied soon after arriving on visitor visa – delayed but continuing study with new completion date – ill father in home country – consent to decision without hearing – closely balanced factors – decision under review remitted

## **National Disability Insurance Scheme**

[Harris and National Disability Insurance Agency](#) [2022] AATA 276 (7 February 2022); Emeritus Professor P A Fairall, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – where applicant has multiple sclerosis – request for bathroom modifications – whether requested support is reasonable and necessary pursuant to subsection 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – whether support is in accordance with NDIS rules and guidelines – decision under review set aside and remitted with directions

[HSPS and National Disability Insurance Agency](#) [2022] AATA 321 (25 February 2022); J C Kelly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – whether applicant meets disability requirements – whether diagnosis of ASD was appropriately made – where applicant's fibromyalgia, osteoarthritis and / or bilateral epicondylitis are permanent under s 24(1)(b) – whether Applicant's conditions result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, any one or more of the activities in s 24(1)(c) – s 24(1)(c) criteria not met – where provision of early intervention supports is not likely to reduce the applicant's future needs for supports – decision affirmed

[Jemison-Budd and National Disability Insurance Agency](#) [2022] AATA 341 (1 March 2022); B W Rayment OAM QC, Deputy President

National Disability Insurance Scheme – access to the scheme, disability requirements – Diffuse Idiopathic Skeletal Hyperostosis – Undifferentiated Connective Tissue Disease – whether impairments are permanent – whether impairments result in “substantially reduced functional capacity” to undertake any one or more specified activities – decision set aside and substituted with decision that the Applicant met access criteria under s21 of the National Disability Insurance Scheme Act 2013 (Cth)

[Pettit and National Disability Insurance Agency](#) [2022] AATA 272 (18 February 2022); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – assessment of reasonable and necessary supports – private tutoring – appropriate funding – purpose of the scheme – decision affirmed

[VCHG and National Disability Insurance Agency](#) [2022] AATA 308 (24 February 2022); J W Constance, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports - consideration of sections 33 and 34 – whether requested supports are reasonable and necessary – Orthoptist for functional vision and Occupational Therapist for travel training are reasonable and necessary – decision set aside and remitted

## **Practice and Procedure**

[Al Saed and National Disability Insurance Agency](#) [2022] AATA 271 (18 February 2022); P J Clauson AM, Senior Member

PRACTICE AND PROCEDURE – interlocutory application that Applicant’s support coordinator does not represent Applicant in proceedings – conflict of interests – pecuniary interest in outcome of proceedings – interlocutory application dismissed

[Anderson and Australian Securities and Investments Commission](#) [2022] AATA 339 (17 February 2022); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of publication of banning order by the Respondent – where applicants were banned for 2 and 3 years – where publication of ban may impact vulnerable clients – whether publication may hurt cause reputational damage – objectives of the regulators in making a decision – where objective of legislation evince concern for consumer protection – objective of transparency – where there may be irrecoverable business loss – where there may be reputational damage – impact on business interests – confidentiality application refused – stay application granted

[Andrews and National Disability Insurance Agency](#) [2021] AATA 5289 (28 September 2021); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – interlocutory application for direction that Applicant undergo medical assessment and occupational therapy assessment – consideration of the Tribunal’s power to compel the applicant to participate in the assessments under section 33 of the Administrative Appeals Tribunal Act 1975 (Cth) – Applicant to attend assessments – summonses – opposition to summons being issued – Applicant’s request to issue summons declined – Applicant’s request to set aside summonses to produce documents sought by the Respondent declined

[Couch and Secretary, Department of Social Services](#) [2021] AATA 5285 (11 October 2021); J Rau SC, Senior Member

PROCEDURE – application for extension time – social security benefits – disability support pension – participation in program of support – whether extension of time should be granted – extension of time application refused

[GRFT and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 273 (9 February 2022); S Webb, Member

PRACTICE AND PROCEDURE – percentage of care – reinstatement following dismissal for failure to appear – discretion not exercised – reinstatement refused

[HDCZ and National Disability Insurance Agency](#) [2022] AATA 359 (17 February 2022); D Connolly, Member

PRACTICE AND PROCEDURE – objection to production of summons material – whether summons is an abuse of discretion – whether summons is necessary – summons set aside

[Higson and National Disability Insurance Agency](#) [2022] AATA 277 (23 February 2022); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – application for dismissal under section 42B of the Administrative Appeals Act (Cth) – application for review of a decision that applicant does not meet the access requirements of the National Disability Insurance Scheme Act 2013 (Cth) – whether applicant was aged under 65 years when access request made – application dismissed

[KQKM and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 296 (14 January 2022); C J Furnell, Senior Member

PRACTICE AND PROCEDURE – jurisdiction – higher education – HECS-HELP balance – application for remission of HECS-HELP debt – where reconsideration request made outside of prescribed time frame – where university decided not to allow longer time for making of reconsideration request – whether decision confirmed, varied or set aside – university did not confirm, vary or set aside decision – Tribunal does not have jurisdiction in respect of application for review of decision

[LKZX and National Disability Insurance Agency](#) [2022] AATA 327 (25 February 2022); S Webb, Member

PRACTICE AND PROCEDURE – extension of time – reasons for delay – factual dispute about internal review procedure – utility of application – preliminary considerations of merit – prejudice – interests – application refused

[Usher and National Disability Insurance Agency](#) [2022] AATA 5287 (15 September 2021); B J Illingworth, Senior Member

PRACTICE AND PROCEDURE – Application for extension of time – National Disability Insurance Agency – Internal review decision not requested – Extension of time refused

## Professions and Trades

[Mihajlovic and Tax Practitioners Board](#) [2022] AATA 342 (25 February 2022); R Reitano, Member

TAX AGENT REGISTRATION – cancellation of registration as a tax agent – preclusion from registration for 12 months – condition applied to registration limiting services – was there a valid condition on the registration – was the condition breached – should the registration be terminated – should a preclusion period be applied to reapplying for registration – decision affirmed

[Plaskitt and Tax Practitioners Board](#) [2022] AATA 267 (18 February 2022); R Reitano, Member

Termination of registration as tax agent – non-application period of 5 years imposed – contraventions of the Code of Professional Conduct – applicant failed to comply with taxation laws in the conduct of its personal affairs – misappropriation of funds – decisions affirmed

## Refugee

[1703907](#) (Refugee) [2021] AATA 5272 (9 November 2021); C Cody, Member

REFUGEE – Protection visa – Thailand – ex-boyfriend policeman – applicant had been involved in “the red shirts” – 2 different sets of written claims – applicant is not a witness of truth in relation to her claims of past harm and future fears – delay in lodging the visa application – inconsistent evidence – credibility concerns – decision under review affirmed

[1726779](#) (Refugee) [2021] AATA 5253 (9 December 2021); K Chapman, Member

REFUGEE – protection visa – Papua New Guinea – particular social group – single mothers without family protection in Papua New Guinea – female minors without family protection in Papua New Guinea – separated woman with a child – familial fear of witchcraft – threat of inter-tribal violence – perceived association with witchcraft – fear of gender based violence – victim of sexual assault – delay in claiming protection – state protection not available – decision under review remitted

[1907926](#) (Refugee) [2021] AATA 5274 (9 November 2021); J Lambie, Senior Member

REFUGEE – Protection visa – Bangladesh – Federal Court remittal – fears harm from AL members – membership of a particular social group – Individuals who have witnessed corruption and held information adverse to the interests of the AL – land dispute – cannot be satisfied that the applicant was an active member of JEI – inconsistent evidence – credibility concerns – decision under review affirmed

[2018607](#) (Refugee) [2021] AATA 5231 (7 December 2021); B Darcy, Member

REFUGEE – protection visa – Federal Court remittal – Pakistan – race – Turi – religion – Shia – imputed political opinion – opposition to Tehrik-e-Taliban Pakistan (TTP) and/or other extremist Sunni groups – kidnapping – fear of killing – Taliban insurgent attacks – state protection – internal relocation – decision under review remitted

[2114115](#) (Refugee) [2021] AATA 5237 (20 December 2021); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Iraq – criminal convictions, imprisonment and release on probation – discretion to cancel visa – previous incidents in immigration detention and criminal offences – warning under character test provisions – non-compliance with conditions of visa – failure to notify department of changes of address – circumstances of offending – hardship if visa cancelled – immigration detention and mental health – continuing fear of harm requiring protection – new legislative provisions ensure non-citizen will not be removed if found to engage protection obligations – temporary visa due to expire in any case – decision under review affirmed

## Social Services

[BHPW and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 325 (24 February 2022); A G Melick AO SC, Deputy President

Family Tax Benefit – 14-week qualifying or interim period – departure from care arrangement – reasonable action to comply with care arrangement – whether special circumstances exist – whether allegations are sufficient to support a finding of special circumstances – whether s 23 or s 35C of the A New Tax System (Family Assistance) Act 1999 should apply – decision set aside and substituted

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 5280 (22 November 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – compensation preclusion period – whether preclusion period applies – whether special circumstances – decision affirmed

[Donovan and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 299 (23 February 2022); P J Clauson AM, Senior Member

SOCIAL SECURITY – low income health care card – whether card was cancelled correctly – whether new claim was lodged – decision under review affirmed

[Dobbie; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 324 (25 February 2022); D Mitchell, Member

SOCIAL SECURITY – Age Pension – rate of pension – member of a couple – whether discretion to treat the Applicant as being single for the purposes of determining his rate of pension should be exercised – discretion not exercised – decision under review set aside and substituted

[Elcheikh and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 320 (18 February 2022); L Rieper, Member

SOCIAL SECURITY – carer payment – request for start date of payment to be backdated – where first claim made and rejected – second claim made and approved – no request for review within 13 weeks for first claim – decision under review is affirmed

[FGSH and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 5282 (22 September 2021); D Cox, Member

SOCIAL SECURITY – disability support pension – impairment tables – whether applicant attracts 20 points – whether applicant has completed program of support – decision affirmed

[Fitzpatrick and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 348 (2 March 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 chronic lumbar back pain fully diagnosed – Applicant’s chronic lumbar pack pain not fully treated and stabilised – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed

[Gonen and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 322 (25 February 2022); J C Kelly, Senior Member

SOCIAL SECURITY – Age Pension – where Applicant was paid Age Pension at portability rate after 26-week absence from Australia – whether Applicant is a resident of Australia – Reviewable decision affirmed

[Jamalluddin and Secretary, Department of Social Services](#) (Social service second review) [2022]  
AATA 361 (6 January 2022); D Cox, Member

SOCIAL SECURITY – Special Benefit Payment – whether the applicant was qualified for special benefit payment – applicant had considerable funds available to him – whether applicant able to earn sufficient livelihood – not suffering financial hardship – decision under review affirmed

[King and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 5288 (5 October 2021); G Hallwood, Member

SOCIAL SECURITY – disability support pension – compensation lump sum received – preclusion period – 50% rule – whether legal costs a component of compensation – whether medical costs a component of compensation – Secretary able to exercise discretion – decision affirmed

[Semmler and Secretary, Department of Social Services](#) (Social services second review) [2021]  
AATA 5286 (15 September 2021); K Millar, Senior Member

SOCIAL SECURITY – pensions - age pension – claim for age pension – date of claim – start date – decision affirmed

[Taylor and Secretary, Department of Social Services](#) (Social services second review) [2021]  
AATA 5284 (10 September 2021); M J McGrowdie, Senior Member

SOCIAL SECURITY – Aged Pension – portability rate – residency requirements – 26 week period of absence – COVID-19 provisions for extension of period – whether Applicant satisfies section 7(3) indicia of residency – where Applicant has significant history of travel – decision affirmed

[Thompson and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 362 (6 January 2022); D Cox, Member

SOCIAL SECURITY – disability support pension – impairment tables – whether applicant attracts 20 points – irritable bowel syndrome – absence of diagnosis during qualification period – decision affirmed

[Van Twest and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 326 (25 February 2022); D Mitchell, Member

SOCIAL SECURITY – disability support pension cancellation – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables at the date of cancellation – decision under review affirmed

## **Taxation**

[Shaw and Commissioner of Taxation](#) (Taxation) [2022] AATA 343 (1 March 2022); Dr M Evans-Bonner, Senior Member

TAXATION – application for release from taxation liability – all of the Applicant’s unpaid taxation liabilities eligible for release – Taxation Administration Act 1953 (Cth) – sch 1 s 340-5 – meaning of phrase “serious hardship” – income/outgoing test – assets/liabilities test – other relevant factors – whether to exercise discretion to grant release from taxation liabilities – Reviewable Decision set aside and substituted with the decision that Mr Shaw is granted a partial release of his eligible taxation debt, with the amount released being the General Interest Charges that have accrued as at the date of this decision

[SQQM and Commissioner of Taxation](#) (Taxation) [2022] AATA 298 (23 February 2022); L Kirk, Senior Member

TAXATION – whether to disregard all or part of Applicant’s non-concessional superannuation contributions – should discretion to disregard non-concessional contributions be applied – whether special circumstances to justify discretion being exercised exists – Applicant’s circumstances do not justify discretion being exercised – reviewable decision affirmed

## Veterans' Affairs

[Catolico and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 274 (22 February 2022); J Sosso, Deputy President

VETERANS' AFFAIRS – was the veteran living with the Applicant – operation of deeming provision in s 5E(3) – whether Applicant and veteran were in a de-facto relationship – financial aspects of the relationship – social aspects of the relationship – sexual relations between the people – the nature of people's commitment to each other – decision that Applicant not a dependant set aside

[French and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 347 (2 March 2022); The Hon. M Groom, Senior Member

VETERANS' ENTITLEMENTS – eligibility for increase in pension rate – Intermediate Rate – Special Rate – whether remunerated work capacity is less than eight hours per week in aggregate – post-traumatic stress disorder – alcohol use disorder – combination of work categories – decision set aside and substituted

[Kerns and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 357 (2 March 2022); W Frost, Member

VETERANS' ENTITLEMENTS – whether disease is 'war caused' – multiple myeloma – Oberon class submarine – benzene – statement of principles 69 – reasonable hypothesis – decision affirmed

[Mackie and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 323 (25 February 2022) (25 February 2022); J Sosso, Deputy President

VETERANS' AFFAIRS – veterans' entitlements – eligibility for veterans' gold card – whether the veteran has rendered qualifying service – whether service in an operational area as defined in Schedule 2 of the Veterans' Entitlements Act – whether "allotted for duty" – service in Hong Kong – decision under review affirmed

[Markou and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 5292 (16 August 2021); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – whether applicant's conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant's conditions attracted an impairment rating of at least 20 points – whether applicant had a continuing inability to work – decision under review affirmed



# Appeals

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

## Appeals lodged

CASE NAME	AAT REFERENCE
<b>Fehoko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 35</a>
<b>Hoang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4139</a>
<b>MJMG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1486</a>
<b>Pihere and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4236</a>
<b>QDJM and Director-General of Security</b>	<a href="#">[2021] AATA 4761</a>
<b>Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 264</a>
<b>SKDF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 5043</a>
<b>TXZQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 5084</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>FHHM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 760</a>	<a href="#">[2022] FCAFC 19</a> <a href="#">[2021] FCA 775</a>
<b>Markaj v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1494</a>	<a href="#">[2022] FCA 120</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v DOM19</b>	<a href="#">[2018] AATA 4603</a>	<a href="#">[2022] FCAFC 21</a> <a href="#">[2021] FCA 862</a>

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

[\[2020\] AATA 3527](#)

[\[2022\] FCAFC 22](#)  
[\[2021\] FCA 825](#)

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**SDCV v Director-General of Security &  
Anor**

[\[2019\] AATA 6112](#)

[\[2022\] HCATrans 20](#)  
[\[2021\] FCAFC 51](#)

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# 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* (the Amendment Act) was passed by Parliament and received Royal Assent on 17 February 2022.

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.

The Amendment Act is available on the [Federal Register of Legislation](#).

# Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986](#) (VEA) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004](#) (MRCA). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These commence on 4 April 2022:

**Eosinophilic oesophagitis (Balance of Probabilities) - No. 30 of 2022**

<https://www.legislation.gov.au/Details/F2022L00267>

**Eosinophilic oesophagitis (Reasonable Hypothesis) - No. 29 of 2022**

<https://www.legislation.gov.au/Details/F2022L00266>

**Exertional heat illness (Balance of Probabilities) - No. 32 of 2022**

<https://www.legislation.gov.au/Details/F2022L00265>

**Exertional heat illness (Reasonable Hypothesis) - No. 31 of 2022**

<https://www.legislation.gov.au/Details/F2022L00263>

**Hypertension (Balance of Probabilities) - No. 22 of 2022**

<https://www.legislation.gov.au/Details/F2022L00259>

**Hypertension (Reasonable Hypothesis) - No. 21 of 2022**

<https://www.legislation.gov.au/Details/F2022L00258>

**Vaccine-induced thrombotic thrombocytopenia (Balance of Probabilities) - No. 34 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00269>

**Vaccine-induced thrombotic thrombocytopenia (Reasonable Hypothesis) - No. 33 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00268>

## **Amended Statements of Principles**

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These amendments take effect from 4 April 2022:

**Suicide and attempted suicide (Balance of Probabilities) - No. 36 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00264>

**Suicide and attempted suicide (Reasonable Hypothesis) - No. 35 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00261>

## **Statements of Principles to be revoked**

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on 4 April 2022:

**Hypertension - No. 64 of 2013**

<https://www.legislation.gov.au/Details/F2013L01651>

**Hypertension - No. 63 of 2013**

<https://www.legislation.gov.au/Details/F2013L01652>



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