



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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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Recent developments

Changes to the rules about lawyers giving immigration assistance in AAT cases

From 22 March 2021, Australian lawyers who hold a practising certificate can give immigration assistance in connection with legal practice without being registered as migration agents. Lawyers who hold an unrestricted practising certificate can no longer be registered migration agents. Lawyers with a restricted practising certificate (that is, they are subject to a condition requiring supervised legal practice) may continue to be registered as migration agents.

Lawyers acting in matters currently before the Migration and Refugee Division are asked to update their status with the Tribunal with the [Change of migration agent status form](#) and sending it to MRDExecutive.Support@aat.gov.au.

[More information](#) about this change is available on our website.

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

[HMZX and Child Support Registrar](#) (Child support second review) [2021] AATA 520 (16 March 2021); Senior Member P J Clauson AM

SOCIAL SECURITY – Child Support and Family Assistance – Percentage of Care Determination – Consideration of correct Percentage of Care – existence of special circumstances – decision affirmed

[SVFG and Child Support Registrar](#) (Child support second review) [2021] AATA 473 (26 February 2021); Senior Member B J Illingworth

CHILD SUPPORT – Whether there was a change in the care percentage of the child – Assessment of actual care – Whether changes to care arrangement – Decision under review affirmed

[VVTR and Child Support Registrar](#) (Child support second review) [2021] AATA 501 (16 March 2021); Dr S Fenwick, Senior Member

CHILD SUPPORT – percentage of care – child resident at boarding school – factors relevant to determination of actual care – disagreement about contribution to payment of school fees – determination of new percentages of care – decision set aside and substituted

[Alborough and Manville](#) (Child support) [2021] AATA 467 (7 January 2021); R Ellis, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income accepted – decision under review affirmed

[Crofts and Joannides](#) (Child support) [2021] AATA 465 (7 January 2021); R Ellis, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations not revoked – decision under review affirmed

CHILD SUPPORT – percentage of care objection – date of effect – whether there were special circumstances that prevented the objection being lodged in time – objection found to be lodged in time – decision under review set aside and substituted

[Rees and Rees](#) (Child support) [2021] AATA 252 (6 January 2021); S Brakespeare, 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 – court orders not complied with – reasonable action taken – interim period correctly applied – decision under review affirmed

[Rice and Morgan](#) (Child support) [2021] AATA 251 (4 January 2021); W Budiselik, Member

CHILD SUPPORT – non-agency payment – whether out of pocket medical expense should be credited as prescribed payment – all conditions to credit are satisfied – prescribed payment credited – decision under review set aside and substituted

[Wilshere and Wilshere](#) (Child support) [2021] AATA 469 (7 January 2021); J Leonard, Member

CHILD SUPPORT – departure determination – costs of education – whether educated in manner expected by both parents – costs of special needs – whether child’s talent amounts to special need – decision under review set aside and substituted

Citizenship

[Alshemeri and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 415 (5 March 2021); Mr S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – satisfaction of identity – insufficient evidence regarding identity of the Applicant – limited primary documentation – Applicant arrived in Australia in 2012 as an irregular maritime arrival – reviewable decision affirmed

[Barami and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 498 (12 March 2021); R West, Member

CITIZENSHIP BY CONFERRAL – Minister not satisfied of Applicant’s identity – national identity guidelines – reasonable satisfaction – decision affirmed

[Jiang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 417 (8 March 2021); Senior Member A Poljak

CITIZENSHIP – refusal of a Citizenship application – whether the applicant is of good character at the time of the Minister’s decision – criminal conduct – cultivation of commercial quantities of cannabis – serious and repeat nature of offending – mitigating factors – failure to demonstrate genuine remorse or insight into offending – not satisfied the applicant is of good character – decision affirmed

[Kim and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 522 (12 March 2021); Senior Member A Poljak

CITIZENSHIP – refusal of a Citizenship application – whether the applicant is of good character at the time of the Minister’s decision – criminal conduct – driving offences – assault occasioning actual bodily harm – mitigating factors – significant amount of time passed – not satisfied the applicant is of good character – decision affirmed

[Ullah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 485 (11 March 2021); Senior Member C Puplick AM

CITIZENSHIP – citizenship by conferral – refusal – residence requirement – whether Applicant likely to reside in Australia – whether likelihood to reside must be immediate or soon after granting of Australian citizenship – whether likelihood to reside requires more than words of intent – whether Applicant had a close and continuing association with Australia – where Applicant has been absent from Australia – decision under review affirmed

Compensation

[Cavanagh and Comcare](#) (Compensation) [2021] AATA 499 (16 March 2021); Dr I Alexander, Senior Member

WORKERS' COMPENSATION – whether the Applicant's employment contributed to, to a significant degree, the aggravation of the Applicant's pre-existing bilateral carpal tunnel syndrome – decision under review affirmed

Education and Research

[Aul and Secretary, Department of Education](#) [2021] AATA 436 (9 March 2021); Senior Member C Puplick AM

HIGHER EDUCATION – VET FEE-HELP – enrolled in diploma at TAFE – request to re-credit – whether special circumstances exist – whether the applicant's circumstances were beyond her control – whether the applicant's circumstances made their full impact on or after the census date – whether impracticable for the applicant to complete the requirements for the unit in the relevant period – no special circumstances found – decision under review affirmed

Migration

[Chol and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 505 (15 March 2021); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of South Sudan – Class XB Subclass 202 Global Special Humanitarian (Permanent) Visa – failure to pass good character test – extensive criminal record as juvenile and adult – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

[JKPM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 525 (16 March 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

[NLHN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 502 (16 March 2021); Mrs J C Kelly, Senior Member

MIGRATION – cancellation of Applicant's Class TY, Subclass 444 Special Category (Temporary) visa – citizen of New Zealand – failure to pass character test – whether there is another reason to revoke the visa cancellation – Direction No. 79 – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – strength, nature and duration of ties – extent of impediment if removed – decision under review affirmed

Ore Parraga and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 458 (10 March 2021); Mr R Reitano, Member

MIGRATION – mandatory visa cancellation – failure to pass character test – whether there is another reason to revoke the original visa cancellation decision – consideration of Direction No. 79 – protection of the Australian community – best interests of minor children – strength, nature and durations of ties – extent of impediments if removed – expectations of the Australian community – decision under review affirmed

PNCV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 529 (17 March 2021); Senior Member D J Morris

MIGRATION – applicant held Class XB Subclass 200 Refugee visa – applicant found to be South Sudanese National – substantial criminal record – visa mandatorily cancelled – applicant invited to make representations whether visa should be revoked – delegate decides not to revoke – Direction No. 79 – Part C primary considerations – protection of the Australian community – the nature and seriousness of the conduct – the risk to the community should the applicant re-offend – particular circumstances of the offence that caused the visa cancellation – best interests of minor children in Australia – expectations of Australian community – other considerations – non-refoulement obligations – applicant has significant physical disability – ties with Australia – extent of impediments if removed – decision under review set aside and new decision substituted

Seupule and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 527 (3 March 2021); Senior Member T Tavoularis

MIGRATION – Non revocation of mandatory cancellation of a Class TY Subclass 444 Special Category visa under the Migration Act 1958 – where Applicant does not pass the character test – where there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 79 – decision under review set aside and substituted

Stowers and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 497 (12 March 2021); Senior Member L Kirk

MIGRATION – applicant's Class TY Subclass 444 Special Category (Temporary) visa – visa cancelled because applicant did not pass the character test – substantial criminal record under section 501(7) considered – whether discretion in section 501CA to revoke mandatory visa cancellation should be exercised – whether another reason to revoke exists – considerations under Direction No 79 – best interests of applicant's minor children considered – protection and expectations of the Australian community considered – strength, nature and duration of ties – impediments to applicant if removed to New Zealand – decision under review set aside

TDPG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2021] AATA 503 (15 March 2021); Deputy President Boyle

MIGRATION – refusal to grant a Protection visa – Australia has protection obligations to the Applicant – Applicant convicted by final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – Applicant is a 33-year-old man who arrived in Australia in 2006 on a refugee visa – violent offending – alcohol-related offending – Applicant an unacceptable risk – reviewable decision affirmed

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

(Migration) [2021] AATA 435 (9 March 2021); The Hon. J Pascoe AC CVO, Deputy President

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

Davinder Singh (Migration) [2021] AATA 292 (4 February 2021); C Packer, Member

MIGRATION – Student (Temporary) (Class TU) – Subclass 590 (Student Guardian) – evidence of financial capacity – money deposit with financial institution – applicant’s brother and sister-in-law’s additional repayments to mortgage with redraw facility – short period of stay and study remaining – decision under review remitted

Hussin (Migration) [2021] AATA 272 (9 February 2021); G Hallwood, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – age limit – related position nomination application delayed by employer’s change of name – other administrative errors by employer – visa application made 25 days after applicant’s 50th birthday – strong compassionate circumstances – importance of position and glowing work references – referred for ministerial consideration – decision under review affirmed

Nadeem (Migration) [2020] AATA 5888 (6 November 2020); R Gagliardi, Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 837 (Orphan relative) – ‘orphan relative’ – no parental care – history of family violence perpetrated by applicant’s father – mother ‘permanently incapacitated’ – Major Depressive Disorder with Psychotic features – treatable condition – relevant cultural and economic factors – mental health care in Pakistan – father ‘whereabouts unknown’ – advertisements – report of local police station – decision under review remitted

Nguyen (Migration) [2020] AATA 5962 (10 December 2020); J Cipolla, Senior Member

MIGRATION – cancellation – Bridging B (Class WB) visa – Subclass 020 (Bridging B) – ground for cancellation – convicted of an offence – common assault (DV)-T2 – conditional release order – offence proven, but no conviction recorded – consideration of discretion – compelling need to remain in Australia – primary breadwinner for the family unit – repaying a mortgage in partner’s name – degree of hardship – best interest of the child – Australian citizen daughter – decision under review set aside

WONG LEE PTY LTD (Migration) [2021] AATA 297 (4 January 2021); D Kelly, Member

MIGRATION – nomination – Temporary Residence Transition – tasks to be performed do not meet requirements – ANZSCO 149212 Customer Service Manager – only 53% of tasks correspond with requirements – issue of financial viability – underpayment – decision under review affirmed

National Disability Insurance Scheme

[CXZS and National Disability Insurance Agency](#) [2021] AATA 511 (16 March 2021); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary support – where applicant diagnosed with autism spectrum disorder requiring substantial support – Applied Behaviour Analysis (ABA) therapy for 20 hours per week – program supervision for six hours per month – whether requested supports are reasonable and necessary – whether supports represent value for money – whether supports will be or likely to be effective and beneficial – decision under review affirmed

[McLaughlin and National Disability Insurance Agency](#) [2021] AATA 496 (12 March 2021); Deputy President G Humphries, AO

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – jurisdiction of Tribunal in NDIS matters considered – whether supports can be approved in relation to a disability other than the disability on which the participant's access to the Scheme was granted – whether section 33 contains a residual discretion not to fund support which is not reasonable and necessary – transport contribution considered – Tai chi considered – singing lessons considered – brain exercises considered – insurance for assistive technology considered – community activities funding considered – decision under review set aside and substituted

Practice and Procedure

[Alkhalil and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 481 (11 March 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability support payment – extension of time application – length of delay – reasonable prospects of success – application refused

[Chen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 483 (11 March 2021); Senior Member C Puplick AM

CITIZENSHIP – citizenship by conferral – extension of time application – reasons for delay – reasonable prospects of success – application refused

[De Miranda Leite and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 482 (11 March 2021); Senior Member C Puplick AM

PRACTICE AND PROCEDURE – extension of time application – short delay – whether there is an acceptable explanation for delay – Applicant found to provide a reasonable explanation of delay – whether substantive application has merits – application for Australian citizenship by conferral – Applicant failed the citizenship test on multiple occasions – whether it is reasonable in all the circumstances to grant the extension – Application found to have little prospects of success – other options for applying for Australian citizenship open to the Applicant – extension of time application refused

Finau and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2021] AATA 521 (16 March 2021); Senior Member A Nikolic AM CSC

PRACTICE AND PROCEDURE – jurisdiction – migration – visa cancellation decision February 2020 – Applicant did not make representations seeking revocation of cancellation decision – review application lodged a year later in February 2021 – no discretion to extend time for representations – no reviewable decision – no jurisdiction – application dismissed

Gu and Migration Agents Registration Authority [2021] AATA 459 (10 March 2021); Ms D Mitchell, Member

PRACTICE AND PROCEDURE – application for stay of decision – cancellation of migration agent registration – whether the granting of a stay would have any effect given the operation section 300 of the Migration Act 1953 (Cth) – stay application refused

Hasan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Citizenship) [2021] AATA 396 (5 March 2021); Mrs J C Kelly, Senior Member

PRACTICE AND PROCEDURE – extension of time application – decision to refuse application for citizenship on character grounds – three months delay in filing application – whether reasonable explanation for the delay – prejudice to others – merits of substantial application – extension of time for making application granted

Head and Telstra Corporation Limited (Compensation) [2021] AATA 523 (17 March 2021); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – summons – objection to summons – whether documents sought are relevant to the issues to be decided – summons to be complied with

Kadeh and Migration Agents Registration Authority (Migration) [2020] AATA 6019 (28 October 2020); M O'Loughlin, Member

PRACTICE AND PROCEDURE – reinstatement application - matter dismissed pursuant to section 42A(2)(a) of the AAT Act for failure to appear - whether reinstatement is appropriate pursuant to sections 42A(9) or (10) - application refused

Kadeh and Migration Agents Registration Authority (Migration) [2020] AATA 6020 (9 July 2020); M O'Loughlin, Member

MIGRATION AGENT REGISTRATION – applicant failed to appear at hearing – appropriate notice provided pursuant to section 42A(7) of the AAT Act - application for review dismissed pursuant to section 42A(2)(a) of the AAT Act

Phromkamon and Secretary, Department of Social Services (Social services second review) [2021] AATA 457 (22 February 2021); Senior Member C J Furnell

PRACTICE AND PROCEDURE – Austudy payment – application 22 months late – debt – limited English – Tribunal not satisfied – application refused

[Sweeney; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 455 (23 February 2021); Mr C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – stay orders – consideration to the interests of all parties who might be affected by the granting or refusal of a stay order – Secretary has established that there is an arguable case for the AAT1 decision to be reviewed – stay granted

Professions and Trades

[Cross and Tax Practitioners Board](#) [2021] AATA 441 (9 March 2021); Deputy President Boyle

TAX AGENT REGISTRATION – tax agent registration termination – practitioner not a fit and proper person – failure to meet requirements of registration – partnership ceases to meet registration requirements – 125 self-managed super fund annual returns lodged with false declarations – review by Tribunal exercising all of the powers of the Board under TASA – reviewable decisions varied

Refugee

[1620623](#) (Refugee) [2020] AATA 5819 (14 December 2020); M Sripathy, Member

REFUGEE – protection visa – Vietnam – political opinion – objection to Communist ideology – freedom of speech and human rights – member of the Viet Tan Vietnam Reform Party – delay in raising claim – purpose of political activities after arriving in Australia – participation in anti-Vietnamese government events and protests in Australia – low level participant with no organising profile or role – decision under review affirmed

[1704016](#) (Refugee) [2021] AATA 219 (15 January 2021); D Barker, Member

REFUGEE – protection visa – China – laid off by state-owned enterprise employer – inadequacy of redundancy payments – organised protest activity at the workplace – petitioned to local district government – credibility concerns – inconsistencies between written statement and evidence at hearing – delay in seeking protection – mental health issues – economic hardship – decision under review affirmed

[1709164](#) (Refugee) [2021] AATA 528 (11 February 2021); N Lamont, Member

REFUGEE – Fiji – particular social group – Fijian Woman domestic violence victim – weak domestic violence services in Fiji – concentrated in Suva – not available in village environment – applicant will not be given adequate protection – decision under review remitted

[1711905](#) (Refugee) [2020] AATA 5810 (10 December 2020); N Goetz, Member

REFUGEE – protection visa – Bangladesh – BNP member – threats from opposition party members – money laundering activities – health conditions – credibility issues – decision under review affirmed

[1715333](#) (Refugee) [2020] AATA 5943 (22 December 2020); Dr J Harkess, Member

REFUGEE – protection visa – China – dispute with local authorities about demolition of house – detention and threats – consent to decision on papers – no opportunity to test credibility or claims – decision under review affirmed

[1800082](#) (Refugee) [2020] AATA 5891 (16 December 2020); C Smolicz, Member

REFUGEE – protection visa – Papua New Guinea – imputed political opinion – family’s and tribe’s political activity – fear of electoral violence – particular social group – male member of families targeted for retributive tribal violence – cultural practice of payback violence – tribal land disputes – delay in applying for protection – decision under review affirmed

Social Services

[Evans and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 524 (18 March 2021); R Maguire, Member

SOCIAL SECURITY – Disability Support Pension – DSP – whether condition is fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the Impairment Tables during the Qualification Period – decision under review affirmed

[Macdonald and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 399 (5 March 2021); Ms A E Burke AO, Member

SOCIAL SECURITY – oral decision – assurance of support – valid visa – special benefit paid to assuree – debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – no special circumstances – decision under review affirmed

[Magok and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 571 (18 March 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – parenting payment (single) (PPS) – whether the Applicant was overpaid PPS – decision to raise and recover PPS debt – whether a debt to the Commonwealth – whether the debt should be recovered in full – whether recovery of all or part of the debt should be waived or written off – whether debt attributable to sole administrative error of the Commonwealth – whether there are special circumstances that make it desirable to waive the debt – Reviewable Decision affirmed

[Wood and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 418 (8 March 2021); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – upper limb function – carpal tunnel syndrome – mental health function – depression and anxiety – whether the applicant’s conditions rate 20 points or more under the Impairment Tables – decision under review affirmed

Taxation

[0 Love 0 Pty Ltd \(in liquidation\) ATF Cooley Trust 1, Cooley Trust 2 & Cooley Trust 3 and Registrar of Personal Property Securities](#) (Taxation) [2021] AATA 397 (5 March 2021); Deputy President Britten-Jones

PERSONAL PROPERTY SECURITIES – amendment demand for a financing change statement to be registered to amend registration of security interest – whether there is a suspicion on reasonable grounds that the amendment is not authorised under s 178 of the Personal Property Securities Act 2009 – whether collateral described in the registration secures any obligation owed by debtor to secured party – whether the registrations are defective because they fail to record that the debtor company granted the security in its capacity as trustee – contractual documents name the debtor company in its own capacity and not as trustee – a suspicion arises on reasonable grounds that the other party had a security interest in the collateral described in the Registrations – decision under review affirmed

[Dodson and Commissioner of Taxation](#) (Taxation) [2021] AATA 484 (11 March 2021); Ms D Mitchell, Member

TAXATION – income tax – eligibility for the Senior and Pensioner Tax Offset – Medicare Levy threshold – accessibility of carers payment – decision under review affirmed

[Slatter Building Group Pty Ltd and Commissioner of Taxation](#) (Taxation) [2021] AATA 456 (10 March 2021); Deputy President B J McCabe and Senior Member R J Olding

TAXATION - Coronavirus Economic Response Package – Cash Flow Boost – where sole trader incorporated the applicant in January 2020 and accounted for GST on quarterly tax periods – whether applicant “made a taxable supply in a tax period that applied to it” – whether sole trader and applicant comprised single “entity” – decision affirmed

[Women’s Life Centre Inc and Commissioner of the Australian Charities and Not-for-profits Commission](#) (Taxation) [2021] AATA 500 (12 March 2021); Deputy President B J McCabe, Senior Member A O’Connell and L Bygrave, Member

Registration as a public benevolent institution – whereas applicant is registered as a charity under the Australia Charities and Not-for-profits Commission Act 2012 (Cth) – whether applicant can demonstrate it is a public benevolent institution – whether services provided are used by those in need – whether services are directed to those in need as opposed to the general public – sufficient nexus not satisfied – decision under review affirmed

Tribunals

[Kirk and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 494 (12 March 2021); S Taglieri SC, Member

Veterans Entitlements Act 1986 – s 175 – whether the Tribunal has jurisdiction – No jurisdiction - application dismissed

Veterans' Affairs

[Bailey and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 572 (17 March 2021); Senior Member R Cameron

VETERANS AFFAIRS – conditions – war caused – Statement of Principles – Deledio steps – Veteran Entitlement Act – Veterans Review Board – Royal Australian Navy – Statement of Principles – decision under review is affirmed

[Davis and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 526 (16 March 2021); Deputy President J Sosso

VETERANS' AFFAIRS – disability pension – cervical spondylosis – osteoarthritis – causal connection between injury and defence service – Cyclone Tracy – but for test – decision set aside and substituted – decision affirmed

[Hall and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 416 (8 March 2021); Ms D Mitchell, Member

VETERANS' AFFAIRS – claim for travel expenses – veteran admitted to hospital – accommodation costs incurred by attendant during veteran's admission – costs of housing pets – decision under review varied

[Keshan and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 398 (5 March 2021); Emeritus Professor P A Fairall, Senior Member

VETERANS' ENTITLEMENTS – income support supplement – whether the valuation of the Applicant's property in Kangaroo Valley is correct – where the property is flood prone and subject to development controls – where three valuation reports available – competing valuations – comparison of similar properties – whether any adjustment needs to be made – adjustment of five per cent made – decision set aside and remitted

[Rumsey and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 495 (12 March 2021); Senior Member R Cameron

VETERANS' AFFAIRS – benefits and entitlements – rate of service pension – Applicant is legally married – whether Applicant and former partner are living separately and apart on a permanent basis – consideration of the factors in Staunton-Smith – decision under review set aside and substituted

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
FVKL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 306
Gardner and Board of Professional Engineers of Queensland	[2021] AATA 93
George and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 276
JLXY and National Disability Insurance Agency	[2021] AATA 144
JNMK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 26
Pegasus Supply Solutions Pty Ltd and Collector of Customs	[2020] AATA 4688
Wuth and Comcare	[2020] AATA 3625
XXBN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4238
ZCSB and Commissioner of Taxation	[2021] AATA 138

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
MNLR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 63	[2021] FCAFC 35 [2020] FCA 948
NWQR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 391	[2021] FCAFC 30 [2020] FCA 1077

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.

Notification of Investigations relating to existing Statements of Principles

On 4 March 2021, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

the content of the following Statements of Principles listed in this [gazette](#)

taking combined hormonal contraceptives

<https://www.legislation.gov.au/Details/C2021G00181>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

Malignant neoplasm of the breast - No. 96 of 2014

<https://www.legislation.gov.au/Details/F2018C00670>

Malignant neoplasm of the breast - No. 97 of 2014

<https://www.legislation.gov.au/Details/F2018C00671>

infection with Coxsackie B virus

<https://www.legislation.gov.au/Details/C2021G00182>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

Diabetes mellitus (Reasonable Hypothesis) - No. 48 of 2020

<https://www.legislation.gov.au/Details/F2020L00823>

infection with Epstein-Barr virus

<https://www.legislation.gov.au/Details/C2021G00186>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

Non-Hodgkin lymphoma (Reasonable Hypothesis) - No. 90 of 2018

<https://www.legislation.gov.au/Details/F2018L01489>

Non-Hodgkin lymphoma (Balance of Probabilities) - No. 91 of 2018

<https://www.legislation.gov.au/Details/F2018L01490>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **5 April 2021**:

Acute lymphoblastic leukaemia/lymphoblastic lymphoma (Balance of Probabilities) - No. 34 of 2021

<https://www.legislation.gov.au/Details/F2021L00216>

Acute lymphoblastic leukaemia/lymphoblastic lymphoma (Reasonable Hypothesis) - No. 33 of 2021

<https://www.legislation.gov.au/Details/F2021L00215>

Asthma (Reasonable Hypothesis) - No. 31 of 2021

<https://www.legislation.gov.au/Details/F2021L00211>

Asthma (Balance of Probabilities) - No. 32 of 2021

<https://www.legislation.gov.au/Details/F2021L00220>

Deep vein thrombosis (Balance of Probabilities) - No. 36 of 2021

<https://www.legislation.gov.au/Details/F2021L00224>

Deep vein thrombosis (Reasonable Hypothesis) - No. 35 of 2021

<https://www.legislation.gov.au/Details/F2021L00223>

Pulmonary thromboembolism (Balance of Probabilities) - No. 38 of 2021

<https://www.legislation.gov.au/Details/F2021L00214>

Pulmonary thromboembolism (Reasonable Hypothesis) - No. 37 of 2021

<https://www.legislation.gov.au/Details/F2021L00213>

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 **5 April 2021**:

Acute lymphoblastic leukaemia - No. 76 of 2012

<https://www.legislation.gov.au/Details/F2012L02086>

Acute lymphoblastic leukaemia - No. 75 of 2012

<https://www.legislation.gov.au/Details/F2012L02087>

Asthma - No. 60 of 2012

<https://www.legislation.gov.au/Details/F2012L01802>

Deep vein thrombosis - No. 55 of 2012

<https://www.legislation.gov.au/Details/F2012L01797>

Deep vein thrombosis - No. 54 of 2012

<https://www.legislation.gov.au/Details/F2012L01795>

Pulmonary thromboembolism - No. 57 of 2012

<https://www.legislation.gov.au/Details/F2012L01798>

Pulmonary thromboembolism - No. 56 of 2012

<https://www.legislation.gov.au/Details/F2012L01796>



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