



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

[DPND and Child Support Registrar](#) (Child support second review) [2021] AATA 673 (29 March 2021); Mr S Barton, Member

CHILD SUPPORT – child support assessment – determination of percentage of care – lack of corroborating evidence – consideration of the date of effect – reviewable decision affirmed

[HLKP and Child Support Registrar](#) (Child support second review) [2021] AATA 700 (26 March 2021); Mr W Frost, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – whether existing determination regarding percentage of care should be revoked – from when existing determination should be revoked – what care actually occurred during relevant care period – decision under review set aside and substituted

[Albrough 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

[Pippen and Child Support Registrar](#) (Child support) [2021] AATA 471 (19 January 2021); P Jensen, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no new determinations made – decision under review set aside and substituted

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 – 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

[Abdul Ali Alizadeh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 624 (24 February 2021); Senior Member MJ McGrowdie

CITIZENSHIP – application for citizenship by conferral – whether applicant should be considered to be a person of good character – applicant did not indicate in his application for citizenship that he had a criminal conviction – decision set aside and remitted

[Colley and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 640 (26 March 2021); Dr L Bygrave, Member

CITIZENSHIP – applicant’s Australian citizenship application refused – applicant did not satisfy residence requirements under paragraph 21(2)(c) and general residence requirements under paragraphs 22(1)(a) and 22(1)(c) of the Australian Citizenship Act 2007 – various provisions of Australian Citizenship Act 2007 considered – general eligibility for citizenship considered – applicant found to satisfy requirements under paragraphs 21(2)(a) and 21(2)(b) – general residence requirements considered – applicant’s absence from Australia, permanent residency and visa history considered – applicant found to not satisfy subsection 22(1) and subsections 22(1A) and 22(1B) found not applicable – discretion under subsection 22(9) considered – applicant found to not satisfy paragraph 22(9)(c) – other discretions considered under section 22 – none found to be applicable – special residence requirements considered – applicant found to not satisfy sections 22A and 22B – defence service requirement considered – applicant found to not satisfy section 23 – decision under review affirmed

[HLJW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 689 (29 March 2021); Emeritus Professor PA Fairall, Senior Member

CITIZENSHIP – application for citizenship by conferral – good character requirement – domestic violence – plea of guilty – good behaviour bond – denial of guilt – retraction by complainant – traffic offences – decision affirmed

[QYKW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 627 (22 March 2021); Senior Member C Puplick AM

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether Minister can be satisfied of the identity of the person – Rohingya – meaning of identity – application of Citizenship Procedural Instructions – decision under review set aside

Compensation

[Connelly and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 702 (30 March 2021); Deputy President G Humphries AO and Dr P Fricker OAM, Member

COMPENSATION – Military Rehabilitation and Compensation Commission – liability for injuries resulting in death – where cause of death is unknown – where multiple causes possibly implicated in fall resulting in death – whether death was contributed to a significant degree by his service – whether Applicant is entitled to the benefit of the doubt in uncertainty – Tribunal not satisfied that compensable conditions resulted in death – decision under review affirmed

[Du and Commonwealth Bank of Australia](#) (Compensation) [2021] AATA 626 (25 March 2021); Deputy President JW Constance

WORKERS' COMPENSATION – injury to cervical spine and lumbar spine – psychotic illness – whether Comcare liable to pay compensation – whether Applicant suffered an ailment – where Tribunal satisfied the Applicant suffered physical disorders in the neck and lower back – where Tribunal satisfied the Applicant suffered a psychotic disorder which includes an adjustment disorder with anxiety and depression – whether ailments contributed to, to a significant degree, by the Applicant's employment – where factors other than the Applicant's working conditions contributed to her physical ailments – where events in the Applicant's workplace did not contribute to her psychotic condition to a significant degree – where Tribunal satisfied in the alternative that the Applicant made a wilful and false representation that she did not suffer those diseases – decision affirmed

[Ducat and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 613 (24 March 2021); Dr I Alexander, Senior Member

WORKERS' COMPENSATION – Undated compensation claim – whether the Applicant's bilateral knee osteoarthritis was contributed to "in a material degree" by his service in the Australian army – independent expert evidence – decision under review affirmed

[Kaur and Comcare](#) (Compensation) [2021] AATA 585 (23 March 2021); Mr R Reitano, Member

COMPENSATION – whether Applicant's managers raising matters concerning Applicant's conduct and performance was the cause or significant deterioration of Applicant's ongoing adjustment disorder – disease as defined in s 5B – whether reasonable administrative action in a reasonable manner taken – whether injury the result of the administrative action – reasonable administrative action in a reasonable manner – decision under review affirmed

[Mitchell and Comcare](#) (Compensation) [2021] AATA 610 (23 March 2021); Senior Member R Cameron

COMPENSATION – whether Applicant still suffers from previously accepted injury – reasonable treatment – chiropractic and massage treatment – decision affirmed

[Scanlin and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 721 (31 March 2021); Deputy President JW Constance

VETERANS' AFFAIRS – compensation – left leg injury – whether injury arose out of, or in the course of, the Applicant's employment – where Applicant's injury occurred while on shore leave – where injury occurred while the Applicant was travelling to attend a volleyball game arranged by his employer – where employer sought to exercise control of the conduct of crew members on shore leave – where Applicant encouraged to attend the sporting event by his employer – where employer expected the Applicant to participate in the event and to arrange his own means of travel – decision set aside and substituted

Industrial Law

[Fink and Secretary, Attorney-General's Department](#) [2021] AATA 734 (31 March 2021); Ms AE Burke AO, Member

EMPLOYMENT – fair entitlements guarantee – entitlement to redundancy payment – when did employment cease – whether Applicant was employed by a small business – the interaction of the Corporations Act and Fair Entitlement Guarantee Act – insolvency principles – decision affirmed

Migration

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

(Migration) [2021] AATA 674 (29 March 2021); Dr Stewart Fenwick, Senior Member

MIGRATION – Mandatory visa cancellation – national of South Sudan – ex-citizen visa – failure to pass character test – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

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

(Migration) [2021] AATA 643 (22 March 2021); Senior Member C Puplick AM

IMMIGRATION – business visa – notice of intention to cancel visa not delivered – whether receipt of notice of intention to cancel was material – whether there was a denial of procedural fairness – decision set aside and remitted

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

(Migration) [2021] AATA 589 (16 February 2021); Mr AM Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of a Refugee (subclass 200) 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

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

(Migration) [2021] AATA 701 (30 March 2021); Ms R Bellamy, Member

MIGRATION – refusal of application for Partner (Provisional) (Class UF) visa under section 501(1) – where the visa applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 79 – voluntary manslaughter in United States of America – no prior or subsequent offending – demonstrated rehabilitation – remote risk of re-offending – spouse and children in Australia – decision under review set aside

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

(Migration) [2021] AATA 587 (17 March 2021); Mr R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category 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

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

(Migration) [2011] AATA 609 (23 March 2021); Deputy President Boyle

MIGRATION – decision of delegate not to revoke mandatory cancellation of visa – character test – whether there is another reason to revoke the mandatory cancellation – Direction 79 – primary and other considerations – Australia's non-refoulement obligations – ITOA found there is a real chance the Applicant would suffer serious harm if returned to Afghanistan – consequences of non-revocation – what should Tribunal consider – Direction 79 paras 14.1(2), 14.1(6) – detention for indeterminate period – effect on mental health – reviewable decision set aside and substituted

[YLFR and Minister for Immigration and Border Protection](#) (Migration) [2021] AATA 612 (19 March 2021); Ms R Bellamy, Member

MIGRATION – visa refusal – whether Applicant fails character test under s 501(6) – whether not of good character – whether more than minimal or remote risk of reoffending – historical offences committed when intoxicated – strong evidence of reform and rehabilitation – decision set aside and substituted

[YNNK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 642 (26 March 2021); Ms R Bellamy, Member

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

[Parsram Foods Pty Ltd](#) (Migration) [2021] AATA 446 (23 February 2021); P Emmerton, Member

MIGRATION – application for approval of nomination of position – direct entry stream – need for position – business model – diverse and expanding operation in specialist market – position a liaison between corporate headquarters and state office – visa applicant a long-term employee – decision under review set aside

[Wong](#) (Migration) [2021] AATA 537 (19 February 2021); C Burnett-Wake, Member

MIGRATION – Temporary Business Entry (Class UC) – Subclass 457 (Temporary Work (Skilled)) – no substantive visa held at time of application – factors beyond applicant’s control – without applicant’s consent, agent ticked box indicating applicant would withdraw visa application if nomination application refused – new nomination application made and approved – compelling reasons for granting visa – long separation from family, study and work in remote area – entitled to be granted visa on day last substantive visa held – decision under review remitted

[HUANG](#) (Migration) [2021] AATA 354 (11 February 2021); M Sripathy; Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – members of family unit – sponsor’s capacity to understand sponsorship obligations and fulfil undertaking – presumption of capacity – no requirement for assessment of capacity – previous carer visa assessment certificates did not assess capacity – recent opinions of treating geriatrician, psychiatrist and solicitor – decision under review remitted

[Pulatov](#) (Migration) [2021] AATA 386 (10 February 2021); D Crawshay Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – full-time study since turning 18 – short courses between completing equivalent of year 12 and commencing degree course in home country – application and letter of offer for degree study in Australia – application for student visa refused – English language requirement – “reasonable time” – decision under review remitted

[2005002](#) (Migration) [2021] AATA 507 (15 January 2021); A Younes, Senior Member

MIGRATION – cancellation – Bridging A (Class WA) visa – Subclass 010 (Bridging A) visa – risk to the health, safety or good order of a segment of the Australian community – applicant charged with an offence – applicant granted bail – likelihood of the risk eventuating – intention to remain permanently – applicant’s spouse expecting a child – financial and psychological hardship – Convention on the Rights of the Child applying to unborn children – decision under review affirmed

National Disability Insurance Scheme

[HPSC and National Disability Insurance Agency](#) [2021] AATA 727 (31 March 2021); Deputy President G Humphries AO

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – primary disability of anxiety – secondary disabilities of carnitine palmytoyltransferase deficiency type II and cyclic vomiting syndrome – whether impairments result in “substantially reduced functional capacity” to undertake any one or more specified activities – methodology used by experts to conduct assessment of level of impairment – decision made under section 20 of National Disability Insurance Scheme Act 2013 (Cth), that Applicant does not meet the access criteria to be a participant in the Scheme, is affirmed

[SCHW and National Disability Insurance Agency](#) [2021] AATA 591 (12 March 2021); Deputy President JW Constance and Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – dissociative identity disorder – whether funding of assistance dog is a reasonable and necessary support – where ‘Including Specific Types of Supports in Plans Operational Guideline – Assistance Animals’ not followed – where Tribunal satisfied the funding is a reasonable and necessary support – decision set aside and remitted

Practice and Procedure

[BKQQ and National Disability Insurance Agency](#) [2021] AATA 732 (31 March 2021); Ms K Buxton, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – application for review of decision to approve statement of supports in participant plan – interlocutory application for direction that Applicant undertake neuropsychological assessment – whether Tribunal has power to compel Applicant to undertake neuropsychological assessment under section 33 of the Administrative Appeals Tribunal Act 1975 (Cth) – application refused

[Francis and Inspector-General in Bankruptcy](#) [2021] AATA 644 (22 March 2021); The Hon. M Groom, Senior Member

BANKRUPTCY – annulment of bankruptcy – review by Tribunal of decision of Inspector-General in Bankruptcy of contribution assessment – all outstanding debts met – Trustees released – consideration of difference between annulment and discharge of bankruptcy – application dismissed under section 42B of the Administrative Appeals Tribunal Act 1975 (Cth)

PRACTICE AND PROCEDURE – bankruptcy – annulment of bankruptcy – decision sought by the applicant no longer of any practical effect and serves no other legitimate purpose – application has become frivolous and vexatious – application dismissed under section 42B of the Administrative Appeals Tribunal Act 1975 (Cth)

[Gaudron and National Disability Insurance Agency](#) [2021] AATA 615 (24 March 2021); Ms K Buxton, Member

PRACTICE AND PROCEDURE – Jurisdiction – National Disability Insurance Scheme – Death of applicant – whether Tribunal has jurisdiction to review decision when applicant is deceased – application dismissed

[MDCT and National Disability Insurance Agency](#) [2020] AATA 6036 (24 December 2020); The Hon Justice D G Thomas, President, Deputy President F Meagher and Ms K Buxton, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – application for review of decision to approve statement of supports in participant plan – interlocutory application for direction that Applicant provide access to all parts of their property for the purpose of an assessment by an occupational therapist – whether Tribunal has power to compel Applicant to facilitate occupational therapy assessment – application granted

[MDCT and National Disability Insurance Agency](#) [2021] AATA 580 (18 March 2021); The Hon Justice D G Thomas, President, Deputy President F Meagher and Ms K Buxton, Member

PRACTICE AND PROCEDURE – recusal application – application for recusal of Members constituted to hear application – where Applicant claims President of Tribunal affected by apprehended bias by nature of prior association with law firm representing the Respondent – where Applicant claims apprehended bias extends to other Members constituted to hear the application – where Applicant claims constituted Tribunal biased against Applicant by reference to interlocutory decision and comments made during interlocutory hearing – application for recusal refused

PRACTICE AND PROCEDURE – confidentiality order – application for confidentiality order under section 35 of the Administrative Appeals Tribunal Act 1975 (Cth) to prohibit publication of interlocutory decision – where Applicant no longer seeking non-publication of whole decision – where Applicant and Respondent both seek de-identification of named persons – where basis for de-identification considered – Order for non-publication of name of applicant or information tending to reveal identity of witness – orders made de-identifying named persons in the proceeding until further order

[RVNL and National Disability Insurance Agency](#) [2021] AATA 588 (18 March 2021); The Hon. John Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – Jurisdiction – whether internal review conducted – internal review not completed at the time of application for review – Tribunal does not have jurisdiction – application dismissed

[Sahai and Australian Securities and Investments Commission](#) [2021] AATA 590 (18 March 2021); Deputy President BJ McCabe

PRACTICE & PROCEDURE – where the applicant seeks stay and confidentiality orders under ss 41 and 35 of the Administrative Appeals Tribunal Act 1975 (Cth) – whereas a presumption exists as to openness and transparency of proceedings – whether discretion of the Tribunal is enlivened – whether a stay is necessary to ensure the efficacy of review or hearing is not rendered nugatory – whether grounds for confidentiality orders made out – whereas reputational damage or financial hardship alone is not sufficient – stay and confidentiality orders not granted – applications dismissed

Professions and Trades

[Logic Accountants & Tax Professionals Pty Ltd and Tax Practitioners Board](#) [2021] AATA 676 (29 March 2021); Ms DK Grigg, Member

TAX AGENT REGISTRATION – termination of applicants’ registrations as tax agents – whether applicants breached Code of Professional Conduct – whether applicants “fit and “proper” as required by the Tax Agents Services Act 2009 – decisions under review affirmed

[McCarthy and Tax Practitioners Board](#) [2021] AATA 641 (25 March 2021); Ms DK Grigg, Member

TAX AGENT REGISTRATION – termination of applicant’s registration as tax agents – whether applicants breached Code of Professional Conduct – whether applicant “fit and “proper” as required by the Tax Agents Services Act 2009 – appropriate length of prohibition to reapply for registration – decision under review varied

Refugee

[1620532](#) (Refugee) [2021] AATA 720 (12 January 2021); J Marquard, Member

REFUGEE – protection visa – Nigeria – religion – Catholic – Christian convert – fear of harm at the hands of pagan worshippers – Ikolo cult – ritual killing – witnessed human sacrifice as a child – claimed attacks on family members – s.438 certificate – anonymous allegations – natural justice obligations – credibility assessment – discrepancies in visa applications – vulnerabilities of the applicant – delay in seeking protection – Christian population in Nigeria – decision under review affirmed

[1606818](#) (Refugee) [2021] AATA 573 (19 January 2021); D Creedon, Member

REFUGEE – protection visa – Egypt – religion – Coptic Christian – particular social group – single Coptic Christian women – victim of harassment and threats – pressured to convert to Islam – fear of kidnapping – decision under review remitted

[1605785](#) (Refugee) [2021] AATA 582 (21 January 2021); D McCulloch, Member

REFUGEE – protection visa – Indonesia – complementary protection criterion – ethnically Chinese Indonesian – anti-Chinese riots of 1998 – Chinese businessman employing Indonesians – Christian – credibility concern – late claim not raised earlier – mental health issues – decision under review affirmed

[1712570](#) (Refugee) [2021] AATA 508 (29 January 2021); M Sripathy, Member

REFUGEE – protection visa – Stateless – race – Rohingya – religion – Muslim – country of former habitual residence – torture – family composition – killing of family members – fraudulently obtained passport now expired – forced labour – travel restrictions – decision under review remitted

[1803020](#) (Refugee) [2021] AATA 733 (1 February 2021); D Connolly, Member

REFUGEE – protection visa – Fiji – Federal Circuit Court remittal – name change – political opinion – vocal and active supporter of the SDL political party – religion – active member of the Methodist Church – criticism of the military regime – association with Pacific Indigenous Samaritan Association Inc (PISAI) and Ms Oni Kirwin – human rights abuses – Buturaki or torture culture – credibility concerns – inconsistent and unreliable evidence – legal departure on passport – voluntary return to home country – delay in seeking protection – decision under review affirmed

[1711245](#) (Refugee) [2021] AATA 636 (10 February 2021); L Mojsin, Member

REFUGEE – protection visa – Morocco – business dispute with wholesaler – perceived as being involved in fraud – unable to repay the money owed – particular social group – victims of dishonest partners – victims of fraud – complementary protection criterion – state protection – criminal law and legal system – corruption and bribery – verbal threats from non-state actors – decision under review affirmed

[1621445](#) (Refugee) [2021] AATA 747 (24 February 2021); M McAdam, Member

REFUGEE – protection visa – Bangladesh – fear of ex-wife's influential relatives – ex-wife's transgender and bisexual background – brother's kidnapping – credibility issues – decision under review affirmed

Social Services

[Brassington and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 611 (19 March 2021); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – asthma – hepatitis C – kidney failure – chronic pain – degenerative arthritis – chronic lower back pain – bilateral lower limb compartment syndrome – rhabdomyolysis with secondary loss of nerves – major depression – post traumatic stress disorder – diabetes – backpay – whether the applicant's conditions rate 20 points or more under the Impairment Tables – decision under review affirmed

[Fletcher; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 577 (19 March 2021); Senior Member C Puplick AM

SOCIAL SECURITY – Disability Support Pension – Family Tax Benefit – where Disability Support Pension granted in error and later cancelled resulting in overpayment – whether debt should be recovered – writing off debt – waiver of debt arising from sole administrative error – whether there was sole administrative error – waiver of debt in special circumstances – whether special circumstances exist – reviewable decision is set aside and substituted

[Forrest and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 586 (23 March 2021); Brigadier AG Warner, AM LVO (Retd), Member

SOCIAL SECURITY – Family Tax Benefit – whether Applicant was overpaid Family Tax Benefit – whether debt due to Commonwealth – whether debt should be recovered – waiver – whether sole administrative error – whether there are special circumstances – whether Applicant knowingly failed to comply with requirements of family assistance law – write-off – decision under review affirmed

[Glover; Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 722 (31 March 2021); Mr P Ranson, Member

SOCIAL SECURITY – Newstart Allowance – overpayment – income reporting – whether there is a debt – what is the amount of debt – whether debt should be recovered – whether debt should be written off debt or waived – whether there is sole administrative error – whether there are special circumstances – reviewable decision is set aside and substituted

[Hariz and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 614 (24 March 2021); Senior Member C Puplick AM

SOCIAL SECURITY – portability of age pension – suspension of age pension while applicant outside Australia – status of policy in decision-making – whether the Applicant was a returning resident under s 7(3) of the Social Security Act 1991 (Cth) – nature of the accommodation used by the Applicant in Australia – nature and extent of the family relationships the Applicant has in Australia – nature and extent of the Applicant’s employment, business or financial ties in Australia – nature and extent of the Applicant’s assets located in Australia – frequency and duration of the Applicant’s travel outside Australia – other considerations – decision under review set aside and remitted

[Kara and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 699 (30 March 2021); Senior Member Puplick

SOCIAL SECURITY – disability support pension – cancellation of disability support pension – re-application for disability support pension – whether the Applicant qualified for disability support pension – whether the Applicant had a physical, intellectual or psychiatric impairment under s 94(1)(a) of the Social Security Act 1991 (Cth) – whether the Applicant’s impairment was of 20 points or more under s 94(1)(b) of the Social Security Act 1991 (Cth) – whether the Applicant participated in a program of support under s 94(1)(c)(ii) of the Social Security Act 1991 (Cth) – whether the Applicant qualified for an exemption from program of support requirements – decision under review affirmed

[Tattam and Secretary, Department of Health](#) (Social services second review) [2021] AATA 625 (24 March 2021); Senior Member PJ Clauson AM

SOCIAL SECURITY – aged care support – permanent residential aged care – financial hardship assistance – asset test – value of assets – whether finance loan is an unrealisable asset – where loan was granted for benefit of family – where loan used to support family property – decision affirmed

[Tricarico and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 723 (31 March 2021); Ms D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[White and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 672 (29 March 2021); Ms AE Burke AO, Member

SOCIAL SECURITY – Disability support pension - overpayment – undeclared assets - debt due to the Commonwealth – whether recovery of debt should be written off or waived – debt not attributable solely to error made by Centrelink – whether special circumstances – decision under review affirmed

Taxation

[Coronica and Commissioner of Taxation](#) (Taxation) [2021] AATA 745 (1 April 2021); Senior Member K James

SUPERANNUATION – self-managed superannuation fund – trustee’s failure to comply with regulatory requirements in relation to in-house assets – acquisition of an asset from a related party – loan to a related party – sole purpose test – decision to issue notice of non-compliance – meaning of money-decision affirmed

SUPERANNUATION – self-managed superannuation fund – decision to disqualify Applicant as trustee of self-managed superannuation fund – nature, seriousness and number of contraventions – whether Applicant fit and proper person to be a trustee – whether breach by trustee of Trust Deed – whether breach by trustee of covenants – decision reserved

[PDXS and Commissioner of Taxation](#) (Taxation) [2021] AATA 725 (31 March 2021); Dr M Evans-Bonner, Senior Member

TAXATION – income tax – Applicant made statements regarding cash income to Western Australia Police during Police interview – Police froze \$79,545 cash found in Applicant’s home and car – Police referred Applicant to Australian Taxation Office – default assessments of income tax for 2011 and 2014 income years – default amended assessments of income tax for 2012 and 2013 income years – assessment of penalties – whether default income tax assessments were excessive – whether administrative penalties were excessive – whether all or part of penalty should be remitted – Applicant knowingly made false statements about his income – Tribunal does not have jurisdiction to review the Commissioner’s decision not to remit any general interest charge – Applicant alleged Commissioner did not make a genuine attempt to estimate his taxable income – whether Applicant met burden of proof – Applicant unable to meet burden – Objection Decision affirmed

[PKWK and Innovation and Science Australia](#) (Taxation) [2021] AATA 706 (24 March 2021); Senior Member R Cameron

TAXATION – research and development tax offset – activities relating to development of soil treatment facility – whether activities were “core R & D activities” or “supporting R & D activities” within the meaning of Division 355 of the Income Tax Assessment Act 1997 – analysis of expert evidence – decision set aside

Veterans' Affairs

[Leitch and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 578 (18 March 2021); Ms S Taglieri SC, Member

Veterans’ entitlements – eligibility for increase in pension rate – whether a disease or injury is defence-caused – alcohol use disorder – generalised anxiety disorder – temporal requirements of Statement of Principles – decision under review is 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
Calvey and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 277
Kaye and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4820
Li and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 169
QJYD and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1
Simpson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 78
WZKB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2659

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Apted	[2020] AATA 5139	[2021] FCAFC 45
HGMZ v Secretary, Department of Social Services	[2020] AATA 978	[2021] FCA 280
Le v Commissioner of Taxation	[2019] AATA 5410	[2021] FCA 303
Pavey v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2019] AATA 4198	[2021] FCA 258
QKJY v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2689	[2021] FCA 233



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