



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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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

[Brower and Dearborn](#) (Child support) [2021] AATA 696 (4 February 2021); M Martellotta, 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 – whether reasonable action taken by parent with reduced care – whether an interim period should apply – decision under review affirmed

[Devoe and Devoe](#) (Child support) [2021] AATA 697 (4 February 2021); Y Webb, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – reduction in income due to ill health – decision under review set aside and substituted

[Malghum and Greaves](#) (Child support) [2021] AATA 468 (18 January 2021); P Noonan, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – special needs of the child – costs of special needs do not significantly affect the cost of maintaining the child – no ground for departure established – refuse to make determination – s98F Child Support (Assessment) Act 1989 – decision under review set aside and substituted

[Michelmore and Newhook](#) (Child support) [2021] AATA 691 (9 February 2021); M Douglas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – child living part of time with grandparent – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Tutton and Tutton](#) (Child support) [2021] AATA 464 (21 January 2021); R Ellis, Senior Member

CHILD SUPPORT – non-agency payment – prescribed payment for school fees – payments not credited – agreement to share education costs – decision under review affirmed

Aviation

[Robey and Civil Aviation Safety Authority](#) [2021] AATA 854 (12 April 2021); Deputy President B W Rayment OAM QC and Emeritus Professor P A Fairall, Senior Member

CIVIL AVIATION – application for conditional Class 2 medical certificate – where applicant has history of seizures – where applicant had a seizure during flight – where applicant seizure free for 7 years and off medication for 13 months – whether there is a likelihood that application would become incapacitated during flight – whether any appropriate conditions would be sufficient to mitigate risk – where no appropriate conditions would be sufficient – decision under review affirmed

Citizenship

[Ali Abed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 798 (8 April 2021); Deputy President R I Hanger AM QC

CITIZENSHIP – character test – application for citizenship by conferral – applicant is Iraqi national – Titre de Voyage asserted applicant was stateless – whether applicant claimed to be stateless – whether applicant incorrectly asserted her husband was stateless – whether applicant incorrectly asserted her daughter was stateless – whether applicant misled officials – whether applicant is of good character – decision set aside and remitted

[Jaber and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 793 (8 April 2021); Senior Member A Poljak

CITIZENSHIP – application for citizenship by conferral – application refused – where delegate not satisfied the application was of good character – definition of good character – offenses involving domestic violence – traffic offenses – where Tribunal not satisfied applicant remorseful for his conduct – where applicant has no insight into gravity of his offending – Tribunal not satisfied applicant has demonstrated an enduring pattern of good conduct – decision affirmed

[Joskun and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 802 (9 April 2021); Senior Member C Puplick AM

CITIZENSHIP – refusal of a citizenship application – whether the applicant is of good character – criminal conduct – traffic offences – drug offences – failure to disclose offences – mitigating factors – significant amount of time passed since offences – satisfied the applicant is of good character – decision set aside

[Thakur and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 824 (9 April 2021); Mr S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – drink driving and traffic offences – whether applicant is of good character – application of Citizenship Procedural Instructions – decision under review set aside

Compensation

[Bell and Comcare](#) (Compensation) [2021] AATA 832 (12 April 2021); Ms D Mitchell, Member

COMPENSATION – accepted injury - major depressive disorder and panic disorder with agoraphobia – whether the Applicant continues to suffer the effects of the accepted injury – whether permanent impairment – decision under review affirmed

[Brown and Military Rehabilitation and Compensation Commission](#) (Compensation) [2021] AATA 864 (14 April 2021); Senior Member L Kirk

COMPENSATION – claim for compensation of an injury – Parkinson’s disease diagnosed after Applicant served in Australian Defence Force – whether liability exists under section 14 of the Safety, Rehabilitation and Compensation Act in respect of Parkinson’s disease diagnosed on 29 July 2013 – whether Applicant’s claimed condition was contributed to ‘to a significant degree’ by the Applicant’s service – whether smoking is a causal factor for the development of Parkinson’s disease – no evidence that cessation of smoking contributes to Parkinson’s disease – decision under review affirmed.

[Hawk and Linfox Armaguard Pty Limited](#) (Compensation) [2021] AATA 800 (8 April 2021); The Hon. J Pascoe AC CVO, Deputy President

WORKERS COMPENSATION – psychological injury suffered in the course of employment – whether Applicant continues to suffer from effects of accepted psychological condition – whether Applicant’s psychological condition results in ongoing need for medical treatment under s 16 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether Applicant’s accepted psychological condition results in ongoing incapacity for employment – whether Applicant is entitled to compensation under s 19 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision set aside and remitted

[Perry and Go Marine Group Pty Ltd](#) (Compensation) [2021] AATA 830 (9 April 2021); Deputy President J Sosso

COMPENSATION – osteoarthritis – aggravation of osteoarthritis – condition contributed to by employment – material degree test – pre-existing condition – obesity – decision affirmed

[Vros and Australian Postal Corporation](#) (Compensation) [2021] AATA 791 (8 April 2021); Senior Member C J Furnell

COMPENSATION – Ceased effects decision – condition an injury – left knee medial meniscus tear – pre-existing degenerative condition – osteoarthritis – injury aggravated pre-existing condition – injury materially contributes to incapacity and impairment – decision set aside and remitted for reconsideration with direction

Permanent impairment decision – impairment is not permanent – real prospect of improvement – knee replacement surgery – degree of impairment not more than ten percent – decision affirmed

Industrial Law

[Campbell and Secretary, Attorney General's Department](#) [2021] AATA 801 (9 April 2021); S Evans, Member

FAIR ENTITLEMENTS GUARANTEE CLAIM – claim for an advance – applicable governing instrument for the purposes of establishing Applicant's weekly wage – terms of Applicant's employment – agreement between Applicant and employer – status of oral agreement – appropriate governing instrument was oral agreement – decision under review remitted

Migration

[Angell and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 862 (30 March 2021); Senior Member A Poljak

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 – expectations of the Australian community – decision under review affirmed

[CRBC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 863 (14 April 2021); The Hon. John 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

[Davis and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 774 (6 April 2021); S Evans, Member

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass character test – Ministerial Direction No. 79 – primary considerations – protection of the Australian community from criminal or other serious conduct – best interests of minor children – other considerations – decision under review affirmed

[DTCB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 833 (12 April 2021); Mr R Maguire, Member

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

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

(Migration) [2021] AATA 760 (1 April 2021); Senior Member K Millar

MIGRATION – mandatory cancellation of applicant’s visa under s 501(3A) of Migration Act 1958 – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – Direction No. 79 – primary considerations – nature and seriousness of conduct – cumulative effect of reoffending – risk to Australian community – best interests of minor children – expectations of Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

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

(Migration) [2021] AATA 776 (7 April 2021); Senior Member D J Morris

MIGRATION – mandatory cancellation of visa – applicant is citizen of New Zealand – substantial criminal records – whether mandatory cancellation of visa should be revoked – contents of Direction No. 79 – primary considerations – protection of the Australian community – risk of re-offending – best interests of minor children in Australia affected by decision – expectations of Australian community – other relevant considerations – strength, nature and duration of ties – extent of impediments if applicant removed – additional submission that ICCPR Article 14 means Australia is applicant’s ‘own country’ – ICCPR not part of Australia’s domestic law – discretion not enlivened so decision under review affirmed

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

(Migration) [2021] AATA 866 (13 April 2021); Senior Member T Tavoularis

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

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

(Migration) [2021] AATA 792 (8 April 2021); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – unacceptable risk of reoffending – other considerations – non-refoulement obligations – risk of harm if returned – no prospect of indefinite detention – decision under review affirmed

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

(Migration) [2021] AATA 753 (1 April 2021); S Burford, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – drug offences, property offences, firearms offences, driving offences – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 34-year-old man who arrived in Australia as a three-year-old child – extent of impediments if returned to New Zealand – impact of COVID-19 pandemic – reviewable decision affirmed

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

(Migration) [2021] AATA 797 (8 April 2021); R West, Member

MIGRATION – refusal of resident visa – Visa Applicant off-shore – criminal offences – character test under s 501(6)(d)(i) not satisfied – discretion under s.501(6) – factors to be considered under Direction 79 – discretion in favour of not refusing visa – matter remitted to Minister for reconsideration

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

(Migration) [2021] AATA 860 (13 April 2021); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – serious offending against children – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – unacceptable risk of reoffending – other considerations – non-refoulement obligations – risk of harm if returned – decision under review affirmed

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

(Migration) [2021] AATA 795 (8 April 2021); Senior Member D J Morris

MIGRATION – remittal from Federal Court of Australia – applicant is Iranian citizen – mandatory cancellation of visa – whether mandatory cancellation should be revoked – Direction No. 79 – significant history of offending including violent offending – primary considerations – protection of the Australian community – best interests of minor children in Australia – expectations of the Australian community – other considerations – non-refoulement obligations – ties with Australia – extent of impediments if removed – applicant previously refused protection visa – country of citizenship’s policy on involuntary returnees – special consideration of applicant’s prospects in relation to detention if visa not restored – decision under review is affirmed

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

(Migration) [2021] AATA 777 (6 April 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

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

(Migration) [2021] AATA 875 (14 April 2021); Senior Member L Kirk

VISA CANCELLATION – decision not to revoke cancellation under s 501CA – whether the applicant passes the character test – whether there is another reason for the Mandatory Visa Cancellation Decision to be revoked – best interests of minor children – strength, nature and duration of ties – extent of impediments if removed – reviewable decision set aside and substituted

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

(Migration) [2021] AATA 874 (14 April 2021); Senior Member C J Furnell

MIGRATION – mandatory cancellation of Global Special Humanitarian (Class BA) (Subclass 202) visa – Afghanistan – substantial criminal record – applicant does not pass character test – whether there is another reason why mandatory cancellation should be revoked – Direction 79 – primary and other considerations – decision affirmed

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

(Migration) [2021] AATA 853 (13 April 2021); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – other considerations – duration of ties – low risk of further offending, risk of harm, extent of impediments and non-refoulement obligations outweigh the primary considerations of the protection and expectations of the Australian community – decision set aside

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

(Migration) [2021] AATA 881 (14 April 2021); Deputy President B W Rayment OAM QC

MIGRATION – mandatory cancellation of visa on character grounds under s 501(3A) – where offending was committed when applicant was 18 years of age – where applicant had traumatic past – Direction No. 79 considered – primary considerations – protection of the Australian community – where applicant was not released on parole due to cancellation of visa – where applicant was transferred to higher security prison due to cancellation of visa – where applicant has matured over time – where risk of recidivism low – best interests of minor children – other considerations – whether international non-refoulement obligations exist – whether applicant would face harm if sent to Sudan or South Sudan – decision set aside and substituted

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

(Migration) [2021] AATA 882 (14 April 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

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

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

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

[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

[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

Practice and Procedure

[BBQF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 756 (25 March 2021); Senior Member A Nikolic AM CSC

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

[Doubouya and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 880 (15 April 2021); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – extension of time – factors that are relevant when considering an extension of time – awareness of appeal rights and explanation for delay – length of delay – prejudice to the Respondent and general public – merits of the substantive application – whether alternative avenues of relief available to the Applicant – Tribunal not satisfied extension of time reasonable in all the circumstances – application for extension of time refused

[Hardy \(by his tutor, Lynette Maree Hardy\) and Australian Securities and Investments Commission](#) [2021] AATA 799 (8 February 2021); Deputy President B J McCabe

PRACTICE AND PROCEDURE – objection to summons – where summons issued to applicant – where summons issued to obtain evidence of applicant’s capacity – where summons concerns particulars of other proceedings in which the applicant is a party – whether documents sought are relevant to these proceedings – whether the creation of a document in order to comply would be too onerous on the applicant – whether compliance in general would be oppressive – summons amended – summons upheld

[Jones and National Disability Insurance Agency](#) [2021] AATA 852 (13 April 2021); Mr R Cameron, 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 to revoke direction involving Applicant undertaking occupational therapist assessment – risk of suicide or suicidal ideation – procedural fairness – natural justice – direction revoked – application granted

[Matson and Attorney-General's Department](#) (Freedom of information) [2021] AATA 788 (7 April 2021); Deputy President G Humphries AO

PRACTICE AND PROCEDURE – application for a confidentiality order – application for release of documents from implied undertaking – application for adjournment of interlocutory proceedings – where documents are exempt from production under s 33 of the Freedom of Information Act 1982 – where Tribunal cannot disclose material which may ultimately be found to be an exempt document – where refusal to make confidentiality order would obviate the purpose of substantive application – confidentiality order granted – where release from implied undertaking would have no utility – release from implied undertaking refused – application for adjournment refused

[Onassys and Comcare](#) (Compensation) [2021] AATA 829 (12 April 2021); The Hon. J Pascoe AC CVO, Deputy President

WORKERS' COMPENSATION – interlocutory decision – whether the Applicant is attempting to relitigate claims previously settled – whether the Applicant should be permitted to relitigate claims previously settled – whether notice given as soon as possible in respect of injuries – whether the Respondent is prejudiced – whether the Tribunal has jurisdiction to deal with aggravations of an injury subject to a settled claim – application dismissed as abuse of process

[Thurling and Comcare](#) (Compensation) [2021] AATA 752 (1 April 2021); Senior Member M J McGrowdie

WORKERS COMPENSATION – extension of time application – workplace injury claim – where changes to accepted conditions – where debt raised – principles to be applied – Applicant's explanation for delay – where waiver of debt refused – where Applicant sought legal advice – where delay viewed in context of entire history – prejudice to the respondent considered – where merits of substantive application considered – extension of time granted

[Wantee and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 759 (26 March 2021); S Barton, Member

PRACTICE AND PROCEDURE – extension of time application – length of delay – explanation for delay – prejudice to Respondent – prospects of success – refusal of application for Australian citizenship by conferral – satisfaction of identity – insufficient evidence regarding identity of the Applicant – limited primary documentation

[Watts and Commissioner of Taxation](#) (Taxation) [2021] AATA 758 (3 March 2021); Deputy President B J McCabe

PRACTICE AND PROCEDURE – whether decision that is subject of the application is reviewable – whether applicant has standing to bring an application on behalf of a company that has been wound-up – whether applicant has standing to seek review of the issuing of Superannuation Guarantee Charges and Director Penalty Notices – the applicant does not have standing – application dismissed

[Wilkinson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 751 (4 March 2021); Senior Member A Poljak

CITIZENSHIP – citizenship by descent – whether the application for review had reasonable prospects of success – relevant decision on appeal – applicant's matter should be properly considered in light of specific circumstances – applicant's similarly adopted sibling granted Australian citizenship – dismissal application refused

Professions and Trades

[Anderson and Victorian Building Authority](#) [2021] AATA 761 (6 April 2021); Senior Member R Pintos-Lopez

MUTUAL RECOGNITION – mutual recognition of occupations between States – Applicant holds a Tradesperson's Licence (Water supply, Sanitary and Drainage Plumbing) in Western Australia – Applicant applied for registration as a plumbing practitioner in Victoria – Respondent refused to register the Applicant in the classes of gasfitting and irrigation (non-agricultural) work – Ministerial Declaration – the equivalence of occupations – equivalence cannot be achieved by conditions – decision under review affirmed

Refugee

[1614393](#) (Refugee) [2020] AATA 6027 (5 March 2020); Dr C Huntly, Member

REFUGEE – protection visa – Uganda – member of a particular social group – homosexual – one important relationship with a man in Australia followed by relationships with men and women – credibility – delay in applying for protection – applied after student visa refused, bridging visa expired and period as unlawful non-citizen – vague, ambiguous and illogical evidence – no public or social profile as gay – no evidence of harm – decision under review affirmed

[1703435](#) (Refugee) [2021] AATA 516 (1 February 2021); H Sanderson, Member

REFUGEE – Protection visa – India – arranged marriage – threatened by former husband – domestic violence – husband withdrew sponsorship of Partner visa – a divorced single woman – provided false or misleading information to the Department – credibility concerns – decision under review affirmed

[1708133](#) (Refugee) [2021] AATA 704 (5 February 2021); D Creedon, Member

REFUGEE – protection visa – Philippines – political opinion – Kilusang Magbubukid ng Pilipinas (KLM) Party – race – 'Lumad' ethnicity – past harm suffered – fear of judicial killing – land grabbing off Lumad peoples – political activism – return visit to the Philippines – anti-terrorism laws – decision under review affirmed

[1709126](#) (Refugee) [2021] AATA 781 (18 February 2021); D Creedon, Member

REFUGEE – protection visa – El Salvador – street gangs – physical, sexual and psychological violence – Mara Salvatrucha (MS-13) – 18th Street Gang (Mara 18) – particular social group – single woman of lower socio-economic status – rate of femicide – perceived wealthy returnee – young boy raised in an English-speaking, developed country – targeted for recruitment by street gangs – causal nexus – complementary protection – risk shared by the general population – individual exposure to the risk – decision under review remitted

[1711795](#) (Refugee) [2020] AATA 6040 (17 February 2020); J Marquard, Member

REFUGEE – Protection visa – Brazil – stress of the natural disaster – economic hardship – business dispute – travelled to Australia for better opportunities for professional growth – gangster – coronavirus – distress or anxiety caused by past event would not amount to persecution – no well-founded fear – decision under review affirmed

[1712162](#) (Refugee) [2021] AATA 778 (25 February 2021); T Flood, Member

REFUGEE – protection visa – Bangladesh – particular social group – twice divorced women – women in an extramarital de facto relationship – mothers with children born out of wedlock – physical beatings and verbal abuse – child with multiple medical conditions – applicant’s physical and mental health – country information – gender-based violence – legal, religious, societal and family attitudes – internal relocation – extrajudicial punishments – social stigma and ostracism – state protection – decision under review remitted

[1724111](#) (Refugee) [2021] AATA 684 (26 February 2021); D Dragovic, Senior Member

REFUGEE – protection visa – Pakistan – political opinion – People’s Student Federation – religion – conversion to Shia – particular social group – homosexual – murder of the applicant’s father – child abuse – threats from family political opponents – state protection – decision under review remitted

[1713060](#) (Refugee) [2021] AATA 567 (13 January 2021); S Baker, Member

REFUGEE – protection visa – Pakistan – incomplete and incorrect information provided in visa application – name, date and place of birth and citizenship – correct information provided in citizenship identity interview – religion and ethnicity – Afghani Shia Hazara born and living in Pakistan – discretion to cancel visa – country information – would have engaged protection obligations in any case – hardship to Australian citizen wife and children if visa cancelled – decision under review set aside

[1720270](#) (Refugee) [2021] AATA 632 (22 February 2021); Dr I O’Connell, Senior Member

REFUGEE – Safe Haven Enterprise Visa – Sri Lanka – familial association with the LTTE – imputed association with the LTTE – incidents of claimed torture took place at a period of time when he was not in Sri Lanka – applicant has resided for a significant part of his life in India – failed asylum seeker – credibility concerns – decision under review affirmed

[1916932](#) (Refugee) [2021] AATA 838 (3 March 2021); A Younes, Senior Member

REFUGEE – cancellation – protection visa – Iran – risk to the safety of the Australian community – applicant charged and convicted of robbery – character test – suffering domestic violence – victim of sexual abuse – victim in a pending civil matter – compelling need to remain in Australia – non-refoulement obligations – positive rehabilitation prospects – United Nations Convention on the Rights of the Child – hardship on the applicant’s family – decision under review set aside

[2005215](#) (Refugee) [2020] AATA 6034 (21 December 2020); J Marquard, Member

REFUGEE – protection visa – Ethiopia – Federal Court remittal – member of a particular social group – person with serious mental illness – ethnicity – imputed political opinion – step-brother of official of previous government involved in human rights abuses – drug user – previous visa cancelled on character grounds – untreated mental health conditions exacerbated by drug use – criminal convictions and imprisonment – suicide attempts – mental health treatment – immigration detention – country information – new government, political conditions and ethnic conflicts – drug and mental health treatment services – discrimination and stigma – no family, support network or ability to subsist – decision under review remitted

Social Services

[D'Ascanio and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 849 (9 April 2021); I Thompson, Member

SOCIAL SECURITY – disability support pension – whether the applicant's conditions were fully diagnosed, fully treated and fully stabilised at the date of the claim or within 13 weeks – decision under review affirmed

[Hare and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 790 (7 April 2021); S Evans, Member

SOCIAL SECURITY – disability support pension – whether the Applicant has a disability of at least 20 points under Impairment Table – whether the impairment was fully diagnosed, fully treated and stabilised – whether the impairment was present at time of claim or within 13 weeks – decision affirmed

[Harrison and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 879 (5 March 2021); Dr S Fenwick, Senior Member

SOCIAL SECURITY – application for disability support pension – whether qualified – conditions of the spine and hip – whether impairment attracts rating of 20 points or more under Impairment Tables – applicant did not meet the qualifying criteria – decision under review affirmed

[Kelly and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 775 (7 April 2021); Senior Member P E Nolan

SOCIAL SECURITY – review of decision to raise and recover a rent assistance debt – whether Applicant overpaid rent assistance – whether the debt should be recovered in part or in full – whether special circumstances exist – decision under review affirmed

[Kim and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 831 (12 April 2021); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – Newstart Allowance – Family Tax Benefit – whether Applicant was member of a couple – whether Applicant was overpaid Newstart Allowance - whether debt should be recovered – whether there are grounds to write off debt – whether there are grounds to waive recovery of all or part of the debt – sole administrative error – special circumstances – where Applicant knowingly failed to report partner's income – reviewable decision is set aside and substituted

[Mousawi and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 850 (13 April 2021); Senior Member D J Morris

SOCIAL SECURITY – benefits, entitlements and pensions – cancellation of parenting payment – parenting payment debts – pension education supplement debts – child care benefit debts – family tax benefit debts – school kids bonus debt – newborn upfront payment debt – the decision of the Social Services and Child Support Division (first tier) – the nature of that decision – second tier review limited by directions or recommendations in the decision at first tier – which debts are now before the Tribunal for review – consideration of whether the applicant was a member of a couple in the specified period – consideration of circumstances – factors to be taken into account – if the applicant found to be overpaid benefits whether the overpayments are debts due to the Commonwealth – whether all or part of the debts should be recovered – decision under review is affirmed

[QWPT and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 878 (13 April 2021); Ms K Parker, Member

CHILD SUPPORT – review of care percentage determinations for the purpose of family tax benefits – actual care varied from shared care arrangements prescribed in Court orders – whether interim period under s 35C applied – whether Applicant took “reasonable action” to seek compliance by Other Party with Court orders – some conflicting evidence of extent of actual care – nomination of relevant “care period” by which to assess extent of actual care – comparison of different care records – decision under review set aside – care percentage determinations revoked after interim period ended – new care percentage determination made to reflect actual care

[Vicaretti; Secretary, Department of Social Services and](#) (Social services second review) [2021] AATA 789 (25 March 2021); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – multiple sclerosis – disability support pension – continuing inability to work – 15 hour work capacity rule – support to work from employer – decision under review affirmed

[Weston and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 876 (15 April 2021); Brigadier A G Warner, AM LVO (Retd), Member

SOCIAL SECURITY – Youth Allowance – whether Applicant was overpaid Youth Allowance in the relevant period – whether data matching and Robodebt factors were involved in creating the debt – whether overpayment a recoverable debt – whether write off or waiver provisions available – administrative error – special circumstances – whether a penalty applies to debt – decision under review, as varied by recalculation of the Youth Allowance debt, affirmed

Veterans' Affairs

[Osmond and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 851 (9 April 2021); Dr N A Manetta, Senior Member and Lt-Col R Ormston, Member

VETERANS' AFFAIRS – war widow's pension – dependant – definition of partner – definition of member of a couple – whether applicant and former husband were living together as a de facto couple after their divorce – held they were not - decision under review affirmed

[Reid and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 877 (15 April 2021); Mr A Ward, Member and Dr L Stephan, Member

VETERANS' AFFAIRS – compounding injuries and illness – ability to undertake remunerative work – whether the Applicant's war-caused disease alone prevents them from undertaking remunerative work – whether the Applicant is entitled to the special or intermediate pension rate – 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
Matenga and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 299
Ngata and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 376
PGDX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 339

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Aitchison v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2422	[2021] FCA 357
Dring v Telstra Corporation Ltd	[2018] AATA 3149	[2021] FCAFC 50 [2020] FCA 699
Gan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4236	[2021] FCA 375
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v PDWL	[2020] AATA 485	[2021] FCAFC 48 [2020] FCA 1354
VPKY v Minister for Home Affairs & Ors	[2019] AATA 352	[2019] FCA 1767 [2020] FCA 1209 [2021] HCATrans 058
YYPF v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4564	[2021] FCA 379

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 26 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:

immune-checkpoint inhibitors and interferon as a factor in diabetes mellitus

<https://www.legislation.gov.au/Details/C2021G00240>

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>

diabetes mellitus (Balance of Probabilities) - No. 49 of 2020

<https://www.legislation.gov.au/Details/F2020L00822>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 27 April 2021:

ankylosing spondylitis (Reasonable Hypothesis) - No. 39 of 2021

<https://www.legislation.gov.au/Details/F2021L00364>

ankylosing spondylitis (Balance of Probabilities) - No. 40 of 2021

<https://www.legislation.gov.au/Details/F2021L00362>

malignant neoplasm of the kidney (Reasonable Hypothesis) - No. 41 of 2021

<https://www.legislation.gov.au/Details/F2021L00358>

malignant neoplasm of the kidney (Balance of Probabilities) - No. 42 of 2021
<https://www.legislation.gov.au/Details/F2021L00359>

seborrhoeic dermatitis (Reasonable Hypothesis) - No. 43 of 2021
<https://www.legislation.gov.au/Details/F2021L00352>

seborrhoeic dermatitis (Balance of Probabilities) - No. 44 of 2021
<https://www.legislation.gov.au/Details/F2021L00353>

posterior tibialis tendinopathy (Reasonable Hypothesis) - No. 45 of 2021
<https://www.legislation.gov.au/Details/F2021L00350>

posterior tibialis tendinopathy (Balance of Probabilities) - No. 46 of 2021
<https://www.legislation.gov.au/Details/F2021L00351>

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 27 April 2021:

Ankylosing spondylitis - No. 3 of 2013
<https://www.legislation.gov.au/Details/F2013L00018>

Ankylosing spondylitis - No. 4 of 2013
<https://www.legislation.gov.au/Details/F2013L00019>

Adenocarcinoma of the kidney - No. 9 of 2013
<https://www.legislation.gov.au/Details/F2013L00024>

Adenocarcinoma of the kidney - No. 10 of 2013
<https://www.legislation.gov.au/Details/F2013L00025>

seborrhoeic dermatitis - No. 13 of 2013
<https://www.legislation.gov.au/Details/F2013L00405>

seborrhoeic dermatitis No. 14 of 2013
<https://www.legislation.gov.au/Details/F2013L00407>



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