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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 online. 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

[BKCZ and Child Support Registrar](#) (Child support second review) [2022] AATA 725 (8 April 2022); B Pola, Senior Member

CHILD SUPPORT – objection to care percentage change – special circumstances – reasonable action – interim care determination – point in time – actual care – Federal Court parenting orders – COVID-19 Lockdowns – COVID-19 border closures – decision affirmed

[SFVY and Child Support Registrar](#) (Child support second review) [2022] AATA 721 (11 April 2022); Dr D Cremean, Senior Member

CHILD SUPPORT – percentage of care – pattern of care – delegated care – relevance of financial support – relevance of emotional support – decision set aside

[Haken and Tarreck](#) (Child support) [2022] AATA 639 (9 February 2022); P Jensen, Member

CHILD SUPPORT – registration details – application for collection of the maintenance liability – whether the application for collection and arrears should be accepted – whether conditions to refuse were met – the application for collection and arrears should be refused – decision under review set aside and substituted

[Smurthwaite and Child Support Registrar](#) (Child support) [2022] AATA 736 (10 February 2022); T Hamilton-Noy, 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 – decision under review set aside and substituted

[Ramsey and Ramsey](#) (Child support) [2022] AATA 741 (10 February 2022); R Ellis, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

[Padden and Farebrother](#) (Child support) [2022] AATA 631 (15 February 2022); C Breheny, Member

CHILD SUPPORT – departure determination – cost of maintaining the children are significantly affected – income, property and financial resources of the carer entitled to receive – a ground for departure established – decision to depart – decision under review varied

[Upchurch and McKeand](#) (Child support) [2022] AATA 731 (22 February 2022); T Bubutievski, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income should be refused – decision under review set aside and substituted

Citizenship

[Chimnani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 661 (28 March 2022); Dr L Kirk, Senior Member

CITIZENSHIP – application for citizenship by conferral – where applicant is 16 or 17 years old at time of application – where applicant meets criteria but discretion to refuse application is used – applicant not a resident of Australia for two years prior to application – close and continuing association with Australia – best interests of the child – significant hardship, disadvantage or detriment – decision under review affirmed.

[Chimnani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 662 (28 March 2022); Dr L Kirk, Senior Member

CITIZENSHIP – citizenship by conferral – general residence requirements – where applicant overseas for period preceding application - 35 days of four year period spent in Australia – where applicant has a de facto spouse who is an Australian citizen – whether the applicant has a close and continuing association with Australia during that period – decision under review affirmed

[Fateminia and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 695 (8 April 2022); S Evans, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the Applicant is of good character – applicant found guilty of refuse or fail to submit to breath analysis and common assault – where applicant contends facts upon which a finding of guilty is based – decision under review affirmed

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

(Citizenship) [2022] AATA 675 (11 March 2022); C J Furnell, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – Australian Citizenship Act 2007 (Cth) – whether the Tribunal can be satisfied that applicant is of good character – application of Citizenship Procedural Instruction 15 – provision of false personal information in visa and citizenship applications – Tribunal not satisfied Applicant is of good character – decision affirmed

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

(Citizenship) [2022] AATA 790 (20 April 2022); L M Gallagher, Member

CITIZENSHIP – cancellation of the approval of the Applicant’s application for Australian citizenship by conferral – whether Tribunal satisfied Applicant was not of good character – discrepancies in the information the Applicant provided for his protection visa and citizenship application – reviewable decision affirmed

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

(Citizenship) [2022] AATA 789 (14 April 2022); C Puplick AM, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – close and continuing association with Australia – applicant likely to reside, or to continue to reside, in Australia – application of Citizenship Procedural Instruction 11 – prohibition under subsection 24(5) of the Citizenship Act – original hearing adjourned – decision affirmed

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

(Citizenship) [2022] AATA 619 (4 March 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – Myanmar – whether the Tribunal is satisfied of the Applicant’s identity – s 24 Australian Citizenship Act 2007 (Cth) – Citizenship Policy – National Identity Proofing Guidelines – Revised Citizenship Procedural Instructions – three pillars of identity – lack of documents provided to the Department – inconsistent information provided to Department – eligibility of persons under 18 – general eligibility provisions – exercise of discretion to refuse citizenship approval of minor applicants – Revised Citizenship Procedural Instructions – United Nations Convention on the Rights of the Child – assessment of each applicant in their own right – best interests of the children – persuasive witness testimony – Tribunal satisfied of Applicant’s identity – decisions set aside

Samithamby Thiyagaratnam and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2022] AATA 743 (12 April 2022); D O’Donovan, Senior Member

CITIZENSHIP – whether Tribunal satisfied Applicant is of good character – humanitarian visa recipient – drug use – dangerous driving occasioning death – remorse – subsequent good conduct – decision under review affirmed

[Trutmann and Minister for Home Affairs](#) (Citizenship) [2022] AATA 687 (6 April 2022); D J Morris, Senior Member

CITIZENSHIP – applicant was conferred Australian citizenship – minister revoked citizenship – two grounds of revocation – applicant convicted of serious offence – minister satisfied contrary to the public interest for the applicant to remain an Australian citizen – review by tribunal of minister’s decision – threshold question – would person be rendered stateless – tribunal satisfied applicant holds another citizenship – consideration of factors – facts of offending – very large number of child sex offences where applicant was in position of trust over victims – is it contrary to public interest for applicant to remain citizen – relevant factors to take into account – should the discretion be exercised to revoke – decision under review affirmed

Compensation

[Hunt and Comcare](#) (Compensation) [2022] AATA 786 (14 April 2022); A G Melick AO SC, Deputy President

COMPENSATION – work-related injury – whether applicant engaged in suitable employment – offer of temporary employment – effect of voluntary redundancy on entitlement – number of hours the Applicant can work – decision set aside and remitted.

[Saunders and K & S Freighters Pty Ltd](#) (Compensation) [2022] AATA 722 (11 April 2022); B J Illingworth, Senior Member and Dr L Stephan, Member

COMPENSATION – injury – pre-existing osteoarthritis – pre-existing hip degeneration – trochanteric bursitis – fall when alighting from the cabin of the truck – Tribunal finds that the natural progression of the change of his degenerative condition unaffected by the fall – decision is affirmed

Corporations

[Teekay Shipping \(Australia\) Pty Ltd and Australian Maritime Safety Authority](#) [2022] AATA 747 (13 April 2022); J W Constance, Deputy President

MARITIME SAFETY – international maritime law – emergency towing vessel – unmanned machinery space system (UMS) – minimum complement of seafarers on vessels – minimum safe manning determination – minimum number of engineers required on board while vessel in operation – set aside and remitted

Education and Research

[Kids Community Pty Ltd and Secretary, Department of Education, Skills and Employment](#)

[2022] AATA 788 (18 March 2022); R West, Member

CHILDCARE – education and care services – family assistance law – child care benefit – continued approval of a childcare service – cancellation – breach of conditions of provider approval – whether sanction should be applied – what sanction is appropriate – decision set aside – approval suspended

Migration

[BUMRUNGROS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 808 (21 April 2022); R Reitano, Member

MIGRATION – refusal to grant visa on character grounds – whether the Applicant passes the character test – whether there is a risk that the Applicant would engage in criminal conduct – Direction 90 – whether there is more than a minimal or remote chance that the Applicant would engage in criminal conduct – where Applicant has pleaded guilty to two offences – where Applicant asserts alternative facts to those in criminal proceedings – whether Tribunal can consider alternative facts to those in criminal proceedings – decision set aside and substituted

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

(Migration) [2022] AATA 806 (22 April 2022); J C Kelly, Senior Member

MIGRATION – visa cancellation under s 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under s 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – Direction No. 90 considered – primary and other considerations considered – Applicant's criminal history and background considered – reviewable decision affirmed.

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

(Migration) [2022] AATA 792 (15 March 2022); Dr L Kirk, Senior Member

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – Direction No. 90 considered – primary and other considerations considered – Applicant's criminal history and background considered – decision under review affirmed.

Mulitauaopele and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 726 (11 April 2022); C Puplick AM, Senior Member

MIGRATION – discretionary visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – impediments to removal – impact on victims – strength, nature and duration of ties to Australia – other non-specified – special circumstances and needs of adult child with ASD – decision set aside and substituted

Oldbury and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 807 (25 March 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – subclass 444 special category visa – citizen of New Zealand – failure to pass character test – substantial criminal record – whether to cancel visa under section 501(2) – decision not to exercise discretion to cancel visa – considerations under Direction No. 90 – applicant lived in Australia from early age – separated from child due to family breakdown – record of family violence committed as a young person many years ago – rehabilitation – new relationship – decision under review set aside

Panagiotidis and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 672 (4 April 2022); Dr S Fenwick, Senior Member

MIGRATION – Mandatory cancellation of visa – national of Greece – Class BF Transitional (Permanent) visa – failure to pass character test – history of drug related offences – single conviction for armed robbery – whether another reason why the mandatory cancellation should be revoked – decision set aside and substituted

PKBV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 748 (7 April 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory cancellation of visa – Class WA Subclass 010 Bridging A visa - Applicant does not pass the character test – is there another reason to revoke the cancellation – consideration of Ministerial Direction No. 90 - protection of the Australian community – best interests of minor children – expectations of the community – impediments to removal – strength, nature and duration of ties – decision affirmed.

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

(Migration) [2022] AATA 768 (14 April 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – Federal Court remittal – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – multiple convictions between 2007 and 2016 – Applicant has been in prison/immigration detention since 2015 – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence committed by the Applicant – best interests of Applicant’s minor sibling, nephews and niece – expectations of the Australian community – Australia’s international non-refoulement obligations – whether the Applicant’s non-refoulement claims were generic or boilerplate in nature – prospect of indefinite detention – extent of impediments if removed to South Sudan – links to the Australian community – strength, nature and duration of ties to Australia – Applicant is a 32-year-old man who came to Australia in 2005 as a dependant under his stepfather’s Class XB Subclass 200 Refugee visa – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted

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

(Migration) [2022] AATA 696 (8 April 2022); D J Morris, Senior Member

MIGRATION – review of decision refusing partner visa to off-shore visa applicant – review applicant is wife of visa applicant – visa applicant convicted of two offences in Australia – substantial criminal record – consideration of ministerial direction – relevant primary considerations – protection of the Australian community – best interests of affected minor children in Australia – expectations of Australian community – other considerations – impact on victims – links to the Australian community, including strength, nature and duration of ties to Australia and impact on Australian business interests – additional consideration – effect on Australian citizen wife – decision under review affirmed

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

(Migration) [2022] AATA 809 (21 April 2022); Mr S Evans, Member

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – Direction No. 90 considered – primary and other considerations considered – Applicant’s criminal history and background considered – decision under review set aside and substituted.

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

(Migration) [2022] AATA 678 (7 April 2022); R Maguire, Member

VISA REFUSAL – refusal of sub-class 309 visa to applicant’s partner on character grounds – failure to disclose prior criminal record – where decision under review set aside and substituted – decision that the Tribunal does not exercise the discretion

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

(Migration) [2022] AATA 724 (16 March 2022); 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. 90 – decision under review set aside

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

(Migration) [2022] AATA 621 (4 April 2022); R Bellamy, Member

MIGRATION – refusal to grant a Protection visa – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review affirmed

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

(Migration) [2022] AATA 685 (7 April 2022); S Boyle, Deputy President

MIGRATION – Migration Act s 501CA(4) – decision of delegate of Minister not to revoke mandatory cancellation of visa – applicant fails character test – whether there is “another reason” to revoke the mandatory cancellation – Direction 90 applied – stalking and intimidation offences – common assault – alcohol-related offending – applicant diagnosed with numerous mental health conditions – mental health conditions raised in relation to non-refoulement obligation – applicant is a bisexual man – extent of impediments if the applicant is removed to Kenya – instances of family violence where victim supports the applicant remaining in Australia – there is another reason to revoke the cancellation of the applicant’s visa – reviewable decision set aside and substituted

1826006 (Migration) [2021] AATA 5464 (30 September 2021); P Hunter, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – health criteria – significant costs to the Australian community – mild Autism Spectrum Disorder – Attention Deficit Hyperactivity Disorder – MOC opinion – waiver of requirement – whether visa grant would result in ‘undue cost’ – actual condition as distinct from the hypothetical person – ability to mitigate costs – compassionate and compelling circumstances – decision under review remitted

1901546 (Migration) [2021] AATA 5461 (20 December 2021); M McAdam, Member

MIGRATION – cancellation – subclass 155 (Five Year Resident Return) visa – applicant had given incorrect information – applicant travelled out of Australia on five occasions – Iraqi Naming Conventions – over 11 years passed since the non-compliance – best interests of the applicant’s minor child – satisfied as to his identity – contribution to the Australian community – decision under review set aside

[Wilson](#) (Migration) [2022] AATA 778 (25 February 2022); L Symons, Member

MIGRATION – cancellation – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) (Extension) – incorrect information in the visa application – 6 months of specified work in regional Australia – specified work completed was not as recorded in application – impact of the COVID19 pandemic – impact on sponsored employment – decision under review set aside

[Gurung](#) (Migration) [2022] AATA 784 (25 March 2022); A McMurrin, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – cook – health requirements – disease or condition likely to result in significant cost to Australian community – stable chronic myeloid leukaemia – opinion of medical officer of commonwealth taken as correct – discretion to waive requirement – unlikely to result in undue cost to community – compliance with and response to treatment – no functional impairment and continued full-time work in sector with skill shortage – long residence and established social and community ties – access to savings – no significant information about availability of treatment in home country – members of family unit – decision under review remitted

[2012152](#) (Migration) [2022] AATA 701 (18 February 2022); J Owen, Senior Member

MIGRATION – Sponsored Parent (Temporary) (Class GH) visa – Subclass 870 Sponsored Parent (Temporary) – genuine temporary stay – lengthy period of unlawful residence – multiple unsuccessful visa applications – limited family responsibilities in Korea – young family in Australia – familiarity with Australian immigration laws – intention to stay in Australia permanently – decision under review affirmed

National Disability Insurance Scheme

[Anassis and National Disability Insurance Agency](#) [2022] AATA 622 (4 April 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – adult participant – participant’s mother appointed as plan nominee – review of decision to approve statement of participants supports (SOPS) – NDIA initially considered that plan should be “NDIA-managed” – whether Tribunal is compelled to grant plan nominee’s request under s 43 of the National Disability Insurance Scheme Act (NDIS Act) for funding to be “plan-managed”, instead of “NDIA-managed” – whether provision in SOPS prohibiting family members from being paid as support workers should be removed – whether provision specifying that core supports be provided by two specified service providers should be removed – role of plan nominee – conflict of interest – plan nominee’s instrument of appointment does not contain any provision preventing her from managing the participant’s plan or from appointing a plan manager to do so – s 44 of the NDIS Act not applicable because request made for plan be “plan-managed”, and not “self-managed” – Decision Under Review set aside and matter remitted for reconsideration with direction that the NDIA approves a new SOPS which is “plan-managed”, contains a prohibition against family members being paid as support workers, and specifies that currently engaged service providers may be used to provide support worker services to the participant, as well as other service providers who may be identified at a later point in time – non-binding observations made about whether the participant’s mother has fulfilled her duties to the participant as plan nominee and should remain as such, or whether the scope of her authority should be limited

[JRGL and National Disability Insurance Agency](#) [2022] AATA 787 (6 April 2022); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – reasonable and necessary supports – applicant sought review of statement of participant supports – request for Ipad and keyboard – decision affirmed

[MDCT and National Disability Insurance Agency](#) [2022] AATA 697 (31 March 2022); I R Hanger AM QC, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – funding of supports – reasonable and necessary – home modification – external modification – capital building – support related to disability – decision affirmed

[Whittaker and National Disability Insurance Agency](#) [2022] AATA 729 (11 April 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Compensation – Compensation Reduction Amount – damages in respect of personal injury – National Disability Insurance Scheme component – objectively identifiable – set aside and remit

Practice and Procedure

[Ambrose and Secretary of Department of Social Services](#) (Social services second review) [2022] AATA 645 (4 April 2022); D O'Donovan, Senior Member

PRACTICE AND PROCEDURE – dismissal of application as frivolous – review sought in circumstances where the applicant could derive no practical benefit from a successful review – application dismissed

[Botre and Privacy Commissioner](#) [2022] AATA 746 (11 April 2022); B W Rayment OAM QC, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – application for review of Commonwealth Ombudsman – no power to review decisions of Commonwealth Ombudsman – no power to review decisions made by the Privacy Commissioner under s.41 of the Privacy Act 1988 – no jurisdiction

[Butler and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 785 (14 April 2022); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – extension of time application – eligibility to receive a service pension – Applicant filed application with the Tribunal outside of the statutory time frame – no discretion to extend time – extension of time refused

[Fry and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2022] AATA 720 (8 April 2022); D J Morris, Senior Member

PRACTICE AND PROCEDURE – where applicant applied to Tribunal to review determination decision of Military Rehabilitation and Compensation Commission – where applicant also lodged application for Tribunal to extend time for lodgement of application – where there was no request for Commission to reconsider determination decision – no reviewable decision for Tribunal to review – extension of time refused and application dismissed for want of jurisdiction – written reasons provided

[KCBW and National Disability Insurance Agency](#) [2022] AATA 629 (1 April 2022); K Parker, Senior Member

PRACTICE AND PROCEDURE – recusal application – National Disability Insurance Scheme – adult participant – no actual or apprehended bias – recusal application refused

[Tindall and Telstra Corporation Limited](#) (Compensation) [2022] AATA 660 (31 March 2022); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – workers compensation – s 57 notice issued requiring Applicant to attend medical appointment – whether s 57 limits attendance to one medical practitioner – whether issuing of s 57 notice in breach of s 57(1) – notice issued validly – applicant required to attend medical appointment.

[Wilson and Inspector-General in Bankruptcy](#) [2022] AATA 730 (16 February 2022); The Hon. M Groom, Senior Member

PRACTICE AND PROCEDURE – application for reinstatement – applicant failed to comply with directions – applicant failed to appear at directions hearing – whether reinstatement is appropriate – application dismissed

[Zahidy and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 805 (21 April 2022); S Boyle, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – decision of delegate to refuse to approve application for conferral of Australian citizenship under s 21(2) of the Act – application for Australian citizenship made using “general eligibility” Form 1300t – applicant claims to suffer permanent or enduring mental impairment under s 21(3) of the Act – incorrect application form used for scope of review sought – where department invited the applicant to withdraw her application and submit her application using “other situations” Form 1290 – Tribunal cannot change the question that was before the original decision-maker – Tribunal satisfied it does not have jurisdiction to review the decision under s 21(3) – scope of decision under review limited to review of the decision under s 21(2) of the Act

Professions and Trades

[Gu and Migration Agents Registration Authority](#) [2022] AATA 749 (13 April 2022); J Sosso, Deputy President

MIGRATION – migration agent registration authority – cancellation of Applicant’s registration – Applicant breached Code of Conduct – Tribunal satisfied that the Applicant is a person of integrity or otherwise a fit and proper person to give immigration assistance at the time of the decision – Applicant disciplined through suspension until date of decision – decision under review set aside and substituted with the Tribunal’s decision that the Applicant’s registration be suspended until the date of this decision after which date the suspension is lifted

Refugee

[1721180](#) (Refugee) [2021] AATA 5467 (5 August 2021); Dr C Huntly, Member

REFUGEE – protection visa – Pakistan – political opinion – Pakistan People’s Party (PPP) – kidnapped – Tehreek-e-Taliban Pakistan (TTP) – intimidated by members of Jamaat e Islami – voluntarily returned to home country – brother killed – particular social group – women in Pakistan who teach primary school aged children – supporter of the education of women and girls – harassed by supporters of the TTP – minor political profile – delay in seeking protection – inconsistent evidence – credibility issues – decision under review affirmed

[1816588](#) (Refugee) [2022] AATA 679 (10 January 2022); J Marquard, Member

REFUGEE – Protection visa – Sierra Leone – political opinion – member of APC government – campaigned against current SLPP government – extra-judicial killing of uncle – cousin’s death – supported APC party during 2018 campaign – Temne ethnicity – threatened and attacked – credibility issues – low-level supporter – generally low level of violence with little individual targeting – decision under review affirmed

[1708801](#) (Refugee) [2022] AATA 607 (14 January 2022); M Hawkins AM, Member

REFUGEE – protection visa – Somalia – Kenya – fear of harm from the Al-Shabaab – identity concerns – bogus document as evidence of identity, nationality or citizenship – Somali passport and birth certificate – reasonable explanation for providing the bogus document – conflicting explanations – decision under review affirmed

[1828741](#) (Refugee) [2022] AATA 564 (20 January 2022); D Dragovic, Senior Member

REFUGEE – protection visa – Pakistan – religion – successful scheduled caste Hindus – kidnapping – forcible conversion to Islam – forced marriages – perceived betrayal of Hindus – lack of family support – fear of killing – internal relocation – decision under review remitted

[1935510](#) (Refugee) [2022] AATA 598 (27 January 2022); K Millar, Senior Member

REFUGEE – protection visa – Afghanistan – Federal Circuit Court remittal – ethnicity, religion and imputed political opinion – Hazara Shi’a and returned failed asylum seeker – brother killed by Taliban and threats to applicant – claim of sexual assault by Taliban first raised at previous tribunal hearing – mental health – country information – takeover by Taliban and continuing volatility – likelihood of identification as returnee – decision under review remitted

[2010235](#) (Refugee) [2022] AATA 602 (27 January 2022); P Noonan, Member

REFUGEE – Protection Visa – Pakistan – Federal Circuit Court remittal – applicant fears harm from extended family – criminal forgiveness laws in Pakistan – educated woman – a returnee from the West – applicant’s fear of persecution is well-founded – state protection is limited – members of the same family unit – decision under review remitted

[1922340](#) (Refugee) [2022] AATA 682 (9 February 2022); R Shanahan, Member

REFUGEE – protection visa – Saudi Arabia – political opinion – opposition to the government – particular social group – deserting the military forces – returned asylum seeker – government critics on social media – people charged with or convicted of serious criminal offences overseas – illegal exit – fear of arrest – fear of torture – delay in applying for protection – criminal charges in Australia – credibility issues – decision under review affirmed

Social Services

[Canzonieri and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 620 (31 March 2022); R West, Member

SOCIAL SECURITY – carer payment – failure to disclose assets – overpayment – carer payment debt – recalculation – part reimbursement - consideration of write off or waiver – decision affirmed

[Doncevksi and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 676 (7 April 2022); R Cameron, Senior Member

DISABILITY SUPPORT PENSION – qualification period – physical, intellectual or psychiatric condition – fully diagnosed, treated and stabilised – persisting for more than two years – impairment rating of at least 20 points under the Social Security Tables – continuing inability to work – lower back condition not fully treated and stabilised – spinal condition cannot attract 20 impairment points - psychiatric condition not reasonably treated and therefore no impairment rating – reviewable decision affirmed

[Gilmartin; Secretary, Department of Social Services and](#) (Social services second review) AATA 723 [2022] (11 April 2022); D Mitchell, Member

SOCIAL SECURITY – Family Tax Benefit – overpayment – administrative error – where no sole administrative error – where no special circumstances – decision under review set aside and substituted

[Judd and Secretary, Department of Social Services](#) (Social services second review) AATA 727 [2022] (11 April 2022); B Pola, Senior Member

SOCIAL SECURITY – Parenting Payment – failure to report earnings – debt to Commonwealth pursuant to section 1223 of the Social Security Act 1991 (Cth) – re-calculation of debt – whether additional 10% penalty for understatement under 1228B applies – decision under review set aside and substituted

[Liang and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 646 (5 April 2022); Dr L Bygrave, Member

SOCIAL SECURITY – rate of age pension – where Applicant’s wife travelled overseas for 6 weeks – whether there is a special reason not to be treated as a member of couple – whether couple could pool resources – whether there was financial difficulty – decision under review affirmed

[NXHR; Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 791 (14 April 2022); G Hallwood, Member

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

[YFFS and Secretary, Department of Health](#) [2022] AATA 728 (11 April 2022); A E Burke AO, Member

AGED CARE ASSESSMENT – means tested daily fee – whether National Redress Scheme lump sum payment is an exempt asset – decision affirmed

Taxation

[Ian Mark Collins & Mienke Mianno Collins ATF The Collins Retirement Fund and Commissioner of Taxation](#) (Taxation) [2022] AATA 628 (4 April 2022); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – whether applicant required to be registered for GST – where applicant subdivided and sold 11 lots – whether sales of lots were excluded from registration turnover threshold as capital assets or solely as a consequence of ceasing to carry on or substantially and permanently reducing the size or scale of an enterprise – held sales not so excluded – decision affirmed

[London and Commissioner of Taxation](#) (Taxation) [2022] AATA 644 (4 April 2022); Dr N A Manetta, Senior Member

INCOME TAX – Allowable deductions – gym memberships, various clothing and equipment expenses – whether deductible – taxpayer a dog-handler and member of Emergency Response Group with Department of Correctional Services – gym membership fees deductible – TR 95/113 applied – some other items deductible under usual principles – travel to gym not deductible – decision under review set aside and matter remitted for reassessment

[McPartland and Commissioner of Taxation](#) (Taxation) [2022] AATA 686 (31 March 2022); P
Britten-Jones, Deputy President

TAXATION – whether applicants have demonstrated default assessments issued by the Australian Taxation Office were excessive – whether applicants have demonstrated their correct taxable income for the relevant income years – onus not discharged – whether penalties should be remitted in full or part – decisions 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
GYNQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 443
Jarvis-Lavery and Commissioner of Taxation	[2019] AATA 5409
JHZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 367
Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 448
NZYQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 378
Philip Morris Limited and Comptroller-General of Customs	[2022] AATA 548
RGCZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3051
Rutherford and Inspector-General in Bankruptcy	[2022] AATA 403
Va'a and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 573

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Jabari v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1492	[2022] FCA 388
Law v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1994	[2022] FCA 330
Ngatupuna v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2120	[2022] FCA 390

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

[\[2021\] AATA 3051](#)

[\[2022\] FCA 348](#)

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

[\[2020\] AATA 3510](#)

[\[2022\] FCAFC 56](#)
[\[2020\] FCA 1849](#)

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

[\[2021\] AATA 1228](#)

[\[2022\] FCA 391](#)

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 6 April 2022, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7A) of the VEA in respect of the following:

repetitive activities of the upper limb as a factor in osteoarthritis -

<https://www.legislation.gov.au/Details/C2022G00269>

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

Osteoarthritis (Reasonable Hypothesis) – No. 61 of 2017

<https://www.legislation.gov.au/Details/F2020C00422>

Osteoarthritis (Balance of Probabilities) – No. 62 of 2017

<https://www.legislation.gov.au/Details/F2020C00353>



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