



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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Contents

AAT Recent Decisions.....	3
Child Support.....	3
Citizenship.....	3
Compensation.....	4
Migration.....	5
National Disability Insurance Scheme.....	8
Practice and Procedure.....	8
Professions and Trades.....	9
Refugee.....	10
Social Services.....	11
Superannuation.....	13
Trade and Commerce.....	13
Veterans' Affairs.....	13
Appeals	15
Appeals lodged	15
Appeals finalised.....	15
Statements of Principles	17
New Statements of Principles.....	17
Amended Statements of Principles.....	18
Statements of Principles to be revoked	18

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

[SHQY and Child Support Registrar](#) (Child support second review) [2021] AATA 930 (20 April 2021); R Reitano, Member

CHILD SUPPORT – percentage of care – period of care – notice of change of percentage of care – revocation of determination of care – whether new determination of care should be made – date of effect of any new determination – decision set aside and substituted

[Windle and Monyn](#) (Child support) [2021] AATA 690 (20 January 2021); S Letch, 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 interim period should have been considered – decision under review set aside and sent back to the Child Support Registrar for reconsideration

[Pankey and Mulgrew](#) (Child support) [2021] AATA 462 (2 February 2021); P Jensen, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate was correctly reconciled – decision under review affirmed

[Deyes and Deyes](#) (Child support) [2021] AATA 692 (16 February 2021); T Bubutievski, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – significant investments – income from trust – decision under review set aside and substituted

Citizenship

[Bernabo Fernandez and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2021] AATA 929 (22 April 2021); Senior Member C Puplick AM

CITIZENSHIP – Citizenship by conferral – a close and continuing association with Australia – Citizenship Policy Instructions – impact of the COVID 19 pandemic preventing return to Australia – general residency requirement – the relevant period – deep and meaningful connection – decision affirmed

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

(Citizenship) [2021] AATA 938 (22 April 2021); Dr L Bygrave, Member

CITIZENSHIP BY CONFERRAL – person not present in Australia – whether the applicant is likely to reside or continue to reside in Australia – whether the applicant is likely to maintain a close and continuing association with Australia – the decision under review is affirmed

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

(Citizenship) [2021] AATA 911 (15 April 2021); W Frost, Member

CITIZENSHIP – revocation of Applicant’s Australian citizenship where Applicant is not of good character – whether the Tribunal is satisfied that the Applicant is of ‘good character’ – aggravating and mitigating factors – whether Applicant meets eligibility requirements to become an Australian Citizen – where Applicant has a history of criminal offending – sexual intercourse with female 12-16 – eligibility requirements under section 21 of the Citizenship Act not met – decision affirmed

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

(Citizenship) [2021] AATA 1018 (26 April 2021); A Maryniak QC, Member

CITIZENSHIP – citizenship by conferral application – section 24(3) of the Australian Citizenship Act 2007 (Cth) – Identity – identity requirements not satisfied – Iranian Kurd – stateless Applicant and family – life story inconsistent – decision under review affirmed

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

(Citizenship) [2021] AATA 935 (22 April 2021); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether close and continuing association with Australia – where Applicant has been absent from Australia for extended periods of time – reviewable decision affirmed

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

(Citizenship) [2021] AATA 912 (16 April 2021); Dr L Bygrave, Member

CITIZENSHIP BY DESCENT – through parent who is Australian citizen at time of birth – defining ‘time of birth’ – whether claimed parent-child relationship existed at or before ‘time of birth’ – whether ‘time of birth’ should be given technical or ordinary meaning – application set aside and remitted

[ZBYM; Child Support Registrar and](#) (Child support second review) [2021] AATA 1034 (15 April

2021); Senior Member C J Furnell

CHILD SUPPORT – percentage of care decision – actual care – pattern of care – dispute about percentage of care – application of legislation during care period – consideration of evidence as to percentage of care – decision under review set aside and substituted

Compensation

[Waititi and Cleanaway Operations Pty Ltd](#) (Compensation) [2021] AATA 924 (19 April 2021);

Senior Member D Katter

COMPENSATION – workplace injury – cost of medical treatment – compensation in respect of an injury suffered if the injury results in incapacity for work – cessation of liability to pay compensation – injury no longer results in incapacity for work – decision under review affirmed

[Wilkinson and Comcare](#) (Compensation) [2021] AATA 931 (21 April 2021); Senior Member C J Furnell

COMPENSATION – firefighter – condition affecting the lumbar region of his back – condition causing incapacity and need for medical treatment – whether that condition encapsulated within accepted condition – approach to construction of compensation claim – incapacity result of continuing effects of accepted condition – causation – operative and effective cause stresses and strains of living – suffer the injury which had been previously determined to have been suffered – question in issue when resile from an acceptance of liability – burden of persuasion – disc prolapse in context of pre-existing spondylosis – disc prolapse a disease or frank injury – distinct from underlying pathology – set aside and substituted decision – set aside and remitted for reconsideration

Migration

[1912725](#) (Migration) [2021] AATA 1025 (18 February 2021); A Murphy, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect answers in the visa application – previous application for refugee status – applicant’s identity details – close relative in Australia – Forensic Facial Image Examination – original photographs not accessible – protection status assessment – Hazara – Shia – decision under review set aside

[Proctor](#) (Migration) [2021] AATA 818 (18 February 2021); A Dronjic, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 Temporary Skill Shortage – ceased employment more than 60 days – position of Hotel or Motel Manager – COVID-19 lockdown and trading restrictions – sponsoring business ceased its operations – new employer willing to sponsor the applicant – adverse impact on business – new employer approved as a standard business sponsor – decision under review set aside

[Uaisele](#) (Migration) [2021] AATA 815 (18 March 2021); R Maguire, Member

MIGRATION – New Zealand Citizen (Family Relationship) (Temporary) (Class UP) visa – Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) – no substantive visa held at time of application – factors beyond applicant’s control – sent application by express post and followed up with phone call – after several months, told that department had no record of application, and to re-apply – compelling reasons for granting visa – long relationship, settled family, sponsor a fly-in/fly-out worker – best interests of child in process of obtaining citizenship – exclusion period may apply if refusal affirmed – decision under review remitted

[1901709](#) (Migration) [2021] AATA 859 (26 March 2021); P Maishman, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – review applicant’s status as aunt – parents deceased – evidence of death provided – Adoption Attestation Letter provided – orphan relatives of Australian citizen – decision under review remitted

[AZIZ](#) (Migration) [2021] AATA 861 (29 March 2021); H Sanderson, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – assistance provided by Australian citizen or permanent resident relatives or obtained from service providers – other relatives’ health, work, families and general circumstances, including inability or unwillingness to provide assistance – brief statutory declarations by other relatives now four years old – no current information provided – multiple relatives able to provide assistance to some extent – cost of care from service providers – no information about attempts to obtain services – members of family unit – decision under review affirmed

[Downes and Minister for Home Affairs](#) (Migration) [2019] AATA 6934 (27 March 2019); M Kennedy, Member

MIGRATION – Mandatory visa cancellation – Request for revocation of cancellation – Character test – Substantial criminal record – Violent offences involving a woman – Sentence of imprisonment of 12 months or more – Protection of the Australian community – Expectations of the Australian community – Best interests of a child – Other considerations – Strong ties to Australia – decision under review affirmed

[Downes and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1037 (9 April 2021); Senior Member B J Illingworth

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 – decision under review affirmed

[LRMM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 923 (7 April 2021); R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Refugee (Class XB)(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 – consideration of Australia’s international non-refoulement obligations – decision under review affirmed

[GVSW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1015 (9 April 2021); Senior Member B J Illingworth

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 – decision under review set aside

[HRZN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1035 (14 April 2021); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether discretion to revoke mandatory cancellation should be exercised – other considerations – consideration of Australia’s international non-refoulement obligations – extend of impediments if removed – primary consideration of protection of the Australian community outweighs other considerations – decision affirmed

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

(Migration) [2021] AATA 1039 (28 April 2021); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation – failure to pass the character test – domestic violence – dispute as to primary facts – protection of the Australian community – best interests of minor children in Australia affected by the decision – expectations of the Australian community – fear of gang violence – non-refoulement – strength, nature and duration of ties to Australia – decision affirmed

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

(Migration) [2021] AATA 1033 (14 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 – non-refoulement obligations – risk of harm if returned – decision under review set aside

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

(Migration) [2021] AATA 1054 (28 April 2021); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of India – Class SN Subclass 190 Skilled-Nominated (permanent) Visa – confidentiality and non-publication application – failure to pass good character test – sexual offending – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – Protection of the Australian community – low but real risk of recidivism – Expectations of the Australian community – best interests of minor child in Australia – impediments if returned not significant – limited links to Australia – decision affirmed

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

(Migration) [2021] AATA 1045 (29 April 2021); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 applied – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – 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 affirmed

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

(Migration) [2021] AATA 939 (14 April 2021); Senior Member T Tavoularis

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

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

(Migration) [2021] AATA 1051 (29 April 2021); Deputy President Boyle

MIGRATION – cancellation of business visas – whether the First Applicant has obtained substantial ownership interest in an eligible business in Australia – definition of eligible business – meaning of “business” – no eligible business found – First Applicant is not utilising his skills in actively participating at a senior level in the day-to-day management of the business – whether a bar under s 134(2) of the Act applies – no evidence that cancellation of the visas would cause the First Applicant’s wife or son extreme hardship – reviewable decisions affirmed

National Disability Insurance Scheme

FBJV and National Disability Insurance Agency [2021] AATA 913 (19 April 2021); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – endometriosis causing chronic pain – whether impairments result in “substantially reduced functional capacity” to undertake any one or more specified activities – whether Applicant meets early intervention requirements – access criteria under sections 24 and 25 National Disability Insurance Scheme Act 2013 not met – decision affirmed

Nottle and National Disability Insurance Agency [2021] AATA 1014 (9 April 2021); Senior Member B J Illingworth and 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 to allow for funding for training of a hearing assistance dog – decision set aside and remitted

Practice and Procedure

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

(Citizenship) [2021] AATA 927 (20 April 2021); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – extension of time application – principles to be applied – where Tribunal not persuaded that the application has no prospect of success – whether the delay was significant – where delay found not to be inordinate in the circumstances – whether there is an acceptable explanation for delay – where explanation of delay was satisfactory – where fairness to the parties considered – where it was reasonable in all the circumstances to grant the extension – extension of time application granted

Mayhew and Secretary, Department of Education [2021] AATA 914 (19 April 2021); Senior

Member C Puplick AM

APPLICATION FOR DISMISSAL – application for review – re-creditation of VET FEE-HELP – inappropriate behaviour by provider or provider’s agent – whether the unit requirements of the course are completed – whether there are any reasonable prospects of success – application for dismissal granted

[Neumueller and National Disability Insurance Agency](#) [2021] AATA 1049 (23 April 2021); I Thompson, Member

PRACTICE AND PROCEDURE – Jurisdiction – Whether internal review conducted – Consideration of when statement of participant supports was in fact approved by CEO – Internal review of reviewable decision by “reviewer” not completed at time of application for review – Tribunal does not have jurisdiction – Application dismissed

[QDKH and National Disability Insurance Agency](#) [2021] AATA 922 (16 April 2021); Deputy President J W Constance

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – where Applicant applied to Tribunal to review a decision not to approve certain supports – where the parties reached agreement in respect of those supports – where the Applicant requested the Tribunal consider additional supports – where additional supports not subject to internal review – jurisdiction of the Tribunal – Tribunal has no jurisdiction to consider additional supports

[Taylor and National Disability Insurance Agency](#) [2021] AATA 1042 (16 April 2021); W Frost, Member

PRACTICE AND PROCEDURE – application for dismissal under s 42B of the Administrative Appeals Tribunal Act 1975 – whether the application should be dismissed – whether application is frivolous, vexatious, misconceived or lacking in substance – whether application is futile or being pursued for a collateral purpose – application dismissed

[Zazy and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2021] AATA 1013 (23 April 2021); Senior Member C Puplick AM

EXTENSION OF TIME APPLICATION – citizenship by conferral – is there a reasonable explanation for delay – does the application have reasonable prospects of success – having regard to policy requirements – the application is granted

Professions and Trades

[Birdseye and Tax Practitioners Board](#) [2021] AATA 1011 (20 April 2021); Mr P W Taylor SC, Senior Member

TAX AGENTS – tax agent registration termination – whether applicants breached the Code of Professional Conduct – acting honestly and with integrity – conduct of personal affairs – competent provision of tax agent services – whether applicant is a fit and proper person – lodgement and payment defaults – decisions under review affirmed

TAX AGENTS – re-application determination – applicants ineligible to re-apply for registration for five year period – maximum ineligibility period – consideration of purpose of registration preclusion period – decisions under review set aside and substituted

Refugee

[1713519](#) (Refugee) [2021] AATA 779 (8 February 2021); D McCulloch, Member

REFUGEE – Protection visa – South Africa – religion – convert from Islam to Christianity – fear of being harmed by Al-Qaeda – inconsistent evidence – applicant was not a credible witness – credibility concerns – decision under review affirmed

[1910122](#) (Refugee) [2021] AATA 780 (15 February 2021); C Smolicz, Member

REFUGEE – cancellation – Subclass 866 (Protection) visa – Afghanistan – incorrect information provided in protection application – false identity – not disclosing that he was known by another name – an ongoing land dispute with the village head – respected member of the Hazara community – best interests of Australian citizen children – decision under review set aside

[1804989](#) (Refugee) [2021] AATA 639 (1 March 2021); J Pennell, Senior Member

REFUGEE – protection visa – Sri Lanka – Federal Court remittal – ethnicity and imputed political opinion – brother conscripted by Tamil Tigers and missing believed dead since end of war – applicant living in internally displaced persons camps because of war and tsunami – abuse, forced menial labour, questioning and beating by soldiers and CID – fear of forced recruitment by Tamil Tigers – member of particular social group – failed asylum seeker – mental health – credibility – vague evidence – country information – decision under review affirmed

[1615482](#) (Refugee) [2021] AATA 754 (2 March 2021); S Burford, Member

REFUGEE – protection visa – Ethiopia – political opinion – opposition to ruling party – member of opposition group – participation in protests – discrimination based on ethnicity – decision under review remitted

[1710906](#) (Refugee) [2021] AATA 873 (4 March 2021); L Hardy, Member

REFUGEE – protection visa – Pakistan – criminal gangs affiliated with political parties – targeted for tithes – targeted for recruitment – Mutahidda Qaumi Movement (MQM) – Pakistan Peoples Party (PPP) – Peoples' Aman Committee (PAC) – delay in seeking protection – economic motivations – effective state protection – relocation – decision under review affirmed

[1827424](#) (Refugee) [2021] AATA 584 (4 March 2021); S Baker, Member

REFUGEE – cancellation – protection visa – Stateless/Iran – Federal Circuit Court remittal – incorrect information in visa application – stateless Kurd or Kurdish Iranian citizen – originally departed on fraudulently acquired passports – acquired genuine passports from embassy in Australia and used them to re-enter and depart – claim that genuine passports acquired using fraudulent documents obtained by brother – country information about procedure for obtaining passports and document fraud – discretion to cancel visa – secondary applicant wife's mental health and child's disability and care needs – country information about health care and education – decision under review set aside

[1900684](#) (Refugee) [2021] AATA 805 (4 March 2021); A Murphy, Member

REFUGEE – protection visa – Italy – Federal Circuit Court remittal – particular social group – persons experiencing mental health conditions – fear of Mafia violence – child sexual assault – debt repayments – employment – Social Security Agreement between Australia and Italy – potential future criminal activities – decision under review affirmed

[1714037](#) (Refugee) [2021] AATA 883 (8 March 2021); J Marquard, Member

REFUGEE – protection visa – Brazil – political opinion – Partido dos Trabalhadores (Workers Party) worker – particular social group – homeless people – robbery – physical attacks – fear of killing – accommodation – employment – access to health services – return visits to Brazil – referral for Ministerial Intervention – decision under review affirmed

[1707484](#) (Refugee) [2021] AATA 926 (12 March 2021); R Smidt, Member

REFUGEE – protection visa – Iraq – occupation as barber – western style haircuts – brother's involvement with anti-terrorist group – applicant not associated with the government or any militias or political groups – no claim of joining protestors if returned to Iraq – low risk indiscriminate violence in Dhi Qar – decision under review affirmed

[2015540](#) (Refugee) [2021] AATA 1022 (17 March 2021); J Marquard, Member

REFUGEE – protection visa – Nigeria – political opinion and ethnicity – member of secessionist political party, now designated terrorist organisation – low-level activity in party in home country – growing interest and involvement in Australia – returned home to take part in protests – cousin detained and beaten by army – mental health – general ethnic discrimination – credibility – no mention of fear of harm in student visa application – applied for protection after imprisonment and cancellation of bridging and student visas – gambling addiction and financial dishonesty – request for voluntary repatriation – real chance of serious harm – no right to reside in third country – decision under review remitted

Social Services

[Amai and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 937 (22 April 2021); Senior Member P J Clauson AM

SOCIAL SECURITY – disability support pension – multiple conditions – hearing loss – tinnitus – where assessment conducted without hearing aid – difficulties maintaining balance – shoulder condition – shoulder pain – where no applicable assessment under impairment table – decision under review affirmed

[Harvey and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1047 (23 April 2021); Dr N A Manetta, Senior Member

SOCIAL SECURITY – disability support pension – Impairment Tables – Table 11 – whether a person suffering frequent attacks of dizziness affecting balance had “continual” difficulty with balance for the purpose of the 20-point descriptor – held the applicant did have “continual” difficulty with balance in these circumstances – 20 points awarded – all other prerequisites satisfied – decision set aside

[Hasselmann and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1050 (29 April 2021); Senior Member P E Nolan

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

[Howlett and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 928 (21 April 2021); Dr N A Manetta, Senior Member

SOCIAL SECURITY – applicant injured in car accident and suffers back pain – applicant paid disability support pension – disability support pension cancelled by delegate – whether an impairment rating of 20 points or more exists under Impairment Table 4 – applicant does not attract 20 points – decision under review affirmed

[Loch and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 910 (19 April 2021); Emeritus Professor P A Fairall, Senior Member

YOUTH ALLOWANCE – Applicant underreported earnings and was overpaid social security benefits – Centrelink issued an account of overpayment (decision) – authorised review officer affirmed the decision – application made to Administrative Appeals Tribunal (AAT) – AAT1 (Social Services and Child Support Division) upheld the decision – second application made to AAT – Centrelink recalculated debt and substituted the decision – AAT2 (General Division) hearing held – Central issue: whether the Applicant is indebted to the Commonwealth and if so, whether any part should be waived or written off – Provisions of Social Security Act 1991 (Cth) considered – inconsistent receipt of payslips and mismanagement by Applicant's former employer considered – calculations and material provided by parties considered – Applicant found to be indebted to the Commonwealth – debt found not capable of or practicable to being written off – debt found to be partially waivable under section 1237AAD of the Social Security Act 1991 (Cth) taking into account Applicant's special circumstances – matter set aside and remitted with directions

[Mills and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1040 (28 April 2021); M East, Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant meets the eligibility requirements for disability support pension – whether conditions fully diagnosed, treated and stabilised – Tribunal unable to assign impairment ratings – Reviewable Decision affirmed

[Phillips and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1046 (29 April 2021); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffers from permanent impairments that attract 20 points or more under the Impairment Tables – Impairment Table 2 – Upper Limb Function – Impairment Table 3 – Lower Limb Function – Impairment Table 4 – Spinal Function – neck and lower back conditions – right shoulder injury and right wrist injury – left foot and ankle conditions – other medical conditions including sleep apnoea and mental health conditions – Applicant found not to meet eligibility requirements – Reviewable Decision affirmed – recommendation made by Tribunal for Department to investigate adequacy of communicating requirement for a program of support to applicants

[Silpadhipathi and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1048 (29 April 2021); R West, Member

SOCIAL SECURITY – disability support pension – mental health condition – left leg condition - chronic back pain – hearing loss – diabetes – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Walker and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1036 (28 April 2021); Dr D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including back injury – whether fully diagnosed, treated and stabilised – decision under review affirmed

[WDHR and Secretary, Department of Social Services](#) (Social services second review) [2021] AATA 1038 (28 April 2021); Brigadier A G Warner, AM LVO (Retd), Member

SOCIAL SECURITY – Carer Allowance – whether Applicant qualified for Carer Allowance at the time of claim – whether the Child's conditions are listed in Schedule 3 to the DCLA Determination – whether the score for the professional questionnaire is greater than zero – whether the score for the ACL questionnaire is 85 or more – whether additional points can be added – decision under review affirmed

Superannuation

[Merchant and Commissioner of Taxation](#) [2021] AATA 915 (19 April 2021); Deputy President I R Molloy

SUPERANNUATION – Self Managed Superannuation Fund – responsible officers of corporate trustee – Applicants disqualified from acting as trustee or responsible officers of a trust – Applicants applied for adjournment pending separate taxation review – adjournment refused

Trade and Commerce

[Gov and Registrar of Personal Property Securities](#) [2021] AATA 917 (19 April 2021); D Mitchell, Member

PERSONAL PROPERTY SECURITIES REGISTER – amendment notice seeking removal of registration from Personal Property Securities Register – whether the Registrar suspects on reasonable grounds that the amendment is not authorised – amendment sought granted by Delegate of Registrar – decision under review affirmed

Veterans' Affairs

[Caldow and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 932 (20 April 2021); Deputy President S Boyle

VETERANS' ENTITLEMENTS – defence service – Applicant posted to Butterworth, Malaysia – Applicant had been diagnosed by two psychiatrists with posttraumatic stress disorder and alcohol use disorder – whether psychological injuries were defence-caused – whether Applicant would have suffered injury 'but for' defence service – inconsistencies in evidence before the Tribunal – Tribunal not reasonably satisfied that the category 1A stressor occurred – reviewable decision affirmed

[Doyle and Repatriation Commission](#) (Veterans' entitlements) [2021] AATA 1023 (27 April 2021);
Deputy President J Sosso

VETERANS' AFFAIRS – Widow's pension – Connection between kind of death and service – Cancer of the prostate – Link between alcohol consumption and service – Deledio methodology – Decision 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
Ali and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5232
Au and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 372
BFMV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 5213
Chol and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 505
Galauk and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 67
Logic Accountants & Tax Professionals Pty Ltd and Tax Practitioners Board	[2021] AATA 676
Lyu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 643
Rascovici and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1640

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BQHJ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3734	[2021] FCA 372
Commissioner of Taxation v ACN 154 520 199 Pty Ltd (In Liquidation)	[2019] AATA 5981	[2021] HCASL 64 [2020] FCAFC 190
Kleinberg v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 2941	[2021] FCA 402
Migration Agents Registration Authority v Bebawy	[2020] AATA 3987	[2021] FCA 397

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

[\[2019\] AATA 4381](#)

[\[2021\] FCAFC 55](#)
[\[2020\] FCA 1127](#)

Statements of Principles

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

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

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

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

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from **24 May 2021**:

Endometriosis (Balance of Probabilities) - No. 52 of 2021

<https://www.legislation.gov.au/Details/F2021L00487>

Endometriosis (Reasonable Hypothesis) - No. 51 of 2021

<https://www.legislation.gov.au/Details/F2021L00486>

Inguinal hernia (Balance of Probabilities) - No. 48 of 2021

<https://www.legislation.gov.au/Details/F2021L00497>

Inguinal hernia (Reasonable Hypothesis) - No. 47 of 2021

<https://www.legislation.gov.au/Details/F2021L00485>

Open-angle glaucoma (Balance of Probabilities) - No. 50 of 2021

<https://www.legislation.gov.au/Details/F2021L00482>

Open-angle glaucoma (Reasonable Hypothesis) - No. 49 of 2021

<https://www.legislation.gov.au/Details/F2021L00481>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from **24 May 2021**:

Cerebrovascular accident - No. 53 of 2021

<https://www.legislation.gov.au/Details/F2021L00495>

Cerebrovascular accident - No. 54 of 2021

<https://www.legislation.gov.au/Details/F2021L00496>

Guillain-Barre syndrome (Balance of Probabilities) - No. 58 of 2021

<https://www.legislation.gov.au/Details/F2021L00484>

Guillain-Barre syndrome (Reasonable Hypothesis) - No. 57 of 2021

<https://www.legislation.gov.au/Details/F2021L00483>

Ischaemic heart disease (Balance of Probabilities) - No. 56 of 2021

<https://www.legislation.gov.au/Details/F2021L00492>

Ischaemic heart disease (Reasonable Hypothesis) - No. 55 of 2021

<https://www.legislation.gov.au/Details/F2021L00490>

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 **24 May 2021**:

Endometriosis - No. 42 of 2012

<https://www.legislation.gov.au/Details/F2012L01356>

Endometriosis - No. 41 of 2012

<https://www.legislation.gov.au/Details/F2012L01355>

Inguinal hernia - No. 6 of 2013

<https://www.legislation.gov.au/Details/F2013L00021>

Inguinal hernia - No. 5 of 2013

<https://www.legislation.gov.au/Details/F2013L00020>

Open-angle glaucoma - No. 28 of 2012

<https://www.legislation.gov.au/Details/F2012L00459>

Open-angle glaucoma - No. 27 of 2012

<https://www.legislation.gov.au/Details/F2012L00457>



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