



Administrative  
Appeals Tribunal

AAT  
Bulletin

# 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 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.

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

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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# Recent developments

## AAT User Feedback Survey 2022

The AAT's annual survey has commenced, with most parties and representatives who had a review finalised between 1 December 2021 and 31 March 2022 invited via email or SMS to have their say. If you received an email or SMS, we strongly encourage you to complete the survey. By doing so you can help us identify where we can make improvements to the way we operate and the services we provide.

If you receive a link on behalf of someone else, please forward it to them as soon as possible.

The survey will close on 26 May 2022.

For more information visit our website, [www.aat.gov.au](http://www.aat.gov.au).

# 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

[CJWN and Child Support Registrar](#) (Child support second review) [2022] AATA 830 (22 April 2022); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – special circumstances – interim care determination – extension of time to object – extension of time to apply for external review – Federal Court parenting orders – reasonable action – mental illness – familial illness – decision set aside and substituted

[GKVX and Child Support Registrar](#) (Child support second review) [2022] AATA 832 (22 April 2022); B Pola, Senior Member

CHILD SUPPORT – objection to care percentage change – reasonable action – Family Court parenting orders – actual care – conflicting evidence – decision affirmed

[XRCW and Child Support Registrar](#) (Child support second review) [2022] AATA 1059 (31 March 2022); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – child support – no challenge to share care percentages – only issue before the Tribunal regarding date of effect of AAT1 decision – backdating irrelevant – proceedings inutile – dismissed pursuant to Administrative Appeals Tribunal Act 1975 (Cth) s 42B(1)(a) and (b)

[Jantz and Pether](#) (Child support) [2022] AATA 633 (8 February 2022); S Letch, Member

CHILD SUPPORT – child support agreement – whether a financial agreement meets the requirements of a binding child support agreement – decision under review affirmed

[Capron and Child Support Registrar](#) (Child support) [2022] AATA 739 (15 February 2022);

M Manetta, Member

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

[Hartnoll and Scruton](#) (Child support) [2022] AATA 946 (25 February 2022); P Jensen, Member

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

[Heywood and Annon](#) (Child support) [2022] AATA 640 (1 March 2022); C Breheny, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – income from family trust – a ground for departure established – decision under review set aside and substituted

[Rowan and Rowan](#) (Child support) [2022] AATA 954 (4 March 2022); 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 – decision under review affirmed

CHILD SUPPORT – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review set aside and substituted

## **Citizenship**

[CCVZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 990 (20 April 2022); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – by conferral – application refused – identity requirement not satisfied – good character not satisfied – where the Applicant claims to be a stateless Bidoon from Kuwait – where the Applicant has Iraqi identity documents – whether documents are fraudulent – Tribunal unable to be satisfied of identity – character not assessed – decision under review affirmed

[Fesaitu and Minister for Home Affairs](#) (Citizenship) [2022] AATA 994 (4 May 2022); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – applications for citizenship – Applicants legally adopted by an Australian citizen by domestic adoption in Fiji when they were adults – whether eligibility criteria in s 19C(2) of the Australian Citizenship Act 2007 (Cth) is satisfied – whether Fiji is a “Convention country” or “a prescribed overseas jurisdiction” – whether a Hague convention adoption – no adoption compliance certificates – recommendation that Respondent assist Applicants to make appropriate visa applications so the family can stay together in Australia – both Reviewable Decisions affirmed

**Oruzgani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2022] AATA 986 (2 May 2022); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – citizenship test exemption – whether Applicant suffers from a permanent or enduring mental incapacity at the time of application – workplace injury after application – medical evidence considered – length of time taken for citizenship application to be considered – no opportunity to sit an assisted test – decision set aside and remitted to Department

**RBFW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2022] AATA 995 (4 May 2022); P Q Wood, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – applicant is a child born in Australia – whether applicant considered to be stateless and eligible to become an Australian citizen under section 21(8) of the Australian Citizenship Act 2007 (Cth) – whether the child's parents are citizens under section 7 of the Burma Citizenship Law 1982 – parents left permanently – if parents had citizenship it would have ceased and they would be considered stateless – child therefore stateless under section 21(8) – citizenship by conferral granted – decision set aside and remitted

**Rupawan and Minister for Foreign Affairs** [2022] AATA 987 (3 May 2022); R Cameron, Senior Member

CERTIFICATE OF IDENTITY – not leaving Australia – does not satisfy criteria – decision affirmed

**Tamanabae and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Citizenship) [2022] AATA 840 (27 April 2022); R Maguire, Member

CITIZENSHIP – refusal of application – identity of applicant – prohibited from approving application – review of decision – affirmed

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

(Citizenship) [2022] AATA 850 (20 April 2022); R West, Member

CITIZENSHIP BY CONFERRAL – application for citizenship by conferral – refusal of citizenship – character test – alleged past criminal conduct – enduring moral qualities – decision set aside and remitted

## Compensation

[Buykx and Comcare](#) (Compensation) [2022] AATA 810 (22 April 2022); S Webb, Member and Dr P Fricker OAM, Member

WORKERS COMPENSATION – claim for compensation – neck and right shoulder ailment – frank injury or disease – onset of symptoms consequent to physiological change – divergent expert medical evidence – no acute injury in the course of employment – employment contribution not established to a significant degree – progress of degenerative condition – aggravation – not established condition made worse by employment – decision affirmed

[Fitzgerald and Comcare](#) (Compensation) [2022] AATA 886 (31 March 2022); A Ward, Member

COMPENSATION – whether accepted claim continues – expert witnesses properly prepared to give evidence; generality of expert views not evidence – effects work injury continuing after cessation of employment; consent decisions; unhelpful idiosyncratic views of expert regarding investigation of medical conditions

[Gordon and Comcare](#) (Compensation) [2022] AATA 841 (27 April 2022); I R Molloy, Deputy President

Worker's Compensation – massage treatment – accepted post-traumatic stress disorder and accepted conditions – whether treatment reasonable to obtain - reviewable decision dated 14 February 2019 affirmed

[Kaukau and Cleanaway Operations Pty Ltd](#) (Compensation) [2022] AATA 998 (4 May 2022); Deputy President Boyle

COMPENSATION – liability to pay compensation for injury suffered under s 14 of the SRC Act – claimed injury of “right ankle inflammation and loose bodies” – previous injury to right ankle – respondent raised defence under s 7(7) of the SRC Act at hearing – applicant's understanding of relevant forms in answering questions about previous injury – applicant did not make wilful and false representations – preferable medical evidence – applicant suffered an injury under s 5A(1)(c) of the SRC Act – respondent is liable to pay compensation – reviewable decision set aside and substituted

[Mador and Comcare](#) (Compensation) [2022] AATA 892 (27 April 2022); Dr I Alexander, Senior Member

WORKERS' COMPENSATION — anxiety/stress disorder – whether Comcare is liable to pay compensation for psychological injury – whether Applicant suffered a psychological ailment for the purposes of section 5B of the SRC Act – whether Applicant's ailment was contributed to, to a significant degree by her employment with ATO, therefore, a disease for the purposes of section 5B of the SRC Act – whether Applicant suffered disease as a result of reasonable administrative action, taken in a reasonable manner in respect of her employment with the ATO and, therefore, not compensable under the SRC Act – decisions under review affirmed

[Walker and Comcare](#) (Compensation) [2022] AATA 984 (29 April 2022); J Sosso, Deputy President

COMPENSATION – Commonwealth employees – whether Applicant suffered from a condition outside the boundaries of normal mental functioning – whether it is necessary to put a label on the ailment – weight to be placed on Applicant’s evidence – whether the Applicant suffers from biological depression – psychiatric history of family members – importance of Applicant’s physical health issues to claimed condition – conflicting expert opinion – claimed ailment contributed to, to a significant degree, by her employment – decision set aside and substituted

## Education and Research

[Nacol and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 1033 (27 April 2022); C Puplick AM, Senior Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – application for re-credit – special circumstances – physical illness – whether applicant’s circumstances were beyond her control – whether applicant’s circumstances made their full impact on or after the census date – whether applicant’s circumstances made it impracticable for unit requirements to be met – Tribunal does not find special circumstances – decision affirmed

## Freedom of Information

[ZLCH and Department of Veterans’ Affairs](#) (Freedom of information) [2022] AATA 1032 (27 April 2022); D Mitchell, Member

FREEDOM OF INFORMATION – refusal of access to documents – whether all reasonable steps have been taken to find documents – whether documents in possession but cannot be found or do not exist – whether further processing request would be substantial and unreasonable diversion of agency’s resources – decision under review affirmed

## Industrial Law

[Tickner and Secretary, Attorney-General’s Department](#) [2022] AATA 837 (26 April 2022); D Mitchell, Member

FAIR ENTITLEMENTS GUARANTEE – Claim for advance under Fair Entitlements Guarantee Act 2012 (Cth) – meaning of effective claim – whether Applicant filed a claim within the relevant time period – no discretion to extend the time period – decision under review affirmed



## Migration

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

(Migration) [2022] AATA 831 (21 April 2022); C Puplick AM, Senior Member

MIGRATION – mandatory 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 – family violence – best interests of minor children – expectations of the Australian community – non-refoulement obligations claimed – impediments to removal – impact on victims – strength, nature and duration of ties to Australia – decision affirmed

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

(Migration) [2022] AATA 1049 (4 May 2022); B W Rayment AOM QC, Deputy President

MIGRATION - mandatory cancellation of visa – Subclass 202 – Global Special Humanitarian 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 – international non-refoulement obligations – impediments to removal – strength, nature and duration of ties – where Applicant has secured place in a rehabilitation program – decision set aside and substituted

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

(Migration) [2022] AATA 848 (30 March 2022); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – very serious violent offending – mental health and substance abuse - whether discretion to revoke mandatory cancellation should be exercised – risk of re-offending – best interests of minor children – expectations of the Australian community – other considerations – strength, nature and duration of ties – extent of impediments if removed – primary considerations outweigh other considerations – decision affirmed

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

(Migration) [2022] AATA 833 (26 April 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class AO (Subclass 802) Child visa – where Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – Violence Restraining Orders – assaults against former partners – assault public officers – assault occasioning actual bodily harm – decision under review affirmed

**Namoa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 991 (14 April 2022); M Griffin QC, Senior Member

MIGRATION – visa cancellation – mandatory cancellation due to substantial criminal record – Direction No. 90 – protection of the Australian community – best interests of minor children – expectations of the Australian community – links to the Australian community – first criminal conviction – decision under review set aside and substituted

**NQJT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 1060 (4 May 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – mandatory cancellation of visa under s 501(3A) – refusal to revoke cancellation – failure of character test due to substantial criminal record – is there another reason to revoke – protection of the Australian community – risk of reoffending – best interests of minor children – international non-refoulement obligations – impediments to removal – links to the Australian community – decision set aside and substituted

**PGDX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 1034 (5 May 2022); A Nikolic AM CSC, Senior Member

MIGRATION – citizen of India – mandatory visa cancellation – Class RN Subclass 187 Regional Sponsored Migration Scheme visa – five-year sentence of imprisonment – substantial criminal record – failure to pass the character test – Ministerial Direction No. 90 applied – nature and seriousness of offending conduct – other serious conduct – risk of reoffending – inconsistencies in evidence – insight and remorse – protection of the Australian community – best interests of children – family violence – expectations of the Australian community – impediments to removal – strength, nature and duration of ties – reviewable decision affirmed

**Smith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 996 (4 May 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 – serious drug offending and lengthy traffic history – receiving country New Zealand – decision under review affirmed

**Daljeet Kaur** (Migration) [2022] AATA 777 (14 March 2022); L Hardy, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – no substantive visa at time of application – substantive visa expired two days – departure flight bookings cancelled by the airline – COVID-19 pandemic travel restrictions – evidence of earlier intended departure – circumstances out of the applicant's control – decision under review remitted

[Acharya](#) (Migration) [2022] AATA 765 (15 March 2022); M Bourke, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – no substantive visa at the time of application – complying with visa conditions – application made within 28 days after the last substantive visa expired – no further stay condition waiver approved – factors beyond the applicant’s control – Department used incorrect notification address – applicant practically could not make a further visa application – compelling reasons for granting the visa – decision under review remitted

[Robin Singh](#) (Migration) [2022] AATA 759 (15 March 2022); D Triaca, Member

MIGRATION – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – genuine student – genuine temporary entrant – limited academic progress – applicant had work rights but no study rights – course related to current work – benefit to future employment prospects – decision under review remitted

[Singh](#) (Migration) [2022] AATA 819 (4 April 2022); A Mercer, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – post-study work stream – Australian study requirement – completion of relevant course within 6 months before application made – application made after completing course work and practical placements but before official notification of completion – anxiety about longer processing times and pending expiration of student visa – no assistance from agent or lawyer – course ‘completed’ on date results finalised by institution – no discretion to waive requirement – value of professional work in regional area to employer – possibility of seeking ministerial intervention – decision under review affirmed

[Fahmi](#) (Migration) [2022] AATA 856 (11 April 2022); J Murphy, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – short-term stream – network administrator – subject of approved position nomination – refusal of related nomination application affirmed on review – no response to tribunal’s invitation to comment – referral for ministerial consideration – strong compassionate circumstances – nominator a school in a multicultural, new migrant community – technology to support learning and development – significant expenditure of public funds – nominee’s skills, experience and leadership – unintentional oversight in labour market testing – member of family unit – referred for ministerial consideration – decision under review affirmed

## **National Disability Insurance Scheme**

[PMCP and National Disability Insurance Agency](#) [2022] AATA 1062 (4 April 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – participant supports – reasonable and necessary supports – decision under review set aside and substituted

## Practice and Procedure

[Barnes and Australian Postal Corporation](#) (Compensation) [2022] AATA 849 (27 April 2022); A Poljak, Senior Member

PRACTICE & PROCEDURE – Objection to issue summonses to give oral evidence – whether witnesses able to give evidence relevant to the Tribunal's determination of substantive issues – where evidence doesn't go to narrow issue before the Tribunal – request for summons refused – interlocutory application granted

[HXJZ and National Disability Insurance Agency](#) [2022] AATA 826 (19 April 2022); P Smith, Member

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – Objection to issue summonses to produce medical records and housing records – whether the documents sought in the summonses are relevant to the Tribunal's determination of the substantive issues – documents containing details of sensitive disclosures made by the Applicant excluded from summons on the basis of relevance and concerns of re-traumatization of the Applicant

[JWVH and National Disability Insurance Agency](#) [2022] AATA 989 (3 May 2022); K Parker, Senior Member

PRACTICE AND PROCEDURE – deemed recusal application – National Disability Insurance Scheme – Applicant asserts Senior Member constituted to hear this application is biased in favour of the NDIA and against her – no actual or apprehended bias – Senior Member decided not to recuse herself – deemed recusal application refused

[Shanney and National Disability Insurance Agency](#) [2022] AATA 827 (22 April 2022); P Smith, Member

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – JURISDICTION – whether the Tribunal has jurisdiction to review a new plan approved by the Respondent as part of the application for review – where the Respondent did not advance a position on whether the Tribunal has jurisdiction – where previous decisions of the Tribunal in similar circumstances considered – Tribunal satisfied there is jurisdiction to review the new plan as part of the current application

## Professions and Trades

### [Tréidlia Biovet Pty Ltd and Australian Pesticides and Veterinary Medicines Authority](#) [2022]

AATA 992 (2 May 2022); A Poljak, Senior Member and Dr L Bygrave, Member

REGULATORY AND COMPLIANCE – refusal of an application to extend an emergency use permit under Agricultural and Veterinary Chemicals Code Act 1994 – where permit had previously been approved on basis of genuine belief that the use is required because of an emergency or impending emergency – whether the requirements in the Code under s 112(2)(e) will continue to be met – whether there is a reasonable ground for not applying for registration for the purposes of s 112(2)(f) – circumstances do not amount to an emergency – no reasonable ground not to apply for registration – decision under review is affirmed

## Refugee

### [1721346](#) (Refugee) [2022] AATA 799 (20 January 2022); B Darcy, Member

REFUGEE – Protection visa – Syria – complementary protection – Orthodox Christian – imputed pro-Assad political opinion – conscription into the Syrian military – general security situation in Syria – inability to relocate in Syria – inability to relocate to a third country – residency permit in Venezuela ceased – decision under review remitted

### [1711907](#) (Refugee) [2022] AATA 709 (11 February 2022); D McCulloch, Member

REFUGEE – protection visa – Bangladesh – religion – Hindu – Hare Krishna – International Society for Krishna Consciousness (ISKCON) supporter – Bangladesh Hindu Buddhist Christian Unity Council member – fear of killing – attacks by Muslim extremists – threatening phone calls and letters – inconsistent evidence – credibility concerns – decision under review affirmed

### [1918507](#) (Refugee) [2022] AATA 793 (18 February 2022); P Windsor, Member

REFUGEE – protection visa – Pakistan – Federal Circuit Court remittal – imputed political opinion – local Peace Committee member – opposition to the Taliban – involvement in an NGO – polio vaccination teams – unlawful killings – mental illness – internal relocation – lack of family support – decision under review remitted

### [1814665](#) (Refugee) [2022] AATA 716 (22 February 2022); J Pennell, Senior Member

REFUGEE – protection visa – Vietnam – religion – Catholic – imputed political opinion – anti-Communist – detained after protest – Formosa protest – expressed views against corruption – credibility issues – inconsistent evidence – delay in applying for protection – decision under review affirmed

[1905677](#) (Refugee) [2022] AATA 744 (2 March 2022); S Roushan, Senior Member

REFUGEE – protection visa – Afghanistan – Federal Court of Australia remittal – imputed political opinion – opposition to the Taliban – perceived association with Western forces – race – Hazara – religion – Shia – mental health issues – sectarian violence – security situation – decision under review remitted

[2101082](#) (Refugee) [2022] AATA 797 (28 March 2022); S Baker, Member

REFUGEE – protection visa – Afghanistan – ethnicity, religion, gender and imputed political opinion – Hazara Shia woman working in government-related occupations with specified people and girls – husband a government employee – discrimination, harm and relocation – fear of harm from Taliban and other militant groups – right to enter and reside in third country – husband’s visa for third country conditional on employment, which has now ceased – husband currently in fourth country on short-term visa – member of family unit – country information – decision made without hearing necessary – decision under review remitted

[1906821](#) (Refugee) [2022] AATA 796 (31 March 2022); L Hardy, Member

REFUGEE – protection visa – Pakistan – fear of harm because of land dispute – rumour of blasphemy spread by opponents and death penalty announced by imam – relocation – authenticity of newspaper article claimed to be about applicant – no other corroborating evidence – country information – decision under review affirmed

## **Social Services**

[Bassett and Secretary, Department of Social Services](#) (Social services second review) (Social services second review) [2022] AATA 985 (29 April 2022); L M Gallagher, Member

SOCIAL SECURITY – disability support pension – whether applicant’s conditions are fully diagnosed, fully treated and fully stabilised – whether applicant has severe impairment – brain aneurysm – mental health condition – cervical spondylosis – sleep apnoea – hearing loss – whether applicant has continuing ability to work – whether applicant has completed program of support – decision under review affirmed

[Fneiche; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 825 (11 April 2022); Dr D Cremean, Senior Member

SOCIAL SECURITY – Parenting payment – overpayment due to ceasing of residency – whether debt was solely attributable to administrative error – whether “special circumstances” exist – decision affirmed

[Robertson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 828 (22 April 2022); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether insufficient medical evidence provided – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support had not been undertaken – decision on the papers – decision under review affirmed.

## Taxation

[Narlexi Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 993 (11 April 2022); R Olding, Senior Member

TAXATION – CORONAVIRUS ECONOMIC RESPONSE PACKAGE – CASH FLOW BOOST – where applicant incorporated in December 2019 – whether applicant could satisfy the requirement that it “made a taxable supply in a tax period that applied to it” that started on or after 1 July 2018 and ended before 12 March 2020 – where applicant accounted for GST quarterly and made its first made taxable supplies in the quarterly tax period ending March 2020 – decision affirmed

[RFZD and Commissioner of Taxation](#) (Taxation) [2022] AATA 988 (14 April 2022); Dr L Kirk, Senior Member

TAXATION – objection decision – superannuation guarantee charge – shortfall – whether the amended SGC assessments and SGC and PAYGW penalties correctly imposed – whether the penalty imposed on the Applicant by the Commissioner should be remitted in whole or in part – decision under review affirmed

[Twin Rivers Developments Pty Limited and Commissioner of Taxation](#) (Taxation) [2022] AATA 887 (28 April 2022); R Olding, Senior Member

TAXATION – CORONAVIRUS ECONOMIC RESPONSE MEASURES – CASH FLOW BOOST – whether applicant paid wages in March and June 2020 quarterly tax periods – whether scheme for the dominant purpose of obtaining or increasing cash flow boost – decision that applicant entitled to cash flow boost for March 2020 quarter but not June 2020 quarter substituted

## Veterans' Affairs

[Lindsay and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 997 (4 May 2022); D Mitchell, Member

VETERANS' AFFAIRS – application for increase in rate of pension – special rate pension – alone test – assessment period – decision under review

# 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
<b>El Khoueiry and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3577</a>
<b>Klewer and National Disability Insurance Agency</b>	<a href="#">[2022] AATA 566</a>
<b>Snow and Secretary, Department of Social Services</b>	<a href="#">[2022] AATA 365</a>
<b>Tapiki and Minister for Immigration and Border Protection &amp; Administrative Appeals Tribunal</b>	<a href="#">[2021] AATA 1228</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>GXXS v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3094</a>	<a href="#">[2022] FCA 468</a>
<b>Healey v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4309</a>	<a href="#">[2022] FCA 449</a>
<b>Ibrahim v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3637</a>	<a href="#">[2022] FCA 450</a>
<b>Miller v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1623</a>	<a href="#">[2022] FCA 489</a>



# 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 **30 May 2022**:

**Malignant neoplasm of the larynx (Balance of Probabilities) - No. 42 of 2022**

<https://www.legislation.gov.au/Details/F2022L00661>

**Malignant neoplasm of the larynx (Reasonable Hypothesis) - No. 41 of 2022**

<https://www.legislation.gov.au/Details/F2022L00660>

**Malignant neoplasm of the thyroid gland (Balance of Probabilities) - No. 40 of 2022**

<https://www.legislation.gov.au/Details/F2022L00658>

**Malignant neoplasm of the thyroid gland (Reasonable Hypothesis) - No. 39 of 2022**

<https://www.legislation.gov.au/Details/F2022L00655>

**Morbid obesity (Balance of Probabilities) - No. 44 of 2022**

<https://www.legislation.gov.au/Details/F2022L00663>

**Morbid obesity (Reasonable Hypothesis) - No. 43 of 2022**

<https://www.legislation.gov.au/Details/F2022L00662>

**Seizure (Reasonable Hypothesis) - No. 37 of 2022**

<https://www.legislation.gov.au/Details/F2022L00651>

**Seizure(Balance of Probabilities) - No. 38 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00654>

**Sudden unexplained death (Balance of Probabilities) - No. 46 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00653>

**Sudden unexplained death (Reasonable Hypothesis) - No. 45 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00652>

**Thoracic outlet syndrome (Balance of Probabilities) - No. 48 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00682>

**Thoracic outlet syndrome (Reasonable Hypothesis) - No. 47 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00681>

## **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 **30 May 2022**:

**Acute lymphoblastic leukaemia/lymphoblastic lymphoma (Reasonable Hypothesis) - No. 59 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00659>

**Diabetes mellitus (Balance of Probabilities) - No. 50 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00666>

**Diabetes mellitus (Reasonable Hypothesis) - No. 49 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00665>

**Hypogonadism (Balance of Probabilities) - No. 52 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00668>

**Hypogonadism (Reasonable Hypothesis) - No. 51 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00667>

**Hypopituitarism (Reasonable Hypothesis) - No. 53 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00664>

**Hypopituitarism (Balance of Probabilities) - No. 54 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00674>

**Immune thrombocytopaenia (Balance of Probabilities) - No. 58 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00657>

**Immune thrombocytopaenia (Reasonable Hypothesis) - No. 57 of 2022**  
<https://www.legislation.gov.au/Details/F2022L00656>

**Sensorineural hearing loss (Balance of Probabilities) - No. 56 of 2022**

<https://www.legislation.gov.au/Details/F2022L00673>

**Sensorineural hearing loss (Reasonable Hypothesis) - No. 55 of 2022**

<https://www.legislation.gov.au/Details/F2022L00672>

## **Statements of Principles to be revoked**

The AAT has been advised that the following Statements of Principles determined by the RMA **will be repealed on 30 May 2022:**

**Malignant neoplasm of the larynx - No. 62 of 2013**

<https://www.legislation.gov.au/Details/F2013L01650>

**Malignant neoplasm of the larynx - No. 61 of 2013**

<https://www.legislation.gov.au/Details/F2013L01649>

**Malignant neoplasm of the thyroid gland - No. 40 of 2014**

<https://www.legislation.gov.au/Details/F2014L00478>

**Malignant neoplasm of the thyroid gland - No. 39 of 2014**

<https://www.legislation.gov.au/Details/F2014L00476>

**Morbid obesity - No. 6 of 2014**

<https://www.legislation.gov.au/Details/F2014L00022>

**Morbid obesity - No. 5 of 2014**

<https://www.legislation.gov.au/Details/F2014L00010>

**Epileptic seizure - No. 77 of 2013**

<https://www.legislation.gov.au/Details/F2013L01897>

**Epileptic seizure - No. 78 of 2013**

<https://www.legislation.gov.au/Details/F2013L01899>

**Sudden unexplained death - No. 58 of 2013**

<https://www.legislation.gov.au/Details/F2013L01646>

**Sudden unexplained death - No. 57 of 2013**

<https://www.legislation.gov.au/Details/F2013L01645>

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