



# AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support Division. It occasionally includes information on legislative changes that affect the AAT.

It is recommended that the Bulletin be read on-line. This has the advantage of allowing the reader to use hyperlinks to access the full text of cases and other internet sites mentioned in the Bulletin.

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

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# Recent developments

## Updates to AAT practices in response to COVID-19

### *New COVID-19 special measures - practice directions*

The President of the Administrative Appeals Tribunal has issued five special measures practice directions that set out how we will continue to operate while COVID-19 impacts our services. The new practice directions make changes to some aspects of our operations and procedures and to obligations of parties to reviews in response to the COVID-19 pandemic. The new practice directions may take precedence over other directions.

The directions are in effect from **Wednesday 29 April 2020**. Please see our [website](#) for more information.

### *New and updated forms & procedures – summonses*

As part of the special measures practice directions, the AAT has introduced new procedures for dealing with requests to issue a summons in the General and other Divisions. In particular there is a new **Request to issue summons** form which requires a party to explain how the documents they have requested to be summoned, or the evidence the person summoned would give, are relevant to the issues the AAT must decide in the review. There are also additional requirements for summonses for health, police or emergency service records during the COVID-19 pandemic.

The form 'Summons to produce documents' has been updated to better facilitate the Tribunal's services in response to the COVID-19 pandemic by making it clear that documents can be produced by means other than bringing the documents to the Registry, including producing them electronically.

The new form 'Request to issue summons' and the updated form 'Summons to produce documents' can be found on our [website](#).

# 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

[MQMV and Child Support Registrar](#) (Child support second review) [2020] AATA 980 (24 April 2020); Senior Member C Puplick AM

CHILD SUPPORT – percentage of care – actual care – delegated care – care period – cost percentages – revocation of percentage of care determination – decision under review affirmed

[Peters and Child Support Registrar](#) (Child support) [2020] AATA 996 (29 April 2020); Deputy President Britten-Jones

CHILD SUPPORT – refusal to issue a departure authorisation certificate – child support debt – where the applicant is unable to give security - whether a departure authorisation certificate should be issued on humanitarian grounds – the decision under review is affirmed

[Eberhardt and Stubbs](#) (Child support) [2020] AATA 880 (5 February 2020); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the liable parent ceased to be a resident of Australia – the liable parent remained a resident – decision under review affirmed

[Yasser and Child Support Registrar](#) (Child support) [2020] AATA 879 (5 February 2020); M Baulch, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay in lodging the objection late – some prospects of objection succeeding – the extension of time should not be granted – decision under review affirmed

[Tanner and Tanner](#) (Child support) [2020] AATA 885 (11 February 2020); Y Webb, 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 reasonable action taken by parent with increased care – interim period applied for 14 weeks – decision under review set aside and substituted

## Citizenship

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

(Citizenship) [2020] AATA 889 (20 April 2020); Mr W Frost, Member

CITIZENSHIP – application for citizenship by conferral – citizenship refused where applicant is not of good character – whether the Tribunal is satisfied that the applicant is of good character – where the applicant has a history of criminal offending – driving offences – assault occasioning actual bodily harm – destroy/damage property – Tribunal not satisfied that the applicant is of good character – decision under review affirmed

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

(Citizenship) [2020] AATA 977 (27 April 2020); Mrs J C Kelly, Senior Member

CITIZENSHIP – Refusal of Australian citizenship by conferral – applicant is a New Zealand citizen – applicant holds TY 444 Special Category temporary visa – whether applicant was a permanent resident at the time the citizenship application was made – whether the applicant was a permanent resident at the time the decision was made – citizenship by birth – citizenship policy – reviewable decision affirmed

[Lynch and Minister for Home Affairs](#) (Citizenship) [2020] AATA 920 (22 April 2020); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – good character – considerations to be taken into account when assessing character – cultivation, sale and supply of cannabis – Applicant declared a drug trafficker – Applicant over the age of 60 years – Applicant a Vietnam veteran – whether sufficient evidence of good character – character references that do not mention offending – reviewable decision affirmed

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

(Citizenship) [2020] AATA 905 (21 April 2020); Senior Member R Cameron

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – whether the Applicant is of good character – failure to disclose the existence of a prior conviction in application – information supplied in application not complete, truthful and correct in every detail – decision affirmed

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

(Citizenship) [2020] AATA 871 (17 April 2020); Senior Member C Puplick AM

CITIZENSHIP – refusal of Australian citizenship by conferral – general eligibility – good character requirement – eligibility of persons aged under 18 – exercise of discretion to refuse citizenship approval – Citizenship Policy – children under the age of 16 – assessment of applicants in their own right – responsible parent – Convention on the Rights of the Child – best interests of the child – significant hardship or disadvantage – reviewable decisions affirmed

### **Selliah and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2020] AATA 919 (22 April 2020); Dr L Bygrave, Member

CITIZENSHIP – application for citizenship by conferral – general residence requirement – spouse exception – whether the applicant had a close and continuing association with Australia – application of the Citizenship Policy – where applicant operates overseas real estate business – where applicant has demonstrated some participation in community organisation – where applicant intends to reside in Australia in the future – significant periods of absence from Australia – decision affirmed

### **Sibai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2020] AATA 957 (17 April 2020); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – application for Australian citizenship by conferral – refuse to approve application – whether applicant has a permanent or enduring physical or mental incapacity – citizenship test – decision under review affirmed

### **SVYH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2020] AATA 936 (23 April 2020); Dr P McDermott RFD, Deputy President

CITIZENSHIP – citizenship by descent – citizenship by descent where Applicant's lineage was unestablished – refusal to submit to DNA test – decision under review affirmed.

## **Compensation**

**Black and Comcare** (Compensation) [2020] AATA 929 (21 April 2020); M O'Loughlin, Member and D Ben-Tovim, Member

COMPENSATION – Workers' Compensation – whether applicant continues to suffer from accepted conditions – assessment of expert medical evidence – decision under review set aside and substituted with a decision that applicant continues to suffer from accepted conditions

**Parry and Military Rehabilitation and Compensation Commission** (Compensation) [2020] AATA 997 (30 April 2020); Senior Member Katter

MILITARY COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) – when conditions manifest – irritable bowel syndrome – applicable test for causation – decision under review affirmed

**Smith and Comcare** (Compensation) [2020] AATA 870 (17 April 2020); Dr I Alexander, Senior Member

COMPENSATION – workers compensation – right lateral epicondylitis – whether employment significantly contributed to her ailment – decision under review affirmed

## **Education and Research**

**McKinstry and Secretary, Department of Education, Skills and Employment** [2020] AATA 862 (17 April 2020); Mr R West, Member

EDUCATION – remission of HECS-HELP debt application after census date – whether special circumstances – exacerbation of depressive illness – whether circumstances beyond the Applicant's control – whether circumstances making full impact after the census date – decision affirmed

## Health

[Pearl Aged Care Services Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2020] AATA 963 (24 April 2020); Mrs J C Kelly, Senior Member

HEALTH AND AGED CARE – Refusal of application for approval as an approved provider of Aged Care under section 8-1 and 8-5 of the Act – whether the applicant has experience in providing aged care or other relevant forms of care – whether the applicant demonstrated understanding of its responsibilities as a provider of the type of care for which approval is sought – the applicant’s records of financial management, and the methods that the applicant uses, or proposes to use in order to ensure sound financial management – the systems that the applicant has, or proposes to have in place to meet its responsibilities as a provider of the type of care for which approval is sought – Pearl Aged Care Services Pty Ltd does not satisfy the requirements of the Act – Applicant is not suitable to provide Aged Care – reviewable decision affirmed

## Media and Communications

[Futrends Pty Ltd and Australian Communications and Media Authority](#) [2020] AATA 987 (29 April 2020); Deputy President J W Constance

RADIOCOMMUNICATIONS – Low Power Open Narrowcasting (LPON) licence – licence cancelled pursuant to discretion – breach of licence conditions – whether licensee provided the service with “reasonable regularity” – meaning of “regularity” – where licensee failed to maintain records of the commencement, hours of operation and provision of the service – decision affirmed

## Migration

[CKQV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 927 (17 April 2020); Ms S Burford, Member

MIGRATION – Migration Act 1958 (Cth) – decision of delegate of Minister to cancel Applicant’s visa – jurisdiction – whether the Applicant’s handwritten letter could be regarded as making a valid application – Applicant’s application filed in time – operation of

‘two-day rule’ – character test – substantial criminal record – court in Australia has convicted the person of one or more sexually based offences involving a child – violence related offences – breach of court orders – traffic and drug offending – Direction no. 79 -protection of the Australian community – nature and seriousness of the conduct – the risk to the Australian community – best interests of minor children – expectations of the Australian community – other considerations – international non-refoulement obligations – strength, nature and duration of ties – impact on Australian business interests – impact on victims – extent of impediments if removed to Indonesia – reviewable decision set aside and substituted – discretion should not be exercised to cancel the Applicant’s visa

[CLXZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1001 (28 April 2020); T Eteuati, Member

MIGRATION – Non-revocation of mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – Applicant does not pass character test — whether there is another reason why the mandatory cancellation of the Applicant’s visa should be revoked – consideration and application of Ministerial Direction No 79 — decision under review is affirmed

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

(Migration) [2020] AATA 872 (2 April 2020); Senior Member Tavoularis

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

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

(Migration) [2020] AATA 907 (21 April 2020); Senior Member L Kirk

MIGRATION – subclass 444 special category visa – citizen of New Zealand – failure to pass character test – offending history – whether discretion to revoke mandatory cancellation should be exercised – considerations under Direction No. 79 – primary considerations – other considerations – decision under review affirmed

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

(Migration) [2020] AATA 959 (24 April 2020); Senior Member D J Morris and Senior Member P Q Wood

MIGRATION – mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – applicant is a citizen of New Zealand – applicant born in Ethiopia – applicant does not pass character test – Ministerial Direction No. 79 – whether another reason to revoke mandatory cancellation of visa – primary considerations – protection of the Australian community – previous immigration warnings and actions – expectations of Australian community – other relevant considerations – strength, nature and duration of ties to Australia – extent of impediments if removed – discretion not enlivened – decision under review affirmed

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

(Migration) [2020] AATA 869 (9 April 2020); Ms R Bellamy, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class AT Subclass 126 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

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

(Migration) [2020] AATA 930 (3 March 2020); The Hon. M Groom, Senior Member

MIGRATION – mandatory cancellation of visa under section 501CA – whether mandatory cancellation should be revoked – Ministerial Direction 79 – primary considerations – other considerations – decision under review affirmed

**Mejias Gallardo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2020] AATA 960 (23 April 2020); Senior Member T Tavoularis

MIGRATION – Cancellation of Applicant's visa under s501(2) of the Migration Act 1958 - where Applicant does not pass the character test – whether discretion not to exercise the power to cancel the subject visa pursuant to s501A(d) – consideration of Ministerial Direction No. 79 – decision under review set aside and substituted

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

(Migration) [2020] AATA 937 (23 April 2020); Ms R Bellamy, Member

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

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

(Migration) [2020] AATA 888 (20 April 2020); The Hon. J Pascoe AC CVO, Deputy President

VISA CANCELLATION – refusal of Bridging E (Class WE) Visa – failure to pass the character test – whether discretion to set aside the delegate’s decision should be exercised – whether there is any risk of the applicant engaging in future criminal conduct – whether the applicant poses a risk of harm to the Australian community – Direction No. 79 – decision under review set aside

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

(Migration) [2020] AATA 1000 (29 April 2020); Senior Member A Nikolic AM CSC

MIGRATION – Mandatory visa cancellation – citizen of Liberia – Class XB Subclass 200 visa – failure to pass good character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 79 applied – decision affirmed

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

(Migration) [2020] AATA 994 (29 April 2020); Senior Member T Tavoularis

MIGRATION – Practice and Procedure – section 501CA(4) of the Migration Act 1958 (Cth) - Interlocutory Hearing– where the Applicant made representations out of time – acknowledged defect in delegate’s decision making process – whether a decision so made is a reviewable decision – whether the Tribunal’s power to revoke the original cancellation decision is enlivened – decision before the Tribunal affirmed

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

(Migration) [2020] AATA 922 (22 April 2020); Ms R Bellamy, Member

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

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

(Migration) [2020] AATA 1013 (30 April 2020); Mr S Evans, Member

MIGRATION – cancellation of Applicant’s Class BC, Subclass 100 Partner (Migrant) permanent visa – Applicant is a citizen of Vietnam – failure of the character test – whether there is another reason to revoke the visa cancellation – Direction No. 79 – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – decision under review affirmed

[XMTQ and Minister for Home Affairs](#) (Migration) [2020] AATA 986 (30 March 2020); The Hon. M Groom, Senior Member

MIGRATION – refusal of visa on character grounds – where applicant does not pass the character test – whether there is another reason the visa should not be refused on character grounds – consideration of primary and other considerations – decision set aside and substituted

[Yu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1002 (29 April 2020); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantial criminal record – drug convictions – Direction No 79 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – extent of impediments if returned to China – impact of COVID-19 pandemic – detention for an indefinite period if decision affirmed – international non-refoulement obligations – whether Applicant may face harm if returned to China due to drug convictions – reviewable decision affirmed

[YYKF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 924 (14 April 2020); Deputy President S A Forgie

MIGRATION – Application for temporary protection visa (class XD) – visa refused under s 501(1) of the Migration Act 1958 – whether applicant passes character test – whether applicant is a risk to the community – where applicant is owed non-refoulement obligations – decision under review set aside and substituted

[Zhang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 1012 (9 April 2020); The Hon. M Groom, Senior Member

MIGRATION – visa refusal – citizen of China – s 501 character test – violent offence against a woman – isolated incident – risk of reoffending – appropriate test – risk of reoffending minimal – decision under review set aside and substituted

[ZNNP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 867 (14 April 2020); Mr T Eteuati, Member

MIGRATION – Non-revocation of mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – Applicant does not pass character test — whether there is another reason why the mandatory cancellation of the Applicant’s visa should be revoked – consideration and application of Ministerial Direction No 79 — decision under review affirmed

[ZTFH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2020] AATA 910 (21 April 2020); Mr T Eteuati, Member

MIGRATION – Non-revocation of mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – Applicant does not pass character test – whether there is another reason why the mandatory cancellation of the Applicant’s visa should be revoked – consideration and application of Ministerial Direction No 79 – decision under review is affirmed

[Boparai](#) (Migration) [2020] AATA 834 (13 March 2020); L Hawas, Senior Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – not enrolled in registered course – discretion to cancel visa – factors for and against cancellation – father’s death – physical health – enrolment in non-registered course on advice of migration agent – agent’s delay in providing information for applicant’s responses to tribunal’s requests – enrolment in registered course after receiving notice of intention to consider cancellation – decision under review affirmed

[Tariq](#) (Migration) [2020] AATA 855 (15 March 2020); D Thompson, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 573 (Higher Education Sector) – enrolled at lower level than visa requirement – poor course results and change of subject area – enrolment in lower-level vocational courses – discretion to cancel visa – factors for and against cancellation – intention to study at original level – enrolment in package of courses which will lead to that level – mental health – decision under review set aside

[Ajiboye](#) (Migration) [2020] AATA 875 (16 March 2020); J Lambie, Senior Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – fraudulent conduct of any person – improper actions by department employees in Pretoria – application processed quickly with no verification of information and documents – disinterested assessor would not have granted visa – discretion to cancel visa – factors for and against cancellation – no evidence of fraud by applicant – compliance with visa conditions – decision under review affirmed

[Muthukuda Arachchige Dona](#) (Migration) [2020] AATA 753 (18 March 2020); M Bishop, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – subject of an approved nomination – request for adjournment – COVID-19 virus – physical attendance of hearing – phone hearing offered – Tribunal’s statutory purpose considered – decision under review affirmed

[1906824](#) (Migration) [2020] AATA 858 (19 March 2020); M McAdam, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) – Subclass 573 (Higher Education Sector) – risk to safety of Australian community – criminal charge, guilty plea, intensive correction order and electronic monitoring – discretion to cancel visa – factors for and against cancellation – purpose of order – applicant’s compliance – decision under review set aside

[Quach](#) (Migration) [2020] AATA 750 (20 March 2020); M Bishop, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry stream – Chef – subject of an approved nomination – linking a visa application to a nomination application – incorrect TRN declared in visa application – innocent mistake – ‘intended’ nomination application approved by the Department – decision under review remitted

## National Disability Insurance Scheme

[XXWC by his mother and National Disability Insurance Agency](#) [2020] AATA 923 (23 March 2020); Deputy President S A Forgie

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – participant is a minor with Autism Spectrum Disorder – participant in need of early intensive behavioural intervention– multidisciplinary therapy – participant already undertaking a program of intervention under the Early Start Denver Model – whether it is reasonable and necessary to fund the Early Start Denver Model – whether alternative comparable intervention should be funded at a lower rate – alternative intervention not appropriate for this applicant – decision set aside and substituted

## Practice and Procedure

[Chadwick and Minister for Home Affairs](#) (Migration) [2020] AATA 983 (28 April 2020); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – jurisdiction – application for extension of time – decision of delegate of the Minister not to revoke mandatory cancellation of visa – whether Applicant filed application for review within nine day statutory time limit s 500(6B) – Migration Act 1958 (Cth) – Migration Regulations 1994 (Cth) – Tribunal cannot extend time – procedure for notification of non-revocation decision under s 501G of the Migration Act 1958 (Cth) – time Applicant taken to have received notification of non-revocation under reg 2.55 of the Migration Regulations 1994 (Cth) – whether letter to the Department could constitute valid application for review – operation of s 500(6L) of the Migration Act 1958 (Cth) requiring Tribunal to make decision within 84 days – Administrative Appeals Tribunal Act 1975 (Cth) – s 42A(4) – Tribunal satisfied no jurisdiction – application dismissed

## Refugee

[1824383](#) (Refugee) [2019] AATA 6693 (8 October 2019); N Burns, Member

REFUGEE – Protection visa – Ethiopia – Federal Circuit Court remittal – actual and imputed political opinion – past membership and support to the Ethiopian People’s Patriotic Front (EPPF) – mixed ethnicity – Tigray and Eritrean/Tigrinyan – relocation is not a safe option – fear of persecution from the authorities is well-founded – decision under review remitted

[1621533](#) (Refugee) [2019] AATA 6788 (17 December 2019); R Smidt, Member

REFUGEE – protection visa – Venezuela – political opinion – anti-government opinions – particular social group – health professionals – anti-Maduro plebiscite – restrictions on health care services – workplace demotion – fear of torture – fear of killing – criminal gangs – state protection – decision under review remitted

[1814447](#) (Refugee) [2020] AATA 909 (16 January 2020); S Roushan, Senior Member

REFUGEE – protection visa – Egypt – Federal Circuit Court remittal – religion – Coptic Christianity – membership of particular social group – business owner – relatives killed in separate incidents – various attacks and threats to family members and friends – mental health and treatment – country information – status of Coptic Christians and women – members of family unit – decision under review remitted

[1726354](#) (Refugee) [2020] AATA 811 (12 February 2020); M McAdam, Member

REFUGEE – protection visa – Stateless – Federal Circuit Court remittal – Faili Kurd in Iran – Iranian identity card allowed residence but no other rights – discrimination but no persecution – left on false passport in own name – identity card now expired – fear of harm as undocumented failed asylum seeker – country information – decision under review remitted

[1823743](#) (Refugee) [2020] AATA 793 (21 February 2020); P Windsor, Member

REFUGEE – protection visa – Bangladesh – arrival at Ashmore Reef not an unauthorised maritime arrival – political opinion – low-level membership of opposition party – harassment at work and accusation of arson – religion – moderate Muslim in strict Muslim family – inter-faith relationship with Hindu woman opposed by woman's brother – attacks and threats by brother and associates – woman's pregnancy and miscarriage after assault – conversion to Hinduism in Bangladesh and Christianity in Australia – church activities for purpose of strengthening claim to be a refugee – physical and mental health – credibility – inconsistent, unsupported evidence – decision under review affirmed

[1622488](#) (Refugee) [2020] AATA 786 (26 March 2020); J Marquard, Member

REFUGEE – protection visa – Ghana – refusal to be enstooled as a fetish priest – credibility concerns – inconsistent evidence – omission of key incidents of harm in written application – provided incorrect information to the Department – delay in applying for protection – country information – selection criteria for chiefs and priests – consequences for refusing traditional positions – no real chance of harm – decision under review affirmed

[Clark and Comcare](#) (Compensation) [2020] AATA 864 (17 April 2020); Senior Member D O'Donovan

PRACTICE AND PROCEDURE – Workers Compensation – application to vacate the hearing dates – concerns surrounding COVID-19 pandemic – whether hearing can be held using alternative technological methods – health condition of the applicant and her Counsel considered – procedural fairness and prejudice considerations – delay occasioned by change in summons procedure considered – hearing vacated on summons ground only – directions made

[Hollonds and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2020] AATA 981 (28 February 2020); Mr A Maryniak QC, Member

PRACTICE AND PROCEDURE – citizenship – application for dismissal pursuant to section 42B(1) of the Administrative Appeals Tribunal Act 1975 – no reasonable prospects of success – general residence requirement not satisfied – discretions not enlivened – application granted – substantive application dismissed

[Le'Sam Accounting Pty Ltd and Tax Practitioners Board](#) [2020] AATA 890 (20 April 2020); Deputy President B J McCabe

PRACTICE AND PROCEDURE – STAY APPLICATION – termination of registration as tax agent – breach of code of professional conduct – failure to respond to request and directions from the Board in a timely, responsible and reasonable manner and respond to request for information – prospects of success – interests of persons affected by the review – public interest – impact of respondent's regulatory role – whether the review would be rendered nugatory if stay not granted – stay refused

[Olive Financial Markets Pty Ltd and Australian Securities and Investments Commission](#) [2020] AATA 982 (23 April 2020); R Reitano, Member

PRACTICE AND PROCEDURE – STAY APPLICATION – CONFIDENTIALITY APPLICATION – application for stay of decision to cancel the applicant's financial services licence – risk to the public – significance of COVID 19 to stay considerations – applicant's prospects of success neutral consideration – consideration of interests of third parties – stay granted with conditions – publication of decision to cancel licence necessary to protect the public – confidentiality application dismissed

[Oommen and Minister for Immigration and Border Protection](#) (Citizenship) [2020] AATA (23 April 2020); Emeritus Professor P A Fairall, Senior Member

PRACTICE AND PROCEDURE – refusal to grant Australian citizenship by conferral – applicant not meeting general residence requirement – the applicant was not present in Australia for the period of 4 years immediately before the day she made the application – the applicant was not present in Australia as a permanent resident for the period of 12 months immediately before the day she made the application – whether section 22(9) Ministerial discretion applies – subsection 42B(1)(b) no prospect of success – review application is dismissed

[Psomadellis and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 1011 (1 May 2020); Dr L Bygrave, Member

EXTENSION OF TIME – principles to be applied – where applicant had not rested on his rights – where substantive application has merit – where some prejudice to the respondent and the general public if extension granted – where extension of time reasonable in all the circumstances – extension of time granted

[WWYY and Child Support Registrar](#) (Child support second review) [2020] AATA 992 (23 March 2020); Mr A Maryniak QC, Member

PRACTICE AND PROCEDURE – Application for stay order – whether application would be rendered nugatory if order not granted – whether any prejudice would be suffered by Applicant if order not granted – interlocutory application refused

## **Social Services**

[Asiminaris and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 993 (30 April 2020); Mr S Evans, Member

SOCIAL SECURITY – bereavement payment – carer allowance – qualification – decision affirmed

[Atkinson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 979 (27 April 2020); Senior Member P J Clauson AM

SOCIAL SECURITY – Disability Support Pension – Cancellation – Maximum Portability Period – whether unlimited portability period applies – whether applicant severely impaired – whether applicant sought written determination prior to departure – whether applicant unable to return to Australia because of a serious accident or hospitalisation – whether portability period can be extended – decision under review affirmed

[Broun and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 868 (17 April 2020); Ms D K Grigg, Member

SOCIAL SECURITY – disability support pension – application of Social Security (International Agreements) Act 1999 – whether severely disabled – decision under review affirmed

[Davidson and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 995 (29 April 2020); Mr S Evans, Member

SOCIAL SECURITY – age pension – rate of age pension – where Applicant sought review of rate of age pension – adjustment decision – earliest date Applicant was entitled to be paid highest rate of age pension – decision under review set aside and remitted for reconsideration

[Delalic and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 938 (23 April 2020); Senior Member B J Illingworth

SOCIAL SECURITY – pensions, benefits and allowances – claim for disability support pension rejected – whether applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[El Armaly and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 984 (30 March 2020); Dr D Cremean, Senior Member and Dr S Fenwick, Senior Member

SOCIAL SECURITY— Newstart and Disability Support Pension—alleged overpayments—alleged indebtedness—decision raising debts—whether attributable assets in real property principal home and other properties—whether trust created—nature of a trust—express trust created—no attributable assets—decision set aside

[Fabretto and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 931 (21 April 2020); Senior Member B Pola

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

[Hogben and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 985 (27 April 2020); G Hallwood, Member

SOCIAL SECURITY – Debt – Whether amounts received ordinary income or child support – failure to declare income – overpayment of Newstart allowance – whether overpayment is a debt – whether debt recovery fee should be applied - should debt be written off or waived – where amounts received found to be ordinary income – where applicant knowingly failed to report income – decision under review is set aside and substituted

[Leigh and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 866 (17 April 2020); Deputy President Boyle

SOCIAL SECURITY – age pension – ordinary employment income – work bonus entitlement – commission – debt – administrative error – overpayment – good faith – debt waived – decision affirmed

[Pollack and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 874 (17 April 2020); The Hon. S Parry, Member

SOCIAL SECURITY – disability support pension – qualification – medical – whether Applicant is qualified to be paid disability support pension – whether the Applicant's impairments are of 20 points or more under the Impairment Tables – whether Applicant's impairments were fully diagnosed, treated and stabilised during the qualification period – decision under review affirmed

[Salah and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 978 (27 April 2020); Mr S Evans, Member

SOCIAL SECURITY – disability support pension – whether the lump sum was compensation – compensation part of lump sum – lump sum preclusion period – whether special circumstances exist to justify disregarding all or part of the compensation payment – decision under review affirmed

[Stephens-Ryan; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 961 (24 April 2020); Deputy President P Britten-Jones

SOCIAL SECURITY – Debt to Commonwealth arising from payment of carer payment benefits to which applicant not entitled – Applicant relied on accountant to correctly complete application form – Accountant failed to disclose trust distributions as income – Whether trust distributions can correctly be characterised as “income” – Where trust distributions to a beneficiary were recorded in the Trust's financial statements and in the tax returns of the beneficiary – Whether trust distributions were received or earned - Whether waiver of debt available – Decision set aside

[Vasiliou and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 962 (24 April 2020); K Parker, Member

SOCIAL SECURITY – claim for disability support pension – applicant has multiple physical and psychiatric medical conditions – whether conditions were permanent as at the qualification period – whether conditions were fully diagnosed, treated and stabilised and likely to persist for more than two years – assessment of impairment rating under Impairment Tables in respect of functional impacts arising from permanent conditions – whether continuing inability to work – whether program of support requirements were met – eligibility requirements not met – decision affirmed

[Wakefield and Secretary, Department of Social Services Services](#) (Social services second review) [2020] AATA 873 (20 April 2020); Senior Member C Puplick AM

SOCIAL SECURITY – disability support pension – application for payment – lump sum compensation preclusion period – length of preclusion period – whether special circumstances exist to reduce preclusion period – meaning of special circumstances – decision under review affirmed

[WPCF and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 887 (20 April 2020); Mr S Evans, Member

SOCIAL SECURITY – child care benefit – child care rebate – overpayment – debt – whether entitled to payments – whether Applicant was entitled to maximum hours of child care benefit and child care rebate – whether Applicant satisfies the work/training/study test – whether debt should be written off or waived – decision under review affirmed

[Wykes and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 1010 (30 April 2020); Deputy President A G Melick AO SC

SOCIAL SECURITY - disability support pension – rejection – qualification – medical – Applicant suffers a physical, intellectual or psychiatric impairment – whether the Applicant's impairments attract 20 points or more under the Impairment Tables – whether the Applicant has a continuing inability to work and has completed a program of support – Applicant found to not have a continuing inability to work during qualification period – decision under review affirmed.

[WZGY and Secretary, Department of Social Services](#) (Social services second review) [2020]  
AATA 863 (17 April 2020); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – carers payment – age pension – wife pension – cancellation – overpayment – debt owed to Commonwealth – income and assets – deprivation of asset provisions – disposal of real property – beneficial owner of property – whether trust property – debt not recoverable – sole administrative error – waiver in special circumstances – whether payments received in good faith – debts discharged – decision affirmed

## **Taxation**

[304 Wanda Street Pty Ltd and Commissioner of Taxation](#) (Taxation) [2020] AATA 921 (22 April 2020); Mr P W Taylor SC, Senior Member

TAXATION – GST – input tax credit claim – creditable acquisition – corporate trustee – land acquisition – disallowance – administrative penalty – whether applicant was carrying on an enterprise – taxable supply – objection decision affirmed

[Elsawi and Tax Practitioners Board](#) (Taxation) [2020] AATA 998 (29 April 2020); Dr K Kendall, Member

TAXATION – Applicant's registration as a tax agent terminated – Applicant prohibited from applying for registration for a period of four years – Applicant knowingly participated in lodgement of false business activity statements – Applicant made false and misleading statements to the Australian Taxation Office – fit and proper person – professional code of conduct – decision to terminate registration varied so that Applicant may seek registration after three years

[Havilah Resources Ltd and Innovation and Science Australia](#) (Taxation) [2020] AATA 933 (16 April 2020); Deputy President P Britten-Jones

TAXATION – research and development tax offset – whether claimed activities are ‘core R&D activities’ within the meaning of Div 355 of the Income Tax Assessment Act 1997 (Cth) – mining related activities – where activities involved standard and routine hydrogeological drilling, sampling and pumping tests and subsequent routine groundwater modelling tasks – where activities involved standard and routine hydrogeological and geotechnical investigations into the feasibility and optimisation of a tailings storage facility for a proposed mining development – where activities came within the exclusion in s 355-25(2)(b) for prospecting, exploring or drilling for minerals - where activities came within the exclusion in s 355-25(2)(f) for activities associated with complying with statutory requirements or standards – consideration of the words ‘experimental activities’, ‘deposits’ and ‘new knowledge’ – decisions under review affirmed

[Peter Donkin; Krystiana Donkin, Nerida McKnight; Adeline Donkin; Joshua Donkin and Joshline Investments ATF Joshline Family Trust and Commissioner of Taxation](#) (Taxation) [2019] AATA 6746 (10 December 2019); Deputy President I R Molloy and P Ranson, Member

TAXATION – AMENDED INCOME TAX ASSESSMENT – trust income – increase in net income of the trust – claimed deductions disallowed – whether the applicants were correctly assessed on the increase in net income of the trust – decision under review affirmed – PENALTIES – penalties for false and misleading statements – whether the applicants are liable for penalties – whether the penalties should be remitted – applicants not liable for penalties

[XPQZ, KYZC, DHJP and Commissioner of Taxation](#) (Taxation) [2020] AATA 1014 (24 April 2020); Senior Member R J Olding

TAXATION – tax treatment of gains on sale and exchange of shares – whether gains income according to ordinary concepts or capital gains – where sole director and shareholder of trustee company that acquired the shares was a director of the company in which the shares were acquired – whether shares acquired in a business operation or commercial dealing pursued by the trustee and director – held gains are income according to ordinary concepts – application for review dismissed.

TAXATION – administrative penalties – recklessness – whether taxpayer’s position reasonably arguable – where limited evidence of circumstances surrounding preparation of returns – penalty upheld.

## **Trade and Commerce**

[Translationz Pty Ltd and Australian Trade and Investment Commission](#) [2020] AATA 958 (27 March 2020); Mr A. Maryniak QC, Member

TRADE AND COMMERCE – export market development grants – eligible services – eligible expenses – whether eligible promotional activity was for an approved promotional purpose – whether related entity – apportionment – translation services

## Veterans' Affairs

[Hayes and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 999 (30 April 2020); Dr P McDermott RFD, Deputy President

VETERANS' AFFAIRS – veterans' entitlements – post-traumatic stress disorder not accepted as related to service – diagnosis of condition – diagnosis of post-traumatic stress disorder not established – diagnosis of adjustment disorder established – Deledio steps – the relevant Statement of Principles supports the connection between the applicant's service and adjustment disorder condition – decision under review set aside and substituted decision that adjustment disorder war caused – remitted for assessment of pension.

[Skinner and Repatriation Commission](#) (Veterans' entitlements) [2020] AATA 865 (16 April 2020); Senior Member Katter

VETERANS' AFFAIRS – claim for defence-caused conditions – claim for disability pension – standard of proof – relevant Statement of Principles – lumbar spondylosis – decision under review remitted for reconsideration

# 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>Burns and Commissioner of Taxation</b>	<a href="#">[2020] AATA 671</a>
<b>CRPS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 872</a>
<b>Ellison and Comcare</b>	<a href="#">[2020] AATA 698</a>
<b>GDGR and Commissioner of Taxation</b>	<a href="#">[2020] AATA 766</a>
<b>JKPM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 365</a>
<b>Khoshaba and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 432</a>
<b>Le'Sam Accounting Pty Ltd and Tax Practitioners Board; Sam Rizkallah and Tax Practitioners Board</b>	<a href="#">[2020] AATA 890</a>
<b>Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 132</a>
<b>VKTT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 649</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Ali v Minister for Home Affairs</b>	<a href="#">[2019] AATA 417</a>	<a href="#">[2020] FCA 538</a>
<b>Comcare v Stefaniak</b>	<a href="#">[2019] AATA 1866</a>	<a href="#">[2020] FCA 560</a>
<b>Cho v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4422</a>	<a href="#">[2020] FCA 506</a>

<b>Dharma v Minister for Home Affairs</b>	<a href="#">[2019] AATA 4065</a>	<a href="#">[2020] FCA 550</a>
<b>FYBR v Minister for Home Affairs &amp; Anor</b>	<a href="#">[2018] AATA 4281</a>	<a href="#">[2020] HCATrans 056</a> <a href="#">[2019] FCAFC 185</a> <a href="#">[2019] FCA 500</a>
<b>Grapsas v Minister for Infrastructure and Regional Development</b>	<a href="#">[2017] AATA 886</a>	<a href="#">[2020] FCA 525</a>
<b>Hewett v Comcare</b>	<a href="#">[2018] AATA 302</a>	<a href="#">[2020] FCA 527</a>
<b>MQGT v Minister for Home Affairs</b>	<a href="#">[2019] AATA 874</a>	<a href="#">[2020] FCA 520</a>
<b>Mundele v Minister for Home Affairs</b>	<a href="#">[2019] AATA 4968</a>	<a href="#">[2020] FCA 526</a>
<b>Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2019] AATA 4598</a>	<a href="#">[2020] FCA 556</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.

## Notification of Investigations relating to existing Statements of Principles

On **20 April 2020**, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following Statements of Principles:

Myeloma – No. 69 of 2012

<https://www.legislation.gov.au/Details/F2017C00803>

Myeloma – No. 70 of 2012

<https://www.legislation.gov.au/Details/F2014C00882>

Giant cell arteritis – No. 71 of 2012

<https://www.legislation.gov.au/Details/F2012L02082>

Giant cell arteritis – No. 72 of 2012

<https://www.legislation.gov.au/Details/F2012L02083>

Solar keratosis – No. 73 of 2012

<https://www.legislation.gov.au/Details/F2012L02084>

Solar keratosis – No. 74 of 2012

<https://www.legislation.gov.au/Details/F2012L02085>

Acute lymphoblastic leukaemia – No. 75 of 2012

<https://www.legislation.gov.au/Details/F2017C00747>

Acute lymphoblastic leukaemia – No. 76 of 2012

<https://www.legislation.gov.au/Details/F2017C00746>

Malignant neoplasm of the oral cavity, oropharynx & hypopharynx – No. 1 of 2013

<https://www.legislation.gov.au/Details/F2013L00016>

Malignant neoplasm of the oral cavity, oropharynx & hypopharynx - No. 2 of 2013

<https://www.legislation.gov.au/Details/F2013L00017>

Ankylosing spondylitis - No. 3 of 2013

<https://www.legislation.gov.au/Details/F2013L00018>

Ankylosing spondylitis – No. 4 of 2013

<https://www.legislation.gov.au/Details/F2013L00019>

Inguinal hernia - No. 5 of 2013

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

Inguinal hernia - No. 6 of 2013

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

Carpal tunnel syndrome – No. 7 of 2013

<https://www.legislation.gov.au/Details/F2013L00022>

Carpal tunnel syndrome – No. 8 of 2013

<https://www.legislation.gov.au/Details/F2013L00023>

Adenocarcinoma of the kidney – No. 9 of 2013

<https://www.legislation.gov.au/Details/F2017C00752>

Adenocarcinoma of the kidney – No. 10 of 2013

<https://www.legislation.gov.au/Details/F2017C00751>

Polycythaemia vera – No. 11 of 2013

<https://www.legislation.gov.au/Details/F2013L00404>

Polycythaemia vera – No. 12 of 2013

<https://www.legislation.gov.au/Details/F2013L00406>

Seborrhoeic dermatitis – No. 13 of 2013

<https://www.legislation.gov.au/Details/F2013L00405>

Seborrhoeic dermatitis – No. 14 of 2013

<https://www.legislation.gov.au/Details/F2013L00407>

Essential thrombocythaemia – No. 15 of 2013

<https://www.legislation.gov.au/Details/F2013L00409>

Essential thrombocythaemia – No. 16 of 2013

<https://www.legislation.gov.au/Details/F2013L00411>

Primary myelofibrosis – No. 17 of 2013

<https://www.legislation.gov.au/Details/F2013L00416>

Primary myelofibrosis – No. 18 of 2013

<https://www.legislation.gov.au/Details/F2013L00412>

### **Notification of Investigations (where there is no existing Statement of Principles)**

On **20 April 2020**, the AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

**Toxic vestibulopathy** - <https://www.legislation.gov.au/Details/C2020G00331>

**Coronavirus Disease 2019 (COVID-19)** - <https://www.legislation.gov.au/Details/C2020G00332>



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