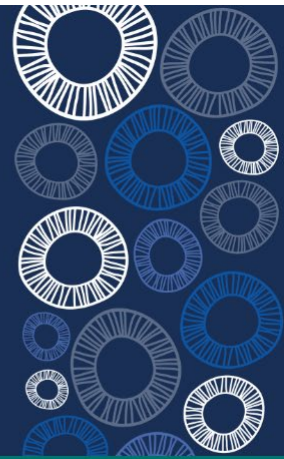




Administrative
Appeals Tribunal

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.

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

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AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

[Langley and Langley](#) (Child support) [2023] AATA 1044 (4 April 2023); P Jensen, 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 of objection decision – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review affirmed

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

[Garrett and Child Support Registrar](#) (Child support) [2023] AATA 1181 (11 April 2023); P Jensen, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay – weighing all factors the extension of time was correctly refused – decision under review affirmed

[Hance and Adler](#) (Child support) [2023] AATA 1180 (30 March 2023); P Jensen, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the application for an administrative assessment was correctly accepted – decision under review affirmed

[Michell and Dudfield](#) (Child support) [2023] AATA 1186 (22 March 2023); Senior Member K Dordevic

CHILD SUPPORT – particulars of the administrative assessment – whether there was a relevant dependent – decision under review set aside and substituted

[Tatro and Tatro](#) (Child support) [2023] AATA 1047 (5 April 2023); Senior Member K Dordevic and Presiding Deputy President K Synon

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – costs of the children include private education – decision under review set aside and substituted

Citizenship

[BYWX and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023] AATA 1439 (29 May 2023); R Bellamy, Senior Member

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – section 21(2)(h) of Australian Citizenship Act 2007 – whether Applicant is of good character – previously provided false information to the Department – decision under review affirmed

[Warsame and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1382 (29 May 2023); Dr L Bygrave, Member

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – section 21(2)(h) of Australian Citizenship Act 2007 – whether Applicant is of good character – decision under review set aside

Compensation

[Barnes and Comcare](#) (Compensation) [2023] AATA 1304 (22 May 2023); D O'Donovan, Senior Member

WORKERS COMPENSATION – where employee suffered a cardiac event in the course of employment – where employee suffered symptoms before attending work – whether employee suffered a frank injury – whether employee suffered a sudden and ascertainable or dramatic physiological change or disturbance – whether the symptoms suffered were separate events – employee entitled to compensation – decision under review set aside

[MacRae and Australian Capital Territory](#) (Compensation) [2023] AATA 1386 (24 May 2023); C J Furnell, Senior Member

COMPENSATION – Australian Capital Territory employee – psychiatric nurse – shoulder injury at work – denial of present liability to pay compensation – determination reconsidered of respondent's own motion – respondent denied present liability for any time after a certain date – held that respondent cannot effectively decide it will never have future present liability to compensate applicant – whether effects of injury continuing – whether left shoulder superior labral tear encapsulated within accepted condition – burden of persuasion – where applicant had previously injured left shoulder – Tribunal does not conclude that left shoulder superior labral tear resulted from injury regarding which liability was accepted – found that effects of injury did not continue after a certain date and are not continuing at time of decision – held that respondent not liable in the period after certain date to the date of decision – decisions set aside and substituted

Freedom of Information

[Montagner and Secretary, Department of Health and Aged Care](#) (Freedom of information) [2023] AATA 1443 (25 May 2023); D J Morris, Senior Member

FREEDOM OF INFORMATION – information sought in relation to consideration by a non-statutory advisory committee relating to funding for development of a breast cancer treatment – Respondent claims exemptions and conditional exemptions for certain documents – application in part sought minutes of a meeting – what are minutes – where applicant claims he was denied procedural fairness in relation to an administrative process – what is before the Tribunal and what is not – observations by the Tribunal regarding measures to improve administrative processes – whether Respondent has been responsive in relation to particular documents – public interest considerations – decision under review varied

Migration

[Belmont and Minister for Immigration, Citizenship and Multicultural Affairs](#) [2023] AATA 1285 (22 May 2023); T Tavoularis, Senior Member and W Pennell, Senior 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. 99 – decision under review affirmed

[Brown and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 1330 (25 May 2023); J Owen, Deputy President

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside and substituted

[Davis and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1328 (25 May 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – offence of grievous bodily harm – Applicant is a 57 year old citizen of New Zealand who arrived in Australia as a 24 year old adult – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – strength, nature and duration of ties to Australia – best interests of minor grandson – expectations of the Australian community – legal consequences of the decision – Australia's international non-refoulement obligations – extent of impediments if removed to New Zealand – Reviewable Decision affirmed

[**FVGP and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2023]
AATA 1440 (24 May 2023); D J Morris, Senior Member

MIGRATION – applicant is a citizen of Iran – applicant was refused bridging visa related to pending immigration decision – applicant sought review by Tribunal of refusal decision – before hearing applicant that officer of Minister’s department would not put applicant’s case before minister for possible intervention – whether there is utility in hearing – High Court decision relating to power of officers to sift matters for ministerial consideration – questions before the Tribunal – does applicant satisfy character test – if not, should discretion be exercised to refuse visa – applicant does not satisfy character test – ministerial Direction No. 99 – primary considerations – other considerations – applicant cannot be involuntarily repatriated – prospects of prolonged detention – decision under review set aside

[**Heihei and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#) (Migration) [2023] AATA 1473 (5 May 2023); The Hon. D Cowdroy AO KC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – family violence committed by the non-citizen – best interests of minor child – expectations of the Australian community – impediments to removal – high risk of re-offending – decision affirmed

[**Kalinov and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2023] AATA 1387 (23 May 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – Applicant is a citizen of Bulgaria – drug offences – assault – breaches of bail conditions – Direction 99 considered – strength, nature and duration of Applicant’s ties to Australia – best interests of minor children – family violence – low risk of reoffending – there is another reason to revoke the visa cancellation – reviewable decision set aside and substituted

[**Rana and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2023] AATA 1327 (23 May 2023); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – family violence committed by the non-citizen – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a 37 year old man who arrived in Australia as a 23 year old – extent of impediments if returned to Pakistan – Non-Revocation Decision is affirmed

[**RCLN and Minister for Immigration, Citizenship, and Multicultural Affairs**](#) (Migration) [2023] AATA 1335 (26 May 2023); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of (Class BB) (Subclass 155) Five Year Resident Return visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed

[Sio and Minister for Immigration, Citizenship and Multicultural Affairs](#) v (Migration) [2023] AATA 1479 (1 June 2023); A George, Senior Member

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No.99 – offending serious – decision under review set-aside

[Tabuarua and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1383 (23 May 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Special Category Class TY Subclass 444 (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. 99 – decision under review affirmed

[Tyson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1478 (30 May 2023); W Frost, Member

MIGRATION – decision of the delegate to refuse to grant the applicant a visa pursuant to subsection 501(1) of the Migration Act 1958 – whether the applicant passes the character test – where the applicant has a substantial criminal record pursuant to subsection 501(7) of the Migration Act 1958 – applicant does not pass the character test – whether the discretion to refuse to grant the applicant a visa should be exercised – application of Direction No 99 – decision under review affirmed

[WVJB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 1388 (22 May 2023); R West, Member

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – other considerations – legal consequences of the decision – extent of impediments if removed – decision affirmed

[ZWCF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1441 (30 May 2023); T Tavoularis, Senior Member and R Skaros, Senior Member

MIGRATION – refusal of a Protection (Class XA) Subclass 866 visa pursuant s 501(1) of the Migration Act 1958 (Cth) – where the Applicant does not pass the character test- whether discretion to refuse the visa under s 501(1) of the Migration Act 1958 (Cth) should be exercised- where Applicant has a significant criminal history in Australia – where Australia's non-refoulement obligations are engaged – indefinite detention as a legal consequence of the Tribunal's decision considered – consideration of Ministerial Direction No. 99 – decision under review affirmed

[Sharma](#) (Migration) [2023] AATA 805 (4 January 2023); W Stooke AM, Member

MIGRATION – – Skilled Regional Sponsored (Provisional) (Class SP) visa – Subclass 489 (Skilled – Regional (Provisional)) – bogus document – discrepancies in payslips – waiver of requirement – compassionate or compelling circumstances – disparity of power between employer and employee – skills in high demand – Australian citizen child – decision under review remitted

[2219046](#) (Migration) [2023] AATA 815 (6 January 2023); B Darcy, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – unlawful non-citizen – substantive visa application – abide by conditions imposed – no work requirement – reporting and notification requirements – adverse migration history – no criminal conduct requirement – drug trafficking offences – reasonable security amount – explanations for non-compliant behaviour – capacity and willingness to engage with the authorities – decision under review remitted

[2206516](#) (Migration) [2023] AATA 876 (6 March 2023); A M Williams, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – Federal Circuit Court remittal – approved sponsorship – sponsor deceased during review process – remaining immediate family reside in Australia – referral for Ministerial Intervention – administratively sensitive case handling – decision under review affirmed

[1935583](#) (Migration) [2023] AATA 858 (27 March 2023); N Schmitz, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – sponsor had been convicted of relevant offences – significant criminal record – 10 years have lapsed since the commission of the relevant offences – parties have been in a long-term relationship – parties have a young child together – sponsorship approval – decision under review remitted

[Go Logistics Pty Ltd](#) (Migration) [2023] AATA 784 (30 March 2023); Senior Member R Skaros

MIGRATION – specified action in relation to sponsorship – sponsorship bar – failure to satisfy sponsorship obligations – providing records and information and ensuring sponsored person works in nominated occupation – move to new premises not notified – duties of accountant – transport company manager worked as delivery driver – COVID pandemic and need to deliver time-critical medical supplies and perishable items – few occasions only when drivers absent – travel to Central Coast depot and to meet with Newcastle agent – scope of business operations and COVID restrictions – essential services – subsequent position nomination and visa applications refused – accountant no longer working for applicant company – decision under review set aside

[Banipal Singh](#) (Migration) [2023] AATA 787 (2 April 2023); C Kannis, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – incorrect information and bogus documents provided in application – funding for stay – parents and grandparents supporting travel, tuition fees and living costs – father's tax returns – verification checks showed no records exist – further documents, statements, submissions and access to father's tax department portal provided to tribunal – re-verified by DFAT post – decision under review set aside

National Disability Insurance Scheme

[Adamczewski and National Disability Insurance Agency](#) [2023] AATA 1325 (24 May 2023); S Webb, Member

NATIONAL DISABILITY INSURANCE SCHEME – request for access – disability thresholds – meaning of 'impairment' and 'permanent' – 'impairment' differentiated from causal condition and functional effects – obesity – pain – physical, cognitive and psychiatric impairments – Tribunal not limited to impairments decided by original decision-maker – permanent impairment – substantially reduced functional capacity – requirement for lifelong support – decision set aside and substituted

[Davis and National Disability Insurance Agency](#) [2023] AATA 1437 (30 May 2023); D O'Donovan, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – whether the applicant qualifies to become a participant in the scheme – whether the applicant meets the disability requirement – whether the applicant meets the early intervention requirement – decision affirmed

[Gardner and National Disability Insurance Agency](#) [2023] AATA 1287 (22 May 2023); D. Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – chronic pain – major depressive disorder – attention deficit hyperactivity disorder – obsessive compulsive disorder – whether there is substantially reduced functional capacity – decision under review set aside and substituted

[Woolf and National Disability Insurance Agency](#) [2023] AATA 1312 (17 May 2023); M Mischin, Deputy President, and K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – Specialist Disability Accommodation (SDA) – Building type – single or shared dwelling – reviewable decision set aside and substituted

[XDWZ and National Disability Insurance Agency](#) [2023] AATA 1481 (31 May 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria under s 21 of the National Disability Insurance Scheme Act 2013 (Cth) are met – “disability requirements” – “early intervention requirements” – Applicant has a disability arising from various impairments – occipital neuralgia – post-traumatic stress disorder – whether impairments are, or likely to be, permanent – whether impairments have resulted in substantially reduced functional capacity in any one of the six prescribed activities – decision under review affirmed

Practice and Procedure

[Copeland and Australian Postal Corporation](#) (Compensation) [2023] AATA 1334 (26 May 2023); J Rau SC, Senior Member

PRACTICE AND PROCEDURE – application for extension of time – whether extension of time should be granted – inadequate explanation for delay – merit of substantive application not articulated – extension of time application refused

[Foster and Secretary, Department of Social Services](#) [2023] AATA 1313 (23 May 2023); Mr S Webb, Member

PRACTICE AND PROCEDURE – application for extension of time in which to make an application for review – factors relevant to exercise of discretion – length of delay – explanation for delay – prejudice – merit – alternative remedy – grounds not/sufficient for exercise of discretion – extension of time refused

[Grace Disability Services Australia Pty Ltd as Trustee for Gracemanor Services Trust and Commissioner of the NDIS Quality and Safeguards Commission](#) [2023] AATA 1337 (26 May 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – decisions by Commissioner of NDIS Quality and Safeguards Commission to suspend and refuse to register a service provider under the National Disability Insurance Scheme Act 2013 (NDIS Act) – application to stay proceedings in Administrative Appeals Tribunal (AAT) until proceedings in the Victorian Civil and Administrative Tribunal regarding the revocation of the registration of related parties as supported residential services under Supported Residential Services (Private Proprietors) Act 2010 (Vic) are finalised – Tribunal grants the application and will hold the AAT applications in abeyance until otherwise directed – Tribunal will hold a further interlocutory hearing on 17 November 2023 to revisit the question of whether the stay of proceedings should continue

[Jackson and Secretary, Department of Social Services](#) [2023] AATA 1286 (22 May 2023); S Webb, Member

PRACTICE AND PROCEDURE – application for extension of time in which to make an application for review – factors relevant to exercise of discretion – length of delay – explanation for delay – prejudice – merit – alternative remedy – not reasonable in circumstances – application refused

SOCIAL SECURITY – Newstart Allowance – declaration of earned income – overpayment debt – initial calculation of overpayment based on income averaging – subsequent recalculation based on bank statements, estimation of gross income and apportionment to entitlement period – overpayment debt and recovery affirmed by AAT first review – incidents of power exercised – finality of AAT decision – power of Secretary to recalculate the overpayment debt following AAT first review decision – re-exercise of power subject to contrary intention – contrary intention subject to new information or subsequent events not before the decision maker – review power essentially conditioned by ‘sufficient reason’ or application for review – statutory scheme allows for progressive decision making – re-exercise of power triggers fresh review rights

[Kollias and National Disability Insurance Agency](#) [2023] AATA 1470 (31 May 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – Application to the Tribunal requesting that the member who constitutes the Tribunal for the purpose of the proceeding recuse himself on the basis of actual or apprehended bias – whether the member is biased against the Applicant and his representative at Tribunal hearings – whether the member is biased against the Applicant and his representatives for allowing the Respondent and/or their legal representatives to file a functional capacity assessment report the Applicant alleges is corrupt or has been changed illegally either by the Respondent’s Occupational Therapist or by the Respondent’s legal representatives without first obtaining the consent of the Applicant – whether the member is biased against the Applicant and his representative for allowing the Respondent’s barrister to rely on the functional capacity assessment report in the proceeding and for allowing the barrister to refer to the contents of that report at the hearing while cross-examining the Applicant – whether the member is biased against the Applicant and his representative for not disciplining or reprimanding the Respondent and/or their legal representatives for lodging with the Tribunal the functional capacity assessment report of the Respondent’s Occupational Therapist – whether the member is biased against the Applicant and his representative for not calling one of the Applicant’s witnesses back – whether the member is biased against the Applicant and his representative for making a comment in response to a request from the Respondent’s solicitor calling for discipline regarding the Applicant’s representative – whether the member is biased against the Applicant and his representative for asking the Respondent if they objected to the Applicant’s request to issue summonses but not asking the Applicant the same when the Respondent wanted to issue summonses - recusal principles – application refused

[McKenzie and Comcare](#) (Compensation) [2023] AATA 1384 (29 May 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE - objection by the Applicant to the issue of summons and the Respondent’s inspection of material produced under summons – relevance of the material produced under summons to issues raised by the reviewable decision – privacy of applicant – objections disallowed

[Sharp and National Disability Insurance Agency](#)v [2023] AATA 1323 (25 May 2023); S Webb, Member

PRACTICE AND PROCEDURE – application for extension of time in which to make an application for review – short delay – reasonable explanation for delay – no prejudice – prospect of success – availability of alternative remedy – reasonable in all the circumstances to exercise discretion – application granted

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – decision to refuse inclusion of additional disability in the context of decision approving statement of supports – no provision for reapplication of access criteria – progressive decision-making – request for internal review of decision – alleged error – alleged invalidity – inadequate statement of reasons for the original decision – scope of internal review power – internal review decision not invalid – rectifiable error – scope of Tribunal review jurisdiction – Tribunal has jurisdiction

[Vick and Australian Securities and Investments Commission](#) [2023] AATA 1486 (17 May 2023); G Lazanas, Senior Member

PRACTICE AND PROCEDURE – application for stay of decision and confidentiality orders – applicant banned from providing any financial services for five years – whether discretion of the Tribunal is enlivened to grant a stay – whether a stay is desirable for the purpose of securing the effectiveness of the hearing – applicant no longer providing financial services – whether consequences for applicant and third parties substantiated – public interest considerations – presumption of openness and transparency of proceedings – whether grounds for confidentiality orders made out – reputational damage and financial hardship not sufficient – applications for stay and confidentiality orders refused

Professions and Trades

[Wadood and Migration Agents Registration Authority](#) [2023] AATA 1322 (23 May 2023); D J Morris, Senior Member

MIGRATION – regulation of migration agents – migration agents registration authority – applicant was a registered migration agent – applicant breached Code of Conduct – applicant suspended from operating as migration agent for five years – applicant sought review by Tribunal – applicant concedes breaches – range of sanctions available – what sanction best matches improper conduct of applicant – nature of conduct – whether there has been pattern of misconduct – Tribunal satisfied of breaches of Code of Conduct – significant failings in relation to a client but no evidence of pattern of misconduct – cancellation decision under review set aside and decision substituted that applicant's registration be suspended for set period – conditions apply to lifting of suspension

Refugee

[1725294](#) (Refugee) [2023] AATA 1345 (6 March 2023); P Vlahos, Member

REFUGEE – protection visa – Malaysia – particular social group – refusing an arranged marriage – physical assault – fear of killing – state protection – internal relocation – police corruption – applicant's wife returned to Malaysia – decision under review affirmed

[1802336](#) (Refugee) [2023] AATA 1072 (25 January 2023); Deputy President D Dragovic

REFUGEE – protection visa – Pakistan – past confrontations with the Taliban – supporter of the village defence committee – member of a family who has taken a position against the Taliban – supporter of the PML-N – returnee from the West – mental health challenges – improved security situation in Swat – decision under review affirmed

[1804998](#) (Refugee) [2022] AATA 5200 (21 December 2022); N Burns, Member

REFUGEE – protection visa – Sri Lanka – race – Tamil – imputed political opinion – Liberation Tigers of Tamil Eelam (LTTE) worker – advocating for Tamil rights – conscripted LTTE service – attacks by the Karuna group – adverse ASIO security assessment – fear of torture – Tamil community involvement in Australia – illegal departure – decision under review remitted

[1819468](#) (Refugee) [2023] AATA 732 (6 February 2023); A McLean Williams, Member

REFUGEE – protection visa – Sri Lanka – political opinion – Freedom Party – volunteer campaign worker – United National Party – assessment of evidence – fear of an individual wielding local level influence and power – internal relocation – decision under review affirmed

[1904450](#) (Refugee) [2023] AATA 1023 (2 February 2023); J Henderson, Member

REFUGEE – protection visa – Ethiopia – ethnicity – Oromo – religion – protestant Christian – social group – of south-western Oromo region – family history of detention and torture prior to 2018 – not-guilty finding in association with OLF – claim for protection in Australia prior to October 2018 – periods travelling in and out of Oromia, both within Ethiopia and off-shore – decision under review remitted

[1911351](#) (Refugee) [2023] AATA 734 (8 February 2023); S Baker, Member

REFUGEE – cancellation – protection visa – Iraq – incorrect information in the visa application – identity details – nationality – Iranian citizenship – Iraqi citizenship – false passport – return trips to Iraq and Iran – non-compliance characterised as inadvertence – mental health issues – best interests of the children – indefinite detention – decision under review set aside

[1932654](#) (Refugee) [2023] AATA 1347 (2 March 2023); B Darcy, Member

REFUGEE – protection visa – Fiji – particular social group – family member in the Fijian military – political opinion – opposition to the government – indigenous people's rights – fear of killing – freedom of expression – economic conditions – accessing retirement savings – corruption – return visits to Fiji – decision under review affirmed

[2011992](#) (Refugee) [2023] AATA 813 (9 February 2023); Senior Member K Harvey

REFUGEE – protection visa – Fiji – quadriplegic – access to the health care – quality of health care – capacity of the local hospital – intermittent electricity supply – complementary harm – arbitrary deprivation of life – subject to degrading treatment – internal relocation – decision under review affirmed

[2109056](#) (Refugee) [2023] AATA 1178 (17 February 2023); Deputy President D Dragovic

REFUGEE – cancellation – protection visa – stateless – risk to the health or safety of an individual – applicant charged with several offences – applicant found not guilty – valid notification of a cancellation – character test requirement – Bridging Visas subsequently granted – updated National Police Certificate – further charges against the applicant withdrawn – power to cancel the visa does not arise – decision under review set aside

Social Security

[Churcher and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1306 (23 May 2023); A Nikolic AM CSC, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant's medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – decision under review affirmed

[Crerar and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1326 (23 May 2023); D J Morris, Senior Member

SOCIAL SECURITY – pensions, benefits and entitlements – where applicant applied for disability support pension – where application rejected – where authorised review officer affirmed rejection – where First Review affirmed rejection of claim – applicant applied for Second Review – provisions of legislation – qualification for disability support pension – whether applicant has physical, intellectual or psychiatric impairment – if so, whether applicant’s impairment is of 20 points or more under the Impairment Tables determination – if not 20 points or more under one Table, whether applicant has continuing inability to work – consideration of medical evidence – applicant found to have impairment – application of Impairment Tables – applicant found not to have attained 20 points or more – question of continuing inability to work – decision under review is affirmed

[FQMH and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1505 (2 June 2023); A Maryniak KC, Member

SOCIAL SECURITY – Whether Applicant was overpaid sickness allowance – Whether the Applicant owes a debt to the Commonwealth – Where Applicant received income protection payments in the form of lump sums and monthly payments – Where Applicant notified the Respondent of existence of payments but failed to fully inform the Respondent of details of payments – Whether the debt should be written off – Whether the debt must be waived on account of sole administrative error by the Respondent – Whether special circumstances exist to waive the debt – Held special circumstances exist and limited waiver appropriate – Decision varied

[Gault and Secretary, Department of Social Services](#) [2023] AATA 1305 (23 May 2023); P Ranson, Member

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 – impairments not more than 20 points – where Applicant has not established conditions are stabilised – decision under review is affirmed

[Penglase; Secretary, Department of Agriculture, Fisheries and Forestry and](#) [2023] AATA 1324 (24 May 2023); Dr L Bygrave, Member

SOCIAL SECURITY – farm household allowance – whether Respondent is a farmer – whether Respondent contributes a significant part of their labour and capital to a farm enterprise – whether the Respondent’s farm enterprise has a significant commercial purpose or character – decision under review set aside

Superannuation

[Burswood Care Pty Ltd \(ACN 154 327 545\) as trustee for Roshana Family Trust and Commissioner of Taxation](#) (Taxation) [2023] AATA 1468 (13 May 2023); B J McCabe, Deputy President

Superannuation guarantee – Discretion to remit – Part 7 – Covid-19 – Taxpayer culpability – decision under review affirmed

Taxation

[Anders and Commissioner of Taxation](#) (Taxation) [2023] AATA 1471 (31 May 2023); D Mitchell, Member

TAXATION – income tax – deductions – employee – work-related self-education expenses – in the course of deriving assessable – decision under review affirmed

[Mathews and Commissioner of Taxation](#) (Taxation) [2023] AATA 1329 (24 May 2023); Dr M Evans-Bonner, Senior Member

TAXATION – income taxation – Applicant claimed deductions of \$70,626 in car repairs and car expenses and \$78,884 in other deductions including for mineral exploration drilling equipment – financial year ending 30 June 2020 – whether deductions allowable under s 8-1, 8-5 or s 40-730 of the ITAA 1997 – characterisation of income – whether carrying on a business – personal services income – employee or independent contractor – whether expenditure incurred in gaining income – apportionment – substantiation – whether Applicant carried on a business of exploration or prospecting for minerals or quarry materials – income earned from employment and personal services income – Applicant found not to be carrying on a business – Reviewable Decision affirmed

Trade

[Global Chinese Christian Unity Federation Incorporated and Australian Trade and Investment Commission \(Austrade\)](#) [2023] AATA 1336 (26 May 2023); B W Rayment OAM KC, Deputy President and G Lazanas, Senior Member

FOREIGN AFFAIRS AND TRADE – export market development grants – travel expenses for promotion of eligible product – salary expenses for marketing manager – substantiation of loan repayment and reimbursement – decision under review varied

Veterans' Affairs

[Martin and Military Rehabilitation and Compensation Commission](#) (Veterans' entitlements) [2023] AATA 1477 (1 June 2023); B W Rayment OAM KC, Deputy President

VETERAN'S ENTITLEMENTS – Military Rehabilitation and Compensation Act 2004 (Cth) s 80 – claim for additional payment for eligible young person – calculation of relevant date – date of conception not able to be proved on balance of probabilities – act of grace payment – decision under review affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Abley and Comcare	[2023] AATA 989
LVFG and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1109
NHBK and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 364
Thompson and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 96

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
DMQ20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1967	[2023] FCAFC 84 [2022] FCA 514
Faingataa v Minister for Immigration, Citizenship, and Multicultural Affairs	[2022] AATA 3562	[2023] FCA 505
Logic Accountants & Tax Professionals Pty Ltd v Tax Practitioners Board	[2021] AATA 676	[2022] FCA 830
Minister for Immigration, Citizenship and Multicultural Affairs v JSMJ	[2021] AATA 4183	[2023] FCAFC 77 [2022] FCA 718
Motufoaki v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3719	[2023] FCAFC 74
PYCS v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4426	[2023] FCA 563
RGKY v Minister for Immigration, Citizenship and Multicultural Affairs & Anor	[2020] AATA 4255	[2023] HCATrans 67 [2022] FCAFC 177 [2021] FCA 750
Taylor v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 19	[2022] HCASL 210 [2022] FCAFC 144 [2022] FCA 309



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