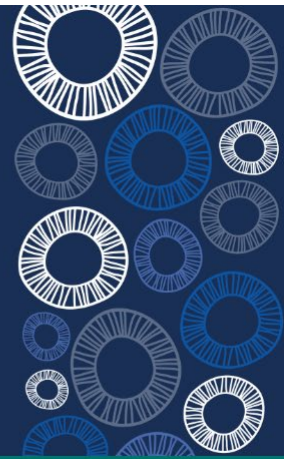




Administrative
Appeals Tribunal

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

[Clowes and Clowes](#) (Child support) [2023] AATA 1794 (24 May 2023); Senior Member K Dordevic

CHILD SUPPORT – particulars of the administrative assessment – estimate of income - whether the estimated income is less than the amount likely to be the actual income - estimate of income correctly refused - decision under review affirmed

[Durbridge and Oliver](#) (Child support) [2023] AATA 1792 (18 May 2023); J Thomson, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – no ground for departure established – decision under review affirmed

[Joyner and Jauncy](#) (Child support) [2023] AATA 1789 (10 May 2023); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond the child's eighteenth birthday – whether the child was in full-time secondary education on her eighteenth birthday – application should not be accepted – decision under review set aside and substituted

[Swanton and Parnell](#) (Child support) [2023] AATA 1643 (27 April 2023); J Leonard, Member

CHILD SUPPORT – particulars of the administrative assessment – whether post separation costs should be excluded from the adjusted taxable income for the last relevant year – additional income was earned not in the ordinary course after separation – an amount should be excluded – decision under review set aside and substituted

[Tiffen and Kelley](#) (Child support) [2023] AATA 1791 (16 May 2023); J Prentice, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

Citizenship

[Rahman and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2008 (12 July 2023); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – whether the good character requirement under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) is satisfied – relevant law and policy considered – Applicant's background and criminal history considered – character references considered – decision under review set aside

[Zarandi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1916 (28 June 2023); S Webb, Member

PRACTICE AND PROCEDURE – jurisdiction – application for conferral of citizenship refused – permanent resident – permanent visa – temporal considerations – temporary visas – conflict in records – right to apply for review not established – decisions dismissed

Compensation

[Chick and Comcare](#) (Compensation) [2023] AATA 1969 (5 July 2023); The Hon. M Groom, Senior Member

Workers Compensation (Cth) – Right knee partial dislocation injury – Early medial compartmental osteoarthritis – Whether injury arose out of or during the course of employment – Previously accepted injury – Whether employment was a significant contributing factor – Decision under review set aside and substituted

[Franklin and Australian Postal Corporation](#) (Compensation) [2023] AATA 1987 (10 July 2023); R Cameron, Senior Member

WORKERS' COMPENSATION – review of decisions denying liability under section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – condition of aggravation to right hip – secondary condition of left knee pain – whether ailment contributed to a significant degree by employment – work duties involving repetitive heavy lifting, pushing and pulling and working on concrete floors – contribution of applicant's weight and other factors - competing expert evidence regarding causation – consideration of applicant as layman – Tribunal satisfied that notice of injury was given as soon as reasonably practicable – exclusion in subsection 53(1) does not apply – representations in compensation claim were true or else not made wilfully – exclusion in subsection 7(7) does not apply – aggravation of left knee condition arose out of compensable right hip injury – decisions set aside and substituted – costs awarded

[Quick and Australian Postal Corporation](#) (Compensation) [2023] AATA 2013 (7 July 2023); R West, Member

WORKER COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – left shoulder rotator cuff tendinosis and subacromial bursitis – determination of earning capacity – determination to undertake rehabilitation programme – cease liability to compensate under ss 16 and 19 – recovery from injury – cease effects decision set aside and matter remitted – other decisions affirmed

Health

[Heather K Haig Executor of The Estate of Joy Garvin De Vos and Secretary, Department of Health and Aged Care](#) [2023] AATA 1988 (10 July 2023); The Hon. M Groom, Senior Member

Application for Review – Health and Aged Care – Estate – Beneficial Interest – Equitable Claim – Assets Test – Income Test – Secondary Residence – Residential and Aged Care – Decision Under Review Set Aside

[Flaracos and Secretary, Department of Health and Aged Care](#) [2023] AATA 2062 (8 June 2023); Emeritus Professor P A Fairall, Senior Member

Aged care – review of decision of Authorised Review Officer – where Applicant’s assets assessed to include a residential property – whether assessment of property value should be reduced – whether Applicant’s son a ‘protected person’ – whether payments to Applicant are unsecured loans against the property – whether payments gave Applicant an equitable charge over the property – no evidence of intention to create legal relations – decision under review affirmed

Migration

[GGJY and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1931 (4 July 2023); Deputy President The Hon. J Pascoe AC CVO

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where Applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – whether the Applicant committed family violence – links to the Australian community – the best interests of minor children in Australia – expectations of the Australian community – impediments to removal – reviewable decision set aside

[HVKV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 1971 (29 June 2023); S Burford, Senior Member

MIGRATION – Migration Act 1958 (Cth) – s 36(2) – non-citizen in Australia in respect of whom Australia has protection obligations – real risk that the Applicant will suffer significant harm – feared persecution on account of political opinion – perpetration of serious non-political crimes before entering Australia – crimes against humanity – Tribunal not satisfied there are “serious reasons” for considering that the Applicant committed crimes against humanity or serious non-political crimes before entering Australia – decision set aside and remitted with a direction that sections 5H(2) and 36(2C)(a) of the Act do not apply to the Applicant

[Ibardaloza and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2061 (2 May 2023); Dr C Huntly, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – offences including ‘Caused GBH in the course of an aggravated home burglary’ – 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 – 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 35 year old man who arrived in Australia as a 11 year old – extent of impediments if returned to Philippines – Reviewable Decision set aside and substituted

[Jbara and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2058 (14 July 2023); J C Kelly, Senior Member

MIGRATION – mandatory cancellation of visa under s 501CA(4) because applicant did not pass the character test – dishonestly obtaining property and financial advantage by deception – whether there is another reason why the cancellation decision should be revoked – Ministerial direction no.99 – protection of the Australian community – strength, nature, duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – impact on victims – reviewable decision set aside

[Kaur and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1918 (27 June 2023); S Evans, Member

MIGRATION – visa refused under subsection 501(1) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there a reason why the visa should not be refused on character grounds – Direction no. 99 considered – reviewable decision affirmed

[KFTJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 2051 (13 July 2023); K Millar, Senior Member and R Skaros, Senior Member

MIGRATION – mandatory cancellation of Protection (Class XA) (Subclass 866) visa under section 501CA(4) – Applicant does not pass the character test – Applicant has a 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

[QDWQ and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2012 (11 July 2023); J Rau SC, Senior Member

MIGRATION – Refusal of Protection (Class XA) visa on character grounds under section 501(1)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to grant the visa under section 501(1) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed

[QXBV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1970 (5 July 2023); Dr S Fenwick, Senior Member

MIGRATION – refusal to grant protection visa – whether convicted by final judgment of particularly serious crime – whether a danger to the Australian community – seriousness and nature of offending – risk of reoffending – decision affirmed

[QXYT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 2049 (12 July 2023); R Reitano, Member

MIGRATION – mandatory cancellation of Protection (Class XA) (Subclass 866) visa under section 501(3A) – whether there is another reason to revoke the cancellation – consideration of Ministerial Direction No. 99 – prospect of indefinite detention – decision under review is set aside

[Tran and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2011 (12 July 2023); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Vietnam – Class BS Subclass 801 Partner (Residence) Visa – failure to pass good character test – illegal residence in Australia – cultivate cannabis – traffick cannabis – family violence – use of illicit drugs – whether another reason why mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – decision affirmed

[Barrick](#) (Migration) [2023] AATA 1500 (25 May 2023); J Francis, Member

MIGRATION – Other Family (Residence) (Class BU) – Subclass 835 (Remaining Relative) – remaining relative of an Australian relative – no near relative requirement – son over the age of 18 at time of decision – whether still a dependent child – ability to work – decision under review remitted

[Griffin](#) (Migration) [2023] AATA 1300 (23 January 2023); M Moustafine, Member

MIGRATION – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – ‘specified Subclass 417 work’ – LIN 20/182 – ‘critical COVID-19 work in the healthcare and medical sectors’ – ‘support services’ – support officer for Bupa Medical Services – customer contact call centre – decision under review affirmed

[Hu](#) (Migration) [2023] AATA 1423 (19 May 2023); S Hoffman, Member

MIGRATION – Business Skills (Permanent) (Class EC) visa – Subclass 888 (Business Innovation and Investment (Permanent)) – ownership interest in at least one actively operating main business during the two years before the visa application was lodged – began the process of opening a bakery business – made enquiries – premises not acquired – seafood export business – provision of goods and services to the public – single wholesaler owned by the applicant’s family – no sales or expenses during relevant period – decision under review affirmed

[Kumar](#) (Migration) [2023] AATA 1447 (15 May 2023); A McMurrin, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Australian study requirement – two academic years of relevant study – courses completed within 6 months before visa application – application lodged before official Completion Letter – university delayed transcript – education provider acknowledged academic requirements were completed earlier – decision under review remitted

National Disability Insurance Scheme

[Al Rifai and National Disability Insurance Agency](#) [2023] AATA 2065 (14 July 2023); A Younes, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – degenerative disc disease – sleep apnoea, prostatic hypertrophy, meniscectomy, osteoarthritis, type II diabetes, depression and anxiety – whether the impairments are, or likely to be, permanent – whether the impairments result in substantially reduced functional capacity – whether the Applicant is likely to require support under the scheme – decision under review affirmed

[Johnson and National Disability Insurance Agency](#) [2023] AATA 1989 (10 July 2023); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – facts not available for consideration before CEO – continuum of original access request – temporal consideration – assessment of substantial functional impairment – set aside and remits for reconsideration – meets the access criteria under section 21

[Kak and National Disability Insurance Agency](#) [2023] AATA 2004 (11 July 2023); The Honourable P Goward AO, Senior Member

National Disability Insurance Scheme – reasonable and necessary supports – Operational Guidelines – Rugged Terrain Vehicle (RTV) – value for money – effective and beneficial – Reasonable family, carer and other support – independence – social participation – decision affirmed

[LinkAssist Pty Ltd and National Disability Insurance Agency](#) [2023] AATA 2063 (14 July 2023); I Thompson, Member

PRACTICE AND PROCEDURE – jurisdiction – services provided to a participant when NDIS Plan funding depleted – whether Respondent’s decision to refuse to pay service provider’s invoices is reviewable – decision is not reviewable – the Tribunal does not have jurisdiction

[TJTP and National Disability Insurance Agency](#) [2023] AATA 1983 (6 July 2023); Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – whether application made for a reviewable decision – identifying the reviewable decision – Tribunal has jurisdiction – extension of time application – extension of time granted

Practice and Procedure

[Bolton and Australian Securities and Investments Commission](#) [2023] AATA 2022 (6 July 2023); B J McCabe, Deputy President

Practice and procedure – non-compliance by applicant with directions – where respondent seeking dismissal – where applicant warned matter would be dismissed in event of non-compliance – no reasonable explanation for delay given – matter dismissed

[Da Silva and Secretary, Department of Education](#) [2023] AATA 2064 (13 July 2023); Brigadier AG Warner, AM LVO (Retd), Member

PRACTICE AND PROCEDURE – reinstatement of application – application dismissed because Applicant failed to appear – whether application dismissed in error – justice of the circumstances – whether appropriate to reinstate the application – lack of any satisfactory explanation for failing to appear – prejudice – merits of substantive application – reinstatement application refused

[HVGY and Commissioner of Taxation](#) [2023] AATA 2009 (23 June 2023); B J McCabe, Deputy President

Interlocutory application – request for section 37 documents – internal ATO application – where documents are said to establish exceptional circumstances – documents deemed not relevant at this stage of proceedings – application refused

[Jones and National Disability Insurance Agency](#) [2023] AATA 2014 (6 July 2023); K Buxton, Senior Member

PRACTICE AND PROCEDURE – Jurisdiction – National Disability Insurance Scheme – Death of applicant – whether Tribunal has jurisdiction to review decision when applicant is deceased – application dismissed

[Kumar and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1913 (30 June 2023); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – Refusal to grant a Partner (Temporary) (Class UK) visa pursuant to s 501(1) of the Migration Act – where the Applicant has sought review outside of the legislative appeal period - whether the Applicant was notified in accordance with s 501G(2) of the Migration Act – whether the Tribunal has jurisdiction to review the application – Applications of the principles in Sandor – Tribunal found to have jurisdiction

[Lewis and Commissioner of Taxation](#) (Taxation) [2023] AATA 1930 (27 June 2023); F D O'Loughlin KC, Deputy President

PRACTICE AND PROCEDURE – review of penalty imposed under Division 269 of Schedule 1 of the Taxation Administration Act 1953 (director penalty notice) – no jurisdiction – dismissal – oral explanation provided – written explanation requested

[Librino and National Disability Insurance Agency](#) [2023] AATA 1985 (6 July 2023); I Thompson, Member

PRACTICE AND PROCEDURE – application for confidentiality order – Tribunal not satisfied that there are sufficient reasons for the order – request for confidentiality order declined by the Tribunal

[Tweed and National Disability Insurance Agency](#) [2023] AATA 2016 (12 July 2023); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme - Applicant and Respondent reached agreement as to the terms of a decision of the Tribunal – power of Tribunal under section 42C of the Administrative Appeals Tribunal Act 1975 (Cth) – whether the Tribunal should be satisfied under s 42C(1)(c) that the requested decision is within the powers of the Tribunal and whether it appears appropriate to make the decision – decision made in accordance with the agreement reached between the parties

Professions and Trades

[OZI Tax Advisors Pty Ltd and Tax Practitioners Board](#) [2023] AATA 2066 (14 July 2023); D K Grigg, Senior Member

TAX AGENT REGISTRATION – termination of applicants' registrations as tax agents – application for a stay pending decision under review – prospects of success – public interest – stay applications refused

Refugee

[1706661](#) (Refugee) [2023] AATA 1308 (16 February 2023); R Da Costa, Member

REFUGEE – protection visa – Fiji – political opinion – employee of organisation which published anti-government statements – legal action against organisation – job appointment blocked by government official – social media activity in Australia – credibility – overstated claims about work, activities and profile – returns from third country and Australia – sporadic, low-level social media activity – new government after recent election – relevant government official under investigation – member of family unit – no separate claims by second applicant – Australian-born child not an applicant – decision under review affirmed

[1718883](#) (Refugee) [2023] AATA 1351 (5 April 2023); D Creedon, Member

REFUGEE – Protection Visa – Libya – actual or perceived political opinion – a member of the Zawiya Tribe – oppose the Wershefana – pro-Gaddafi – recipients of scholarships funded by the Gaddafi Government – close association with someone widely known to have become an ISIS fighter – westernized, progressive and moderate religious and political views – perceived religious views as being “unIslamic” – state protection will not be available to the applicant – applicant has a well-founded fear of persecution – member of the same family unit as the applicant – decision under review remitted

[1818739](#) (Refugee) [2023] AATA 1352 (26 March 2023); D Creedon, Member

REFUGEE – protection visa – Nigeria – political opinion – member of nationalist separatist group – fear of harm from police and military – campaign and protest activities – one protest met with tear gas and live gunfire, and group members killed – house raided – no harm to family members – consistent but uncorroborated claims and evidence, with some doubts about veracity – continuing membership of Australian branch – country information – group proscribed as terrorist organisation – repression of human rights and armed operations – state protection or relocation not available – decision under review remitted

[1826318](#) (Refugee) [2023] AATA 1455 (29 March 2023); P Noonan, Member

REFUGEE – protection visa – Myanmar – religion, imputed political opinion and membership of particular social group – Rohingya Muslim – claim of statelessness not accepted – returns from third country to visit father – irregular maritime arrival – husband and children Australian citizens – returned failed asylum seeker and unaccompanied woman – country information – coup, violent suppression of protests and widespread, ongoing conflicts – decision under review remitted

[1826973](#) (Refugee) [2023] AATA 1514 (31 March 2023); A Grant, Member

REFUGEE – protection visa – Ghana – political opinion – membership and activity in political party – party won election but applicant’s area a stronghold of other major party – applicant and family members attacked and friend killed in post-election violence – continued threats to applicant after returning from third country but no further harm to family members – no strong political views but campaigned as means of improving family’s situation – frank and plausible evidence – significant differences between written claims and evidence in interview with delegate clearly explained – country information, news and academic reports – local political vigilantism – chance of persecution relates to all areas of country and state protection not accessible – treaty right to reside in neighbouring countries limited in practice – decision under review remitted

[1907208](#) (Refugee) [2023] AATA 1318 (31 March 2023); N Lamont, Member

REFUGEE – Protection Visa – Vietnam – political opinion – filing a complaint and appeal about the property – fear of harm at the hands of the Vietnamese authorities – opposition to forcible resumption of his family land – land dispute – left Vietnam illegally – religion – Christian – membership of particular social group – a failed asylum seeker – decision under review remitted

[1912249](#) (Refugee) [2023] AATA 1605 (6 March 2023); Deputy President D Dragovic

REFUGEE – protection visa – Iraq – land dispute with powerful political figure – passage of time – religion – conversion to Christianity – countryside – harm from the tribe, extended family and militias – internal relocation – Kurdish Region of Iraq (KRI) – complementary protection – reasonableness of relocation – Kurdish bureaucracy – language barriers – support networks – decision under review remitted

[1917246](#) (Refugee) [2023] AATA 1483 (8 March 2023); Senior Member A Duffield

REFUGEE – Protection visa – Ghana – Conversion to Judaism – persecuted by his father or his father's followers – anonymous allegation – abandonment of the church – Tribunal does not accept that the applicant has been or is or will be targeted by his father or his father's followers – manufactured claim to support his application for protection – delay in applying for protection – applicant does not have a well-founded fear of persecution – credibility concerns – decision under review affirmed

[1919338](#) (Refugee) [2023] AATA 1294 (23 March 2023); Senior Member M Bishop

REFUGEE – protection visa – stateless/South Sudan – ethnicity and imputed nationality and political opinion – membership of a particular social group – widowed woman without male protection – citizenship – born in former southern Sudan, now South Sudan – automatic loss of Sudanese citizenship for any person presumed to be Sudanese citizen – possible eligibility for South Sudanese citizenship but no steps taken – Ethiopian passport issued under Refugee Convention – delay in applying for protection and return to Ethiopia – inconsistent and unsubstantiated claims and evidence – illiteracy, lack of education, memory difficulties and forms filled out by other people – daughter's and grand-daughter's humanitarian visas – country information – vulnerability of women and elderly people – no effective state protection and not reasonable to relocate – decision under review remitted

[2001485](#) (Refugee) [2023] AATA 1353 (16 February 2023); N Burns, Member

REFUGEE – cancellation – protection visa – stateless – not all questions answered and incorrect information given in visa application – previous name known by not declared – applicant used Iraqi name only after father obtained Iraqi ID for him – citizenship – stateless Faili Kurd or Iranian citizen, and eligibility for Iraqi citizenship – Iranian driver's licence obtainable only if holding national identity card – vague description of refugee cards claimed to have held – departure on fraudulently obtained genuine Iraqi passport – fraud and security features at the time – return visit on Australian titre de voyage – Iraqi citizenship regained after protection visa granted – country information – Iranian driver's licence obtainable by registered refugees – no real state of satisfaction that grounds for cancellation made out – member of family unit – automatic cancellation of now adult son's visa with no jurisdiction to review – criminal history not relevant – decision under review set aside

[2007911](#) (Refugee) [2023] AATA 1392 (17 February 2023); J Silva, Member

REFUGEE – protection visa – Pakistan – Federal Court remittal – political opinion – Pakistan People’s Party – forced Tehrik-e-Taliban Pakistan recruitment – religion – mixed religious marriage – fear of killing – threats from family – return visit to Pakistan – decision under review affirmed

Social Security

[Dwyer and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2017 (12 July 2023); A McLean Williams, Member

SOCIAL SECURITY – Overpayment of age pension – where Applicants erroneously indicated they held market-linked income stream instead of allocated income – whether debt attributable solely to administrative error by the Commonwealth – whether debt or part of debt would be waived or written off – whether special circumstances apply – decision under review varied

[Harding and Secretary, Department of Employment and Workplace Relations](#) (Social services second review) [2023] AATA 1984 (7 July 2023); K Millar, Senior Member

SOCIAL SECURITY – Jobseeker payment – application to dismiss – considerations – application to dismiss refused cancellation of jobseeker payment – compliance failure – mutual obligation requirement – applicant complied with reconnection requirement – date of effect of the decisions – decisions under review are set aside

[Hawkins and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1917 (3 July 2023); D Mitchell, Member

SOCIAL SECURITY – rate of JobSeeker Payment – where income from sole trader business taken into consideration – decision under review set aside and substituted

[Lin and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1986 (10 July 2023); D J Morris, Senior Member

SOCIAL SECURITY – pensions, benefits and entitlements – where applicant in receipt of disability support pension (DSP) – where DSP cancelled because annual income exceeded allowable limit – where debt raised as undisclosed income not taken into account when calculating rate of DSP payment – where applicant applied for Job Seeker payment – where Job Seeker application rejected as income above allowable limit – where authorised review officer affirmed three decisions – where First Review affirmed authorised review officer’s decisions – where applicant sought Second Review – implausible evidence about sources of income – very significant deposits into applicant’s bank accounts during period applicant receiving social security benefits – no claim that debts were raised in error – no claim that repayment would result in severe financial hardship – decisions under review affirmed

PRACTICE AND PROCEDURE – where hearing held and decision reserved – where applicant sought leave to provide further material within a timeframe – where applicant did provide further material within timeframe – where applicant delivered additional documents to Tribunal after timeframe on several occasions – where applicant apparently did not provide additional documents to respondent – general principles about re-opening a matter when decision reserved – where applicant made no specific submissions about relevance of additional material – where applicant had ample opportunity to submit documents – fairness to other party – where no evidence additional material pivotal to decision under review – objective of the Tribunal – desirability that matters be finalised – additional material provided after timeframe not considered by Tribunal

[Mani and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2001 (7 July 2023); Dr L Kirk, Senior Member

SOCIAL SECURITY – Disability Support Pension – Claim for disability support pension rejected – Whether applicant’s conditions were fully diagnosed, fully treated, and fully stabilised during the qualification period – Whether applicant’s conditions attracted an impairment rating of at least 20 points – Decision affirmed

Taxation

[Richmond and Commissioner of Taxation](#) (Taxation) [2023] AATA 1915 (27 June 2023); S Boyle, Deputy President

TAXATION – applications for review of objection decision – whether income tax assessment was excessive or otherwise incorrect – deduction claimed under s 8-1 of ITAA 1997 – alternatively deductions claimed under ss 40-80(1), 40-25, 40-730 and 40-880 of ITAA 1997 – whether applicant is entitled to deductions – whether expenditure to capital or revenue account – purchase of interest in mining tenement through farm-in agreement – depreciating asset – applicant failed to discharge onus of proof pursuant to s 14ZZK of TAA 1953 – decision affirmed

[Semmens and Commissioner of Taxation](#) (Taxation) [2023] AATA 2060 (14 July 2023); D Mitchell, Member

TAXATION – goods and services tax – input tax credits – four year rule to claim input tax credit – notification of entitlement to input tax credits – taxpayer’s burden to prove assessment excessive or otherwise incorrect – decision under review affirmed

[Sexyworld \(Aust\) Pty Ltd and Commissioner of Taxation](#) (Taxation) [2023] AATA 1919 (15 June 2023); G Lazanas, Senior Member

CASH FLOW BOOST (CFB) – eligibility for CFB – pay as you go withholding (PAYGW) – whether the applicants paid amounts to individuals as employees (whether of the applicants or of another entity) from which the applicants must withhold PAYGW tax – where amounts paid by another entity to individuals as employees of the applicants – whether applicants and or associates or agents of the applicants entered into or carried out a scheme or part of a scheme for the sole or dominant purpose of making the applicants entitled to the CFB or increasing the amount of their CFB entitlement – objection decisions affirmed

[Stern and Commissioner of Taxation](#) (Taxation) [2023] AATA 2010 (4 July 2023); B J McCabe, Deputy President

Review of objection decision – superannuation – commutation of excess transfer balance – where taxpayer recipient of capped defined benefit income streams – whether commutation results in acquisition of property – whether s 51(xxxi) of the Australian Constitution engaged – whether Commissioner required to consult taxpayer over commutation – decision under review affirmed

[TBLX and ZSCM and Commissioner of Taxation](#) (Taxation) [2023] AATA 2059 (4 July 2023); D K Grigg, Senior Member

TAX – review under Part IVC of the Taxation Administration Act 1953 (Cth) – whether the Tribunal had jurisdiction to review a “nil assessment” – onus of proof – where little corroborating independent material to support the applicant’s claim – where applicant claimed corroborating material destroyed in fire – whether jurisdiction to review validity of assessments – whether deposits properly characterised as income – whether PAYG tax credits reviewable by the Tribunal under Part IVC - whether penalty assessment should be remitted - decision re TBLX affirmed – decision re ZSCM dismissed

Veterans’ Affairs

[Bourke and Repatriation Commission](#) (Veterans’ entitlements) [2023] AATA 2007 (11 July 2023); The Hon. M Groom, Senior Member

Veteran’s Affairs – Diagnosis of Claimed Conditions – Whether the Applicant Suffers from Meniere’s Disease – Whether the Applicant suffers from Otitis Media, Otitic Barotrauma and Vestibular Migraine – Application of Statement of Principles – Whether the Meniere’s Statement of Principles Supports a Connection with the Applicant’s Service – Decision Set Aside

[Boylan and Repatriation Commission](#) (Veterans’ entitlements) [2023] AATA 2052 (13 July 2023); D Mitchell, Member

VETERANS’ AFFAIRS – special rate pension – incapacity from service-caused conditions – prevented from being able to continue to undertake remunerative work that he was undertaking – alone test – loss of salary or wages – date of effect of decision where application for review was made outside the 3 month window – decision under review set aside and new decision substituted

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
Ahmed and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 5110
YFMG and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1699

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BKTS v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2733	[2023] FCA 729
Galpin v Chief Executive Officer of the Australian Skills Quality Authority	[2021] AATA 309	[2023] FCA 223
Hedges v Commissioner of Taxation	[2020] AATA 5307	[2023] FCAFC 105 [2022] FCA 1389
SLGS v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1515	[2023] FCAFC 104 [2022] FCA 1055
XGHJ v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 3474	[2023] FCA 772
XRZG v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3952	[2023] FCA 783

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

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

mild traumatic brain injury and Parkinson's disease as a factor in Parkinson's disease and secondary parkinsonism – <https://www.legislation.gov.au/Details/C2023G00746>

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

Parkinson's disease and secondary parkinsonism (Reasonable Hypothesis) – No. 55 of 2016

<https://www.legislation.gov.au/Details/F2016L00560>

Parkinson's disease and secondary parkinsonism (Balance of Probabilities) – No. 56 of 2016

<https://www.legislation.gov.au/Details/F2016L00570>

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

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):

Myocarditis – <https://www.legislation.gov.au/Details/C2023G00744>

Pericarditis – <https://www.legislation.gov.au/Details/C2023G00745>

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 25 July 2023:

Hodgkin lymphoma (Balance of Probabilities) – No. 71 of 2023

<https://www.legislation.gov.au/Details/F2023L00950>

Hodgkin lymphoma (Reasonable Hypothesis) – No. 70 of 2023

<https://www.legislation.gov.au/Details/F2023L00948>

Malignant neoplasm of the stomach (Balance of Probabilities) – No. 75 of 2023

<https://www.legislation.gov.au/Details/F2023L00943>

Malignant neoplasm of the stomach (Reasonable Hypothesis) – No. 74 of 2023

<https://www.legislation.gov.au/Details/F2023L00942>

Peripheral neuropathy (Balance of Probabilities) – No. 73 of 2023

<https://www.legislation.gov.au/Details/F2023L00941>

Peripheral neuropathy (Reasonable Hypothesis) – No. 72 of 2023

<https://www.legislation.gov.au/Details/F2023L00940>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on 25 July 2023:

Hodgkin's lymphoma – No. 36 of 2014

<https://www.legislation.gov.au/Details/F2014L00468>

Hodgkin's lymphoma – No. 35 of 2014

<https://www.legislation.gov.au/Details/F2014L00467>

Malignant neoplasm of the stomach – No. 59 of 2014

<https://www.legislation.gov.au/Details/F2014L00938>

Malignant neoplasm of the stomach – No. 58 of 2014

<https://www.legislation.gov.au/Details/F2014L00939>

Peripheral neuropathy – No. 75 of 2014

<https://www.legislation.gov.au/Details/F2014L01137>

Peripheral neuropathy – No. 74 of 2014

<https://www.legislation.gov.au/Details/F2014L01135>



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