



Administrative
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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

[Joelson and Audette](#) (Child support) [2022] AATA 3964 (19 September 2022); T Hamilton-Noy, Member

CHILD SUPPORT – percentage of care – court orders not complied with – whether interim period should be applied – special circumstances exist – decision under review affirmed

[Mackall and Mackall](#) (Child support) [2022] AATA 3969 (19 September 2022); M Baulch, 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

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

[Joynson and Lamble](#) (Child support) [2022] AATA 3676 (21 September 2022); S Hoffman, Member

CHILD SUPPORT – particulars of the administrative assessment – decision under review set aside and substituted

[Kuzner and Kersley](#) (Child support) [2022] AATA 3678 (27 September 2022); M Douglas, Member

CHILD SUPPORT – departure determination – costs of orthodontic costs for the children – decision under review affirmed

[Gedye and Blant](#) (Child support) [2022] AATA 3997 (17 October 2022); R Ellis, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – whether employer withholding should not apply – decision under review affirmed

Citizenship

[Gillbanks and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 3929 (21 November 2022); J Sosso, Deputy President

CITIZENSHIP – application for Australian citizenship by conferral – where Applicant has been convicted of criminal offences – where Applicant failed to disclose criminal convictions in citizenship application – where Applicant made a false statutory declaration – where Applicant has an extensive traffic offence history – where Applicant failed to lodge tax returns – decision under review affirmed

Compensation

[Ajmal and Comcare](#) (Compensation) [2022] AATA 3978 (24 November 2022); W Frost, Member

WORKERS' COMPENSATION – section 14 of the Safety, Rehabilitation and Compensation Act 1988 – denial of liability for an aggravation of lateral epicondylitis (right) – 'tennis elbow' -- where Applicant worked as auditor – keyboard and mouse usage – where symptoms aggravated by employment and outside daily living activities – underlying degenerative condition – employment contribution not established to a significant degree – decision under review affirmed

[Dalgrin and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 3935 (18 November 2022); Dr L Kirk, Senior Member

COMPENSATION – Defence-related claims – whether the Applicant suffered an injury or disease – claim for right ulna fracture – claim for left clavicle fracture – whether the Applicant's injuries arise out of or in the course of his employment – whether employer induced the Applicant to participate in activity – reviewable decision approved

[Guerrero and FedEx Express Australia Pty Ltd](#) (Compensation) [2022] AATA 3928 (22 November 2022); B W Rayment OAM KC, Deputy President

WORKERS' COMPENSATION – review of decision denying compensation under the Safety, Rehabilitation and Compensation Act 1988 – whether applicant suffered an injury during the course of his employment – whether applicant's injury was significantly contributed to or aggravated by his employment – decision under review set aside and substituted

Migration

[Chol and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3816 (14 November 2022); R Cameron, Senior Member

MIGRATION – mandatory visa cancellation – Class XB Subclass 202 Global Special Humanitarian Visa – failure to pass character test – substantial criminal record – intentionally causing serious injury – assault – international non-refoulement obligations – Ministerial Direction No. 90 applied – primary and other considerations – reviewable decision affirmed

[DGYT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3895 (18 November 2022); P Britten-Jones, Deputy President and T Tavoularis, Senior Member

MIGRATION – citizen of the People’s Republic of China – protection visa application – does not satisfy section 5H(2) and section 36(2C) of the Migration Act 1958 – consideration of the meaning of non-political crime – Applicant committed serious non-political crime in China before arriving in Australia – therefore, does not meet the definition of a refugee – ineligible to be granted a protection visa – reviewable decision affirmed

[DXJL and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]
AATA 3809 (24 October 2022); K Parker, Senior Member

MIGRATION – mandatory cancellation of visa due to criminal offending and serious misconduct – applicant convicted of serious offences including home invasions, theft and possessing methylamphetamine – applicant concedes he does not pass good character test – whether there is another reason to revoke mandatory cancellation decision – applicant likely to face harm and impediments if removed to South Sudan – applicant has strong links to the Australian community – applicant first arrived and has remained in Australia since age 2 – legal consequences of non-revocation – assessment of likelihood of reoffending – primary considerations of protection and expectations of the Australian community outweigh countervailing considerations in favour of revocation of visa cancellation – Decision Under Review affirmed

[Halafa'u and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3907 (17 November 2022); B W Rayment OAM KC, Deputy President

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – numerous motor vehicle offences – misconduct with police – applicant remorse – humanitarian concerns – decision under review set aside and substituted

[Kristensen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3814 (14 October 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – whether there is another reason to revoke the mandatory cancellation decision – sexual offending occurred when applicant a young adult – serious drug offending but low risk of recidivism - psychological impact on children if applicant deported – decision under review is set aside and substituted

[Lasalo and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 4018 (9 November 2022); C Puplick AM, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – impediments to removal – links to the Australian community – strength, nature and duration of ties – business interests – not limited to delivery of major projects – decision affirmed

[MLFT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 3947 (26 October 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – serious offending – low risk to the Australian community – gaol and immigration detention as powerful deterrence – ongoing detention as a consequence – other considerations outweighs primary considerations – another reason to revoke the mandatory cancellation – decision under review set aside and substituted

[Moala and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]

AATA 3834 (24 October 2022); A George, Senior Member

MIGRATION – Class BB Subclass 155 Five Year Resident Return visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – offending serious – decision under review set aside – decision to revoke the mandatory cancellation of the Applicant's visa substituted

[NDMS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 3909 (20 October 2022); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 202 Global Special Humanitarian visa - where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – sexual offences against a minor – decision under review affirmed

[PYNT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 3912 (21 November 2022); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of visa – Resident Return (class BB) (subclass 155) visa – visa cancelled under s 501(3A) of the Migration Act 1958 (Cth) – Applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – nature and seriousness of Applicant's conduct – seriousness of offending and future risk – family violence committed by the Applicant – expectations of the Australian community – other considerations – extent of impediments if removed – links to the Australian community – strength, nature and duration of ties to Australia – decision under review set aside and substituted

QHPK and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3825 (18 October 2022); Dr N A Manetta, Senior Member

MIGRATION – partner visa – applicant’s partner refused visa – violent offending eleven years ago by applicant’s partner towards a past spouse – substantial criminal record – visa refused under s501(1) – Direction 90 – low risk of reoffending – decision set aside

RYTV and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3835 (16 November 2022); S Boyle, Deputy President

MIGRATION – s 501(1) of the Migration Act – decision of a delegate of the Minister to refuse to grant the Applicant a Bridging E (Class WE) visa – whether Tribunal should exercise discretion in s 501(1) to refuse to grant the Applicant the visa – Direction 90 applied – Applicant complicit in crimes against humanity – Applicant a citizen of Turkey who has been in Australia for over 10 years – Applicant’s involvement with JITEM – Applicant has no family in Australia – no chronological endpoint to detention – reviewable decision affirmed

RYZM and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3995 (21 November 2022); D J Morris, Senior Member

MIGRATION – applicant found to be a citizen of South Sudan – applicant held Global Special Humanitarian (Class XB)(Subclass 202) visa – visa cancelled because applicant has substantial criminal record as defined in Act and was serving sentence of full-time imprisonment – is there another reason to revoke cancellation of visa – two procedural matters – late statement from potential witness lodged after ‘two-day rule’ – no statement from the Applicant – threshold question – the country of reference – Direction No. 90 – primary considerations – protection of the Australian community – family violence conduct – best interests of minor children in Australia affected by decision – expectations of Australian community – other considerations – international non-refoulement obligations – application found to be owed protection – application refused a protection visa – extent of impediments if removed – impact on victims – links to the Australian community – special considerations – prospect of prolonged detention – extent of impediments if removed to a third country – decision under review is affirmed

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

(Migration) [2022] AATA 3808 (14 November 2022); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of France – Class BW Subclass 856 Employer Nomination Scheme (Permanent) visa – failure to pass good character test – substantial criminal record – sexual and violent offending – polysubstance drug abuse – non-refoulement obligations – whether another reason to revoke the mandatory cancellation – Ministerial Direction No. 90 applied – decision affirmed

[Siorame and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3975 (24 November 2022); B W Rayment OAM KC, Deputy President

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – menacing driving offences – intimidation offences – family violence assault offence – first offences – low risk of reoffending – substantial links to Australian community – decision under review set aside and substituted

[Thang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3933 (22 November 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Global Special Humanitarian (Class XB) (Subclass 202) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review affirmed

[TTCT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4019 (15 November 2022); C J Furnell, Senior Member

MIGRATION – mandatory cancellation of Child (Class AH) (Subclass 101) visa – Migration Act 1958 (Cth) s 501(3A) – Applicant does not pass character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 90 – Somalia – indefinite detention – primary and other considerations – decision under review affirmed

[VDXX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3828 (2 November 2022); Dr L Bygrave, Member

MIGRATION – cancellation of visa – Refugee (Class XB) (Subclass 200) visa – visa cancelled under s 501(3A) of the Migration Act 1958 (Cth) – Applicant did not pass character test – criminal record – Ministerial Direction No. 90 – primary considerations – protection of Australian community from criminal or other serious conduct – family violence committed by Applicant – best interests of minor children in Australia – expectations of Australian community – other considerations – international non-refoulement obligations – extent of impediments if Applicant removed – links to Australian community – strength, nature and duration of ties to Australia – decision under review set aside and substituted

[XRZG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3952 (22 November 2022); K Raif, Senior Member

MIGRATION – mandatory cancellation of visa – special category (subclass 200) temporary visa – where visa was cancelled under subsection 501(3A) because Applicant did not pass the character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children – expectations of Australian community – other considerations – extent of impediments if removed – links to the Australian community – decision under review affirmed

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

(Migration) [2022] AATA 4017 (21 November 2022); D J Morris, Senior Member

MIGRATION – applicant is citizen of New Zealand – applicant held Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record for purposes of character test – applicant therefore fails character test – visa cancelled – consideration of ‘another reason’ to revoke mandatory cancellation of visa – ministerial Direction No 90 – primary considerations – significant and serious road traffic offences – historical family violence offences – other considerations – decision under review is affirmed

YXXV and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3934 (21 November 2022); R Cameron, Senior Member

MIGRATION – cancellation of Class BF transitional (Permanent) visa – substantial criminal record – delegate decided not to revoke mandatory cancellation – ministerial direction No. 90 – primary considerations – protection of the Australian community – best interests of minor children in Australia – expectations of Australian community – extent of impediments if removed – links to the Australian community – offending driven by drug and alcohol addiction – evidence that applicant has been drug-free for a considerable period of time – applicant has substantial links to Australia – applicant resided in Australia for a majority of his life – applicant has significant health conditions – decision under review set aside and new decision substituted

Galesi (Migration) [2022] AATA 3664 (12 September 2022); A Mercer, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 – Accommodation or Hospitality Manager – no approved nomination of first applicant – no review pending with the Tribunal on 18 October 2021 of the decision to refuse to approve the nomination – no jurisdiction in relation to the first named applicant – not members of the family unit, of a person who holds a subclass 482 visa – decision under review affirmed for second and third named applicants

Martin (Migration) [2022] AATA 3622 (4 October 2022); J Owen, Deputy President

MIGRATION – cancellation – Bridging A (Class WA) visa – Subclass 010 (Bridging A) – applicant convicted of criminal offences – withdrawal of the applicant’s substantive visa application – compassionate or compelling circumstances – impact of skill shortage on the applicant’s employer – separation from extended family – working as an unlawful resident – visa had already ceased – decision under review affirmed

Matusiewicz (Migration) [2022] AATA 3603 (14 October 2022); A Mercer, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – direct entry scheme – hairdresser – skills and qualifications – certificates obtained by recognition of prior learning not recognised by departmental policy – policy went beyond requirement of legislation and is not in current version of manual – full-time employment in occupation for at least 3 years – decision under review remitted

[Jia](#) (Migration) [2022] AATA 3606 (17 October 2022); A Mercer, Member

MIGRATION – Business Skills – Business Talent (Permanent) (Class EA) visa – Subclass 132 (Business Talent) – first applicant’s visa refused because of second applicant’s involvement in unacceptable business practices – first applicant outside migration zone when review application made – COVID-related travel restrictions – concessional arrangements for certain classes of visa holder – no discretion to waive requirement – no jurisdiction for first applicant – not open to refer for ministerial consideration because no substantive decision made – second applicant not a family of a person who holds visa – decision under review affirmed

[Markovska](#) (Migration) [2022] AATA 3605 (18 October 2022); R Matheson, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – assistance cannot be reasonably provided by other specified relatives or obtained from service providers – other relatives’ family, work, study, incapacity or own caring commitments – small amount of in-home medical care – limited attempts to investigate service providers – nursing home placement possible but not reasonable – cultural and language requirements and preferences – applicant’s ongoing care – decision under review remitted

National Disability Insurance Scheme

[Cox and National Disability Insurance Agency](#) [2022] AATA 3911 (2 November 2022); P Goward, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME (NDIS) – quadriplegia – whether support is reasonable and necessary – whether the NDIA should fund Botox treatment as a reasonable and necessary support – whether funding for support is consistent with relevant law and policy – whether functionality is incidental to pain management – decision under review affirmed

[Paterno and National Disability Insurance Agency](#) [2022] AATA 3908 (21 November 2022); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – specialist disability accommodation requirements – reasonable and necessary supports – whether applicant should receive funding for a two bedroom one resident apartment – high physical support needs – decision set aside and substituted

[QTDM and National Disability Insurance Agency](#) [2022] AATA 3826 (15 November 2022); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – ankylosing spondylitis – inflammatory bowel disease – asthma – whether the applicant satisfies the disability requirements – whether applicant has a disability attributable to an impairment – whether impairments substantially reduced functional capacity to undertake any one or more specified activities specified in s 24(1)(c) – where no functional assessment provided to the Tribunal – totality of available evidence – decision affirmed

Practice and Procedure

[Fuller and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 3827 (16 November 2022); R Cameron, Senior Member

COMPENSATION – interlocutory application for dismissal under section 42B(1) – no reasonable prospects of success – abuse of process - matter previously heard and determined - cognitive condition – reports state that the applicant does not suffer from this condition – degenerative back conditions – relates to the same subject matter of several previous applications that resolved by consent of the parties – settlement contained a binding clause which restricts further claims being made in respect of this injury – other claims had ceased – significant time elapsed – no new evidence available to the Tribunal – matter dismissed

[Grayson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3817 (4 November 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – refusal of citizenship by conferral – cogent reasons for delay – applicant did not rest on their rights – no prejudice to a respondent – no merits or reasonable prospects of success – extension of time refused

[Harrison and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3894 (10 November 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – refusal of age pension – where applicant failed to meet residence requirements – application for dismissal – where application has no reasonable prospects of success – application dismissed

[OnMarket BookBuilds Pty Ltd and The Treasury](#) (Freedom of information) [2022] AATA 3993 (18 November 2022); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – request for Tribunal to make Directions to provide material to Applicant - objection to the issue of summons to give evidence – request for the Tribunal to exclude evidence – request that the Tribunal make a confidentiality order – whether the directions are appropriate to make – whether the Applicant would be denied procedural fairness – whether the requested summons would materially assist the Tribunal in determining the issues – whether the evidence in question opinion evidence – whether the confidentiality order is appropriate to make – request for directions refused – request to issue summons refused – evidence excluded from consideration – request for confidentiality order granted

[Secretary, Department of Home Affairs and Comcare](#) (Compensation) [2022] AATA 3958 (22 November 2022); S Webb, Member

PRACTICE AND PROCEDURE – psychological injury claim – acceptance of claim by Comcare – application for review by employer – issues of employment causation – assertion of alcohol abuse – application for direction compelling claimant to produce financial records – objection to application – discretion – applicable principles – legitimate forensic purpose – threshold of apparent relevance – likely probative value of documents sought – privacy considerations – obligation to ensure each party is given a reasonable opportunity to present their case – speculation not sufficient – no reasonable basis made out for the direction sought – application refused

[Stantin Partners Pty Ltd and Tax Practitioners Board](#) [2022] AATA 3913 (18 November 2022); G Lazanas, Senior Member

PRACTICE AND PROCEDURE – applications for stays of decisions – applications for confidentiality – termination of tax agent registrations and imposition of two year bans – whether conditional stay should be granted pending decisions on applications for review – factors relevant to the granting of a stay – prospects of success – consequences if stay not granted – public interest – consequences for respondent in carrying out its functions – whether substantive applications would be rendered nugatory – stay applications granted on conditions including prohibition on taking on new clients and requirement for applicants to notify clients and employees in writing of administrative action by respondent and proceedings at the Tribunal – applications for confidentiality refused as inconsistent with stay applications granted on conditions

[The Estate of the Late Judith Hartikainen and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 3832 (17 November 2022); D Mitchell, Member

PRACTICE AND PROCEDURE – role of the Tribunal – application for dismissal pursuant to section 42B(1)(b) of the Administrative Appeals Tribunal Act 1975 (Cth) – claim for permanent impairment – operation of the transitional provision of the Safety Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) where injury occurred prior to December 1988 – when was injury permanent – whether Tribunal is satisfied the application has no reasonable prospect of success – application dismissed

Professions and Trades

[Douglas and Australian Securities and Investments Commission](#) [2022] AATA 3914 (28 October 2022); P W Taylor SC, Senior Member

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION – Non-compliance – non-compliance with directions – reinstatement of application – statutory interpretation – application dismissed

Refugee

[1825403](#) (Refugee) [2022] AATA 3633 (7 July 2022); P Noonan, Member

REFUGEE – protection visa – Iraq – particular social group – a returnee from the West who has not resided in Iraq since being an infant – accent – English language tattoos – cultural unfamiliarity – ‘all areas of the receiving country’ – father’s tribal area – ongoing drug usage – psychological issues – state protection – decision under review remitted

[1711412](#) (Refugee) [2022] AATA 3566 (21 July 2022); L Hardy, Member

REFUGEE – Protection visa – Colombia – alleged criminal activity threatened against applicants for refusing to comply with a criminal demand – Tribunal is not satisfied that the applicant is at risk of serious harm – delay in lodging the visa application – inconsistent evidence – credibility concerns – decision under review affirmed

[1923439](#) (Refugee) [2022] AATA 3631 (4 August 2022); A Duffield, Senior Member

REFUGEE – protection visa – Bangladesh – religion – conversion to Christianity – sporadic and violent attacks on Christian converts – disowned by respective families – decision under review remitted

[1731711](#) (Refugee) [2022] AATA 3559 (22 August 2022); R Da Costa, Member

REFUGEE – Protection visa – Sri Lanka – race – Tamil – religion – Hindu – fears harm from the Sri Lankan army and associated groups – imputed political opinion – applicant does not have real or perceived links to the LTTE – situation in Sri Lanka has changed significantly for the better – a failed asylum-seeker – applicant does not have a well-founded fear of persecution – decision under review affirmed

[1908269](#) (Refugee) [2022] AATA 3567 (25 August 2022); S Roushan, Senior Member

REFUGEE – protection visa – Iraq – race – Arab ethnicity – nationality – Iraqi citizenship – religion – secularism – perceived Iranian background – education – fear of killing – fear of Muslim fundamentalists – language skills – property dispute – decision under review affirmed

[2015278](#) (Refugee) [2022] AATA 3776 (7 September 2022); D Dragovic, Senior Member

REFUGEE – cancellation – protection visa – Afghanistan – ground for cancellation – convicted of an offence – sexual assault – stalking – community corrections order – consideration of discretion – purpose of travel to Australia – Hazara ethnicity – Jafari Shia – Taliban’s ascension to power – degree of hardship – primary breadwinner for family in Afghanistan – severe impacts on applicant and family – mandatory legal consequences – prospect of lengthy or possible indefinite detention – risk of reoffending – genuine remorse – integrity of the migration program – decision under review set aside

[2207086](#) (Refugee) [2022] AATA 3628 (21 October 2022); J L Redfern PSM, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – whether the applicant is Stateless – former habitual residence – Croatia – state protection – humanitarian visa cancelled – Serbian ethnicity – intellectual disability and mental health issues – criminal deportee – suffering trauma – applicant found to be a refugee – decision under review remitted

Social Services

[Andersen and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3824 (31 October 2022); Dr L Bygrave, Member

SOCIAL SECURITY – Age Pension – overpayment of Age Pension – income assessment – assessment of Applicant's Danish Old Age Pension – social security agreement between Australia and Denmark – personal allowance – whether debt can be waived or written off – no sole administrative error – no special circumstances – decision under review affirmed

[Baker and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4016 (22 November 2022); R West, Member

SOCIAL SECURITY – disability support pension – idiopathic hypersomnia – anxiety/depression – attention deficit hyperactivity disorder – whether conditions fully diagnosed, treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

[Clark and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3930 (21 November 2022); D O'Donovan, Senior Member

SOCIAL SECURITY – Disability Support Pension — debt raised to recover overpayments – debtor failed to disclose he was a member of a same-sex couple – whether whole or part of debt should be waived – whether special circumstances exist to warrant a waiver of the debt – whether debtor gave misleading responses to questions – whether applicant made an honest mistake about his status based on advice prior to changes to the law concerning same-sex couples – debtor failed to comply with his statutory obligations – decision affirmed

[Collins and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3805 (14 November 2022); S Evans, Member

SOCIAL SECURITY – Benefits – Family Tax Benefit – Where Applicant filed income tax returns out of time – Whether time can be extended beyond the following income year – Whether special circumstances exist that prevented Applicant making a claim within time – Whether non-lodgement of tax returns by accountant constitutes special circumstances – Decision under review affirmed

[Collins; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 3783 (10 November 2022); S Evans, Member

SOCIAL SECURITY — Disability support pension - appeal by the Secretary of the Department of Social Services – whether the respondent was qualified to receive DSP – where respondent has multiple conditions – where the respondent is suffering from episodic and fluctuating impairment – whether the respondent meets the requirements of severely impaired – where some conditions are neither fully diagnosed nor treated – Whether condition fully treated and stabilised during the relevant period – respondent does not meet the requirements of the Impairments Table – decision under review set aside and substituted

[Innes and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3977 (24 November 2022); D Mitchell, Member

SOCIAL SECURITY – Newstart Allowance – overpayment – where income was not correctly reported – where no sole administrative error – where no special circumstances – where appropriate to write off repayment of the debt – decision under review otherwise affirmed

[Kupelian and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3980 (24 November 2022); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension (DSP) – whether DSP should be paid at partnered rate or single rate – partner visa – whether there was financial difficulty – whether there was a special reason to not treat the applicant as a member of a couple – reviewable decision affirmed

[Radley and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3893 (18 November 2022); A E Burke AO, Member

SOCIAL SECURITY – age pension – reduction of age pension – proceeds from sale of home assess as an asset – 24 month assets exemption applied – delays beyond control in building other residence – decision under review affirmed

[Rush and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3931 (21 November 2022); D O'Donovan, Senior Member

SOCIAL SECURITY – Newstart allowance and carer payment – debt raised to recover overpayments – debtor failed to disclose he was a member of a same-sex couple – whether whole or part of debt should be waived – whether special circumstances exist to warrant a waiver of the debt – whether debtor gave misleading responses to questions – whether debtor made honest mistake about his status based on advice prior to changes to the law concerning same-sex couples – debtor failed to comply with his statutory obligations – decision affirmed

Taxation

[Cammarano and Commissioner of Taxation](#) (Taxation) [2022] AATA 3910 (21 November 2022); K James, Senior Member and N Gaudion, Member

TAXATION – audits undertaken – amended assessments issued – unexplained and unreported income – gambling – whether assessment incorrect or excessive – standard of proof not satisfied – objection decision affirmed

[SVYR and Commissioner of Taxation](#) (Taxation) [2022] AATA 3994 (24 November 2022); B J McCabe, Deputy President and R Olding, Senior Member and D Mitchell, Member

TAXATION – GOODS AND SERVICES TAX – mobile telephone and tablet accessories – where telecommunications provider granted credit to customer of its licensed retail mobile telephone and accessories outlet for purchase of accessories – where amount paid by telecommunications provider to retail outlet less than financed price repaid by customer – whether creditable acquisition by retail outlet – whether retail outlet has decreasing adjustment – significance of contractual terms – no taxable supply by telecommunications provider to retail outlet – no creditable acquisition – no decreasing adjustment – decision affirmed

Veterans' Affairs

[Cameron and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 3807 (11 November 2022); Dr M Evans-Bonner, Senior Member

VETERANS' AFFAIRS – Veterans' entitlements – Veterans' Entitlements Act – Statement of Principles – eligibility for an increase in pension – post-traumatic stress disorder (PTSD) – whether connected to service – peacetime injury – decision under review set aside and remitted with a direction that the Applicant's PTSD is defence caused – power imbalance between the veteran and the Respondent both legally and financially – recommendations for reform suggested to address power imbalance and to assist veterans in similar proceedings

[Wood and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 3833 (17 November 2022); J C Kelly, Senior Member

VETERANS' ENTITLEMENTS – disability pension – clinical worsening – post-traumatic stress disorder – major depressive disorder – statement of principles – whether defence-caused diseases were clinically worsened in connection with applicant's service – whether there was a causal connection to service – reviewable decision is 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
Khalil and Minister for Immigration, Citizenship, and Multicultural Affairs	[2022] AATA 3563
Tran and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3600
T.D.S BIZ PTY LTD and Commissioner of Taxation	[2022] AATA 3543

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Cowgill v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2162	[2022] FCA 1337
CWRG v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2408	[2022] FCA 1382
Hedges v Commissioner of Taxation	[2020] AATA 5307	[2022] FCA 1389
JFJF v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3888	[2022] FCA 1401
Miller v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 1623	[2022] FCAFC 183 [2022] FCA 489
National Disability Insurance Agency v KKTB, by her litigation representative CVY22	[2021] AATA 5457 [2021] AATA 5459 [2021] AATA 5456	[2022] FCAFC 181
Philip Morris Ltd v Comptroller-General of Customs	[2022] AATA 548	[2022] FCAFC 185



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