



AAT Bulletin

Issue No. 26/2022

22 December 2022

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

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

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

Enquiries regarding this publication may be directed to <u>aatweb@aat.gov.au</u>.

Contents

Recent developments	3
End of year arrangements	
Responding within a timeframe	
AAT Recent Decisions	4
Child Support	
Citizenship	
Compensation	
Corporations	7
Education and Research	7
Freedom of Information	7
Migration	
National Disability Insurance Scheme	
Practice and Procedure	
Professions and Trades	14
Refugee	14
Social Services	
Taxation	17
Appeals	
Appeals lodged	
Appeals finalised	

Recent developments

End of year arrangements

Our opening hours will change over the holiday period, but our online lodgement and submission service remains available.

Our registries will be closed on

•

- Monday 26 December 2022
- Tuesday 27 December 2022
- Monday 2 January 2023

You can still contact us using our online services portal during this period.

Our registries, except for Canberra and Hobart, will be open from Wednesday 28 December to Friday 30 December 2022.

Responding within a timeframe

If we, or the agency that made the original decision, have provided a date by which an application or documents must be submitted, you should consider using our <u>online services portal</u> so that you do not miss the required timeframe for submission.

If you plan to send an application or documents through the post, please be aware that there may be delays in postal delivery during the period.

You can contact us on 1800 228 333 or visit our website for more information.



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 <u>AustLII</u> have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Child Support

LBYF and Child Support Registrar (Child support second review) [2022] AATA 4304 (14 December 2022); G Lazanas, Senior Member, and C Puplick AM, Senior Member

CHILD SUPPORT – percentage of care – whether parent continues to provide care where child hospitalised – whether parent continues to provide care where child the subject of temporary care arrangement – whether parent continues to provide care where child the subject of children's court order allocating parental responsibility to the Minister – whether parent has responsibility for making decisions in relation to the welfare of the child – whether parent continues to provide financial and emotional support – decision under review affirmed

Allpress and Allpress (Child support) [2022] AATA 4007 (7 October 2022); D Tucker, Member

CHILD SUPPORT – percentage of care – what was the likely pattern of care from the start of the administrative assessment – parents living under the same roof – shared care appropriate determined – decision under review affirmed

Comerford and Stansby (Child support) [2022] AATA 4005 (12 October 2022); A Schiwy, 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 – 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 affirmed

Dewing and Dewing (Child support) [2022] AATA 3967 (14 October 2022); S Letch, Member

CHILD SUPPORT – departure determination – income, property and financial resources – orthodontic costs – a ground for departure established – decision to depart – decision under review set aside and substituted

AAT BULLETIN

Frobisher and Elford (Child support) [2022] AATA 4009 (17 October 2022); J Leonard, Member

CHILD SUPPORT – child support agreement – when a binding child support agreement should be applied to administrative assessment – decision under review set aside and sent back with directions

Hulbert and Hulbert (Child support) [2022] AATA 4008 (26 October 2022); A Schiwy, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been accepted – estimate of income correctly accepted – decisions under review affirmed

Citizenship

Dhillon and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 4274 (13 December 2022); J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – applicant does not meet general residency requirements – whether the applicant should be exempted from the general residency requirements – whether the applicant has a close and continuing association with Australia – application of citizenship policy instructions – reviewable decision affirmed

El Ayeed and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 4381 (16 December 2022); C Puplick AM, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – claimed stateless Bidoons – refusal of citizenship approval on basis of identity – absence of biometric data – documentary evidence – birth certificates – identity cards – other documents – life story – identity of applicants satisfied – further character concern – applicant provided counterfeit ID – where applicant was not aware of counterfeit status – no character concern found – decision set aside and remitted

Embaye and Minister for Immigration, Citizenship and Multicultural Affairs (Citizenship) [2022] AATA 4276 (13 December 2022); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether Tribunal is satisfied of Applicant's good character – Applicant failed to declare having a child – Applicant failed to advise the Department that her second marriage ceased – Applicant has provided inconsistent information – Reviewable Decision affirmed

Heccae and Minister for Immigration, Citizenship, and Multicultural Affairs (Citizenship) [2022] AATA 4310 (14 December 2022); B J Illingworth, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to the Applicant's identity pursuant to section 24(3) of the Australian Citizenship Act 2007 – Whether Applicant was of 'good character' for the purposes of s 21(2)(h) – decision under review set aside and remitted for reconsideration Khan and Minister for Immigration, Citizenship and Multicultural Affairs (Citizenship) [2022] AATA 4386 (13 December 2022); C Puplick AM, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship approval – general eligibility criteria met for minor children – discretionary refusal – applicants usually resident in Australia living with non-citizen parent – whether applicants would experience significant hardship, disadvantage/detriment if citizenship refused – consideration of applicants' best interests as children – decision affirmed

<u>Samra and Minister for Immigration, Citizenship and Multicultural Affairs</u> (Citizenship) [2022] AATA 4275 (9 December 2022); C Puplick AM, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – cancellation of citizenship approval – whether applicant intends to reside or maintain a close and continuing relationship with Australia – applicant satisfies intention to reside requirement – where applicant failed to take the pledge of commitment within 12 months of approval – discretion enlivened to waive pledge requirement – decision set aside and remitted

<u>Waraich and Minister for Immigration, Citizenship and Multicultural Affairs</u> (Citizenship) [2022] AATA 4232 (9 December 2022); T Tavoularis, Senior Member

CITIZENSHIP – decision to refuse application for citizenship by conferral – good character test – convictions for false and misleading statement – public interest – decision set aside and substituted by the Tribunal in 2018 – Minister appeal upheld and Tribunal's decision set aside – Matter remitted to the Tribunal – decision under review affirmed

Compensation

Davis and Australian Postal Corporation (Compensation) [2022] AATA 4348 (15 December 2022); A Maryniak KC, Member

COMPENSATION – whether Applicant received a superannuation lump sum – whether superannuation lump sum received as a result of retirement – three instances of receipt of lump sum raised – where Applicant received notices that superannuation had been transferred to different plans or funds – no opportunity to object – no tacit or implied consent – superannuation withdrawn upon reaching preservation age – held insufficient temporal or causal link between receipt of lump sum and retirement – decision set aside and substituted

Garrett and Comcare (Compensation) [2022] AATA 4379 (16 December 2022); W Frost, Member

COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) – section 29A – compensation payable for catastrophic injury – household and attendant care services – gardening – whether the Applicant's wife can be paid compensation – reasonable hourly rate of compensation – decision under review varied

ISSUE 26/2022

Corporations

Dortkamp and Australian Securities and Investments Commission [2022] AATA 4395 (20 December 2022); B W Rayment OAM KC, Deputy President

CORPORATIONS – ASIC – banning order – where applicant banned from performing functions as an officer and responsible manager of a financial services business for a period of two years – whether applicant is not adequately trained or not competent – reputational evidence – superannuation software bug – complete information not disclosed to applicant – difference between applicant's evidence given to the Tribunal and ASIC examination – decision under review set aside

Education and Research

<u>CNPG and Secretary, Department of Education</u> [2022] AATA 4349 (15 December 2022); D J Morris, Senior Member

HIGHER EDUCATION SUPPORT – HECS-HELP – remission of debts – two different study periods – applicant claims severe flare up in mental health affected her ability to withdraw before census date – applicant sought internal review of decision by higher education provider – higher education provider provided oral advice that decision was confirmed – review by Tribunal – consideration of legislative provisions and Guidelines then in place – whether special circumstances applicable to applicant were beyond her control – whether special circumstances had an abnormal or unusual overlay – decision under review set aside and new decision substituted remitting one debt and confirming the other debt

PRACTICE AND PROCEDURE – where enactment provides for review by Tribunal – where decision-maker gave affected party oral advice of decision – where affected party, acting on that advice, applied to Tribunal for review – where reviewable decision subsequently advised but not in form required by enactment – Brian Lawlor principle – purported or defective decision in this case is a decision in fact – Tribunal satisfied decision in fact made under relevant Act which permits review by Tribunal – Tribunal therefore satisfied decision amenable to review

Freedom of Information

<u>VKJY and Secretary, Department of Home Affairs</u> (Freedom of information) [2022] AATA 4306 (14 December 2022); C Puplick AM, Senior Member, and S Evans, Member

FREEDOM OF INFORMATION – Office of Australian Information Commissioner declined to undertake further review under 54W of the Freedom of Information Act 1982 (Cth) – Freedom of information decision under review by the Tribunal – Whether respondent has taken all steps to find documents within the scope of the applicant's freedom of information request – Whether conditional exemptions in 47E and 11B of the Freedom of Information Act 1982 (Cth) properly applied – Whether 42 of the Freedom of Information Act 1982 (Cth) properly applied – Whether 42 of the Freedom of Information Act 1982 (Cth) properly applied – documents only partially covered by legal professional privilege – Decision under review remitted to respondent with directions

AAT BULLETIN

ISSUE 26/2022 // 7

Migration

<u>Amodu and Minister for Immigration, Citizenship and Multicultural Affairs</u> (Migration) [2022] AATA 4230 (12 December 2022); 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 – violent offences including numerous offences involving assaulting police officers – Applicant is a 31-yearold citizen of Liberia who arrived in Australia from Sierra Leone when he was 19 years of age as the holder of a Global Special Humanitarian visa – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – best interests of minor son, nieces and nephews – minimal information about minor children – expectations of the Australian community – Australia's international non-refoulement obligations – links to the Australian community – strength, nature and duration of ties to Australia – best interests of minor daughter in Sierra Leone – Reviewable Decision affirmed

<u>Asad and Minister for Immigration, Citizenship and Multicultural Affairs</u> (Migration) [2022] AATA 4321 (14 December 2022); 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. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – expectations of the Australian community – non-refoulement – strength, nature and duration of ties to Australia – impediments to removal – decision under review affirmed

BMVM and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 4374 (18 November 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – serious offending involving children – infrequent offending history – substantial risk of reoffending – whether "another reason" for revocation of cancellation decision – Direction 90 – applicant has below-average cognitive functioning – applicant more likely to receive rehabilitation treatment in Australia – family supports in Australia – decision set aside

<u>Caires De Andrade and Minister for Immigration, Citizenship, and Multicultural Affairs</u> (Migration) [2022] AATA 4231 (12 December 2022); The Hon. J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class BF Transitional (permanent) visa under section 501(3A) – whether the Applicant does not pass the character test when sentence reduced on appeal – whether the Applicant has substantial criminal record – whether the discretion to revoke the visa cancelation under section 501CA (4) should be exercised – Applicant resident since infancy – consideration of Ministerial Direction No. 90 – decision under review is set aside and substituted with a decision that the cancellation of the Applicant's visa is revoked

ISSUE 26/2022

<u>CPWL and Minister for Immigration, Citizenship and Multicultural Affairs</u> (Migration) [2022] AATA 4318 (16 November 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – serious offending – lengthy offending history including offences against young females – history of domestic violence – whether "another reason" for revocation of cancellation decision – Direction 90 – risk of reoffending if alcohol consumed – applicant has chronic alcoholism – serious impediments on removal – spousal and other family support in Australia – decision set aside

Dowsett and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022] AATA 4311 (11 December 2022); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of a Special Category (Subclass 444) 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 set aside and substituted

<u>Heley and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</u> (Migration) [2022] AATA 4376 (19 October 2022); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – whether the Applicant passes the character test – whether there is another reason why the decision to cancel the Applicant's visa should be revoked – consideration of Ministerial Direction No. 90 – substantial criminal record – decision under review affirmed

HSRN and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 4377 (8 November 2022); The Hon. Dennis 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. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – applicants long period of residence in Australia – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

JDZP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 4229 (23 November 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – sexual offence against child – long term resident – protection of the Australian community – expectations of the Australian community – links to the Australian community – impediments to relocation – decision set aside and substituted



Juma and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022] AATA 4345 (15 November 2022); A George, 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 – consideration of Ministerial Direction No. 90 – decision under review affirmed

Pihama and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) [2022] AATA 4383 (7 December 2022); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – criminal record – unlawful use of motor vehicles – breach of bail conditions – unlawful possession of weapons – Direction No. 90 – primary and other considerations – protection of the Australian community – family violence – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – best interests of the Australia – Applicant is a 38-year-old man who came to Australia as a 27-year-old – reviewable decision affirmed/set aside and remitted/set aside and substituted

SXYD and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022] AATA 4277 (8 December 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is 'another reason' to revoke the cancellation – consideration of Direction No. 90 – protection of the Australian community – expectations of the Australian community – impediments to removal – links to the Australian community – decision set aside and substituted

VFLV and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 4375 (16 December 2022); S Evans, Member

MIGRATION – Non-revocation of mandatory cancellation – Class TY Subclass 444 Special Category (Temporary) Visa – where the Applicant does not pass the character test by virtue of his "substantial criminal history" – whether there is "another reason" to revoke the mandatory cancellation – consideration of Ministerial Direction 90 – offences brought on by drug use – interests of minor children who are teenagers – interests of family members who suffers from mental illness – decision under review set aside and substituted

Khan (Migration) [2022] AATA 3989 (10 November 2022); M Bradford, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – incorrect information and bogus document provided with visa application – course completed and certificate – ground for cancellation disputed – course in question not registered – no other evidence or documentation provided – later enrolled in registered course while purportedly enrolled in course in question – no completed courses – course provider in question later deregistered – discretion to cancel visa – visa and study history – re-enrolment in previously failed course – claim of fraud by agent – relationship difficulties and parents' health – decision under review affirmed

Vo (Migration) [2022] AATA 4025 (17 November 2022); K Chapman, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – medium-term stream – production or plant engineer – subject of approved position nomination – refusal of relation nomination application affirmed on review – incorrect advice from and inaction by previous migration agent – application for judicial review of nomination refusal affirmation in progress – request for recusal or adjournment not accepted – members of family unit – decision under review affirmed

Hu (Migration) [2022] AATA 4130 (23 November 2022); N Hossen, Member

MIGRATION – cancellation – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – genuine effort to be engaged in employment for two years – employment terminated 14 days after permanent visa granted –forced to work more than 12 hours a day, underpaid and fired after asking about night shift pay – unsuccessful conciliation meetings and unfair dismissal claim – personal computer hacked and family threatened – discretion to cancel visa – no issues reported while holding previous temporary visa – complaints by other workers, previous owners removed from company and position reinstated – previous and current work record – visas of members of family unit automatically cancelled, with no jurisdiction to review – decision under review set aside

Asuncion (Migration) [2022] AATA 4129 (23 November 2022); K Raif, Senior Member

MIGRATION – cancellation – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) incomplete information in visa application form – three children and former de facto relationship not declared – discretion to cancel visa – circumstances of non-compliance – former partner took children without applicant's knowledge and threatened to withhold access – access allowed when applicant stopped providing financial support, and children now in Australia on tourist visa – Australian citizen child with husband has developmental disorder and applicant is main carer – special education and other support – decision under review set aside

Mahmud (Migration) [2022] AATA 4073 (24 November 2022); G Hallwood, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – direct entry stream – subject of approved position nomination – nominated as accountant, not housekeeping manager – skills assessment in relation to applicant's qualifications, not position – agent's logical approach to completing poorly constructed form – applicant's experience and ongoing employment in position – member of family unit – decision under review remitted

ISSUE 26/2022

National Disability Insurance Scheme

Barnes and National Disability Insurance Agency [2022] AATA 4344 (15 December 2022);

D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – PRACTICE AND PROCEDURE – interlocutory applications – jurisdiction and extension of time – issue: whether the decision before the Tribunal is reviewable – relevant law and material considered – decision not reviewable – application dismissed

<u>CKPN and National Disability Insurance Agency</u> [2022] AATA 4397 (30 November 2022); K Parker, Senior Member, and T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision relating to approval of Applicant's statement of participant supports (SOPS) under his NDIS plan – child participant has severe gastro-oesophageal reflux disease (GORD), redundant length colon with poor gut motility, avoidant/restrictive food intake disorder, sensory processing issues, insomnia with underlying anxiety disorder, and chronic pain – request for additional funding for allied health interventions and support worker assistance – whether "reasonable and necessary supports" criteria under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) are met – Tribunal satisfied that most, but not all, requested supports meet those criteria and should be included in Applicant's SOPS – Decision Under Review set aside and remitted with direction to facilitate the approval of a new SOPS for the Applicant

Darlow and National Disability Insurance Agency [2022] AATA 4280 (13 December 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – plan review – assessment of degree of physical and psychological impairments arising from Applicant's disability – whether supports might reduce Applicant's independence – credibility issues – slightly higher level of support worker assistance granted, but not at the level requested by the Applicant – Tribunal satisfied mini-CPAP machine repayments under payment plan met "reasonable and necessary support" criteria – NDIA agreed to provide ergonomic desk and chair during the course of the proceeding – Applicant claimed more expensive desk and chair – Tribunal not satisfied more expensive desk and chair met "reasonable and necessary support" criteria – Decision Under Review set aside and remitted with directions

<u>Murphy and National Disability Insurance Agency</u> [2022] AATA 4278 (8 December 2022); D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – Telephone Directions Hearing – failure to attend TDH – Telephone Case Conference – whether application should be dismissed – National Disability Insurance Scheme – disabilities – Extension of Time – legal representative – advocate – medical condition – reviewable decision – application dismissed

ISSUE 26/2022

AAT BULLETIN

Wyatt and National Disability Insurance Agency [2022] AATA 4238 (12 December 2022); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – access criteria – multiple impairments – whether impairments are permanent – whether impairments result in substantially reduced functional capacity – decision under review affirmed

Practice and Procedure

Andrews and National Disability Insurance Agency [2022] AATA 4399 (20 December 2022); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – application for access to the NDIS – request to set aside a decision staying the proceeding – request for recusal of the member – request for referral to the Federal Court – requests for listing for a final hearing – requests refused

Athukorala and Minister for Immigration, Citizenship and Multicultural Affairs (Citizenship) [2022] AATA 4372 (11 November 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – refusal of citizenship by conferral – no cogent reasons for delay – no merits or reasonable prospects of success – applicant subject to community corrections order – statutory prohibition against granting citizenship applies – extension of time refused

Inguanzo and Secretary, Department of Social Services (Social services second review) [2022] AATA 4343 (5 December 2022); J Sosso, Deputy President

PRACTICE AND PROCEDURE – social security – disability support pension – decision reviewed by a Subject Matter Expert – decision not reviewed by an Authorised Review Officer – no jurisdiction to review decision

QLYQ and National Disability Insurance Agency [2022] AATA 4384 (15 December 2022); Mischin, Deputy President

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – Objection to issue summons to produce records from service provider

Professions and Trades

<u>Gupta and Tax Practitioners Board</u> [2022] AATA 4226 (12 December 2022); Dr M Evans-Bonner, Senior Member

TAXATION – application for unrestricted registration as a tax agent – Master of Business Administration (MBA) – whether MBA is relevant to the unrestricted tax agent services to which the Applicant's application for registration relates – MBA degree and units considered as a whole – only three out of 13 units relevant – eligibility requirements not satisfied – recommendations made concerning communications by Board staff concerning eligibility requirements – Reviewable Decision affirmed

Refugee

1807672 (Refugee) [2022] AATA 4089 (1 August 2022); J Lambie, Senior Member

REFUGEE – protection visa – Papua New Guinea – particular social group – single or separated women – victim of domestic violence – wife of tribal leader – imputed responsibility for payback compensation – fear of harm by tribal violence – tribal payback – high risk of payback based on tribal status – delay in applying for protection – delay in making claims of domestic violence – reliance on support of in-laws – widespread and systemic failure to properly protect women and girls from violence – withholding of state protection – decision under review remitted

2206619 (Refugee) [2022] AATA 4365 (9 September 2022); L Hardy, Member

REFUGEE – protection visa – Tonga – political opinion – pro-democracy supporter – harassment and assault by Tongan military – corruption within monarchy – credibility issues previous claims of tsunami and deaths of parents – unlawful status – identity issues – use of aliases – vague, inconsistent and unreliable evidence – decision under review affirmed

1834962 (Refugee) [2022] AATA 4058 (12 September 2022); A Paxton, Member

REFUGEE – protection visa – Iraq – religion, political opinion and membership of a particular social group – moderate Sunni Muslim, supporter of secular democracy and opponent of extremism, university lecturer and westernised returnee – family and personal connections with people in public positions – imputed as supporter of ISIS – kidnapping, wounding by sniper and death threats – relocation and time in refugee camp – relatives displaced or missing believed killed – fear of harm from government and militias – members of family unit – wife and older child's return soon after arriving – urgent medical treatment in relatively safe area – younger child born in Australia – physical and mental health – credible and reliable witness – country information – decision under review remitted

1730101 (Refugee) [2022] AATA 4088 (19 September 2022); P Papadopoulos, Member

REFUGEE – protection visa – Vietnam – political opinion – anti-communist – political views shared on social media – membership of and activities with the Viet Tan – high volume of photographic evidence – conduct engaged in for the purpose of strengthening claims to be a refugee – delay in applying for protection – many anti-Vietnam government, anti-communist, and sympathetic Viet Tan Facebook postings – credibility issues – complementary protection – decision under review remitted

1907335 (Refugee) [2022] AATA 4059 (19 September 2022); K Chapple, Member

REFUGEE – protection visa – Nigeria – religion – Christian – refusal to join Blood Axe cult – harm from Boko Haram insurgents – physical assault – fear of killing – Australian citizen child – return visits to Nigeria – delay in applying for protection – referral for Ministerial Intervention – decision under review affirmed

1800941 (Refugee) [2022] AATA 4409 (26 September 2022); D Dragovic, Senior Member

REFUGEE – protection visa – Pakistan – religion – atheist of Shia Muslim background – harassment, bullying and beatings by student, local and religious communities – no involvement in atheist groups in Australia – music as community and expression of atheism – country information – 1 in 10 Pakistanis 'not religious' – atheism not illegal but subject to widespread use of blasphemy laws – real chance of serious harm but modification of behaviour minor and not unreasonable – not innate or immutable and engagement with others not an inherent part of it – political opinion – opposition to religiously-influenced state, society and interference in daily life – not reasonable to modify behaviour on this ground – state protection or relocation not available – decision under review remitted

1929897 (Refugee) [2022] AATA 4312 (30 September 2022); P Haag, Member

REFUGEE – protection visa – Ethiopia – race – mixed-race ethnicity – imputed political opinion – non-aligned – subjected to pressure to support Oromo political activists – likelihood of being barred from employment – influential Oromo-centric enemies – Ethiopian People's Revolutionary Democratic Front (EPRDF) – Oromo People's Democratic Organization (OPDO) – Oromo Democratic Party (ODP) – Oromo Liberation Army (OLA) – outbreak of civil war – political and ethnic conflict exacerbated by impact of natural disasters – decision under review remitted

Social Services

<u>Chedyak and Secretary, Department of Social Services</u> (Social services second review) [2022] AATA 4371 (5 December 2022); C Puplick AM, Senior Member

SOCIAL SECURITY – carer allowance – applicant currently paid carer allowance at single rate – whether Applicant was entitled to arrears at the higher single rate from an earlier date – applicant did not make an application within 13-week period of decision that he was a member of a couple from that earlier date – decision affirmed

AAT BULLETIN

ISSUE 26/2022 // 15

Pearce (Battye) and Secretary, Department of Social Services (Social services second review) [2022] AATA 4273 (13 December 2022); K Millar, Senior Member

FAMILY TAX BENEFIT - failure to lodge tax returns - decision affirmed

Scanlan and Secretary, Department of Social Services (Social services second review) [2022] AATA 4351 (15 December 2022); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – Whether the payment of Jobseeker payment was validly cancelled – failure of applicant to comply with information notices seeking information and documents – an information notice can request information and documents concerning past eligibility of a social security benefit – information notice seeking information and documents can seek information about a business conducted for an applicant for Jobseeker payment – reasonable excuse for noncompliance with information notices

Savage and Secretary, Department of Social Services (Social services second review) [2022] AATA 4373 (24 November 2022); C Puplick AM, Senior Member

FAMILY TAX BENEFIT – whether there was a change in care percentage – factors relevant to the determination of actual care – no change in care percentage – decision affirmed

<u>Suddhoo and Secretary, Department of Social Services</u> (Social services second review) [2022] AATA 4305 (13 December 2022); Brigadier AG Warner, AM LVO (Retd), Member

SOCIAL SECURITY – disability support pension – whether Applicant's conditions were fully diagnosed, treated and stabilised during the qualification period – whether Applicant's conditions attracted an impairment rating of at least 20 points – Applicant found not to have 20 or more impairment points – continuing inability to work – decision under review affirmed

Taylor and Secretary, Department of Social Services (Social services second review) [2022] AATA 4378 (16 December 2022); L Benjamin, Member

SOCIAL SECURITY LAW – where the applicant maintains that he is not in a couple – meaning of "couple" – where the applicant provides no documentary evidence – decision affirmed

XYMV and Secretary, Department of Social Services (Social services second review) [2022] AATA 4350 (6 December 2022); Dr L Kirk, Senior Member

SOCIAL SECURITY – austudy – newstart – whether compensation preclusion period applies – whether compensation charge has been correctly raised and recovered – Applicant received lump sum compensation – whether special circumstances exist to treat all or part of the payment as not being made – debt recovered from insurance company – should debt be written off or waived – decision affirmed

Taxation

Del Castillo and Commissioner of Taxation (Taxation) [2022] AATA 4233 (12 December 2022); B J McCabe, Deputy President

TAXATION – Concessions available to small business entities under Division 152 of the Income Tax Assessment Act 1997 – Did the applicant carry on a business in the relevant year of income – active asset within the meaning of s 152-40 ITAA97 – exemption to active assets – vacant land – residential letting business – unable to satisfy active asset test – decision affirmed

Jones and Commissioner of Taxation (Taxation) [2022] AATA 4382 (16 December 2022); O'Donovan, Senior Member

TAXATION – Income Tax – objections to tax assessments – payment of invalidity payments in accordance with the Military Superannuation and Benefits Trust Deed - Whether payments should be taxed as a superannuation income stream benefit – Whether payments were to be taxed as a superannuation lump sum – Whether an election was made in the relevant periods – Applicant's taxation objections misconceived – objections decisions 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 <u>AustLII</u>. Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME		AAT REFERENCE
Chol and Minister for Immigration, Citizer Affairs	nship and Multicultural	[2022] AATA 3816
CWRG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs		[2021] AATA 2408
DXJL and Minister for Immigration, Citizenship, and Multicultural Affairs		[2022] AATA 3809
FYMS and Commissioner of Taxation		[2022] AATA 3790
HSRN and Minister for Immigration, Citize Affairs	enship and Multicultural	[2022] AATA 4377
Kassem and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs		[2022] AATA 4043
Lasalo and Minister for Immigration, Citizenship and Multicultural Affairs		[2022] AATA 4018
TTCT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs		[2022] AATA 4019
Appeals finalised		
CASE NAME	AAT REFERENCE	COURT REFERENCE
Fehoko v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 35	[2022] FCA 1471



Minister for Immigration, Citizenship and

[2022] FCAFC 200

Pillay v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 270	[2022] FCA 1535
RGCZ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3051	[2022] FCAFC 201 [2022] FCA 348

© Commonwealth of Australia 2022



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a <u>Creative Commons Attribution 3.0 Australia Licence</u>. Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: https://www.pmc.gov.au/government/commonwealth-coat-arms.

Enquiries regarding the licence are welcome at <u>aatweb@aat.gov.au</u>.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on <u>AustLII</u>.