



Administrative
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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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Contents

AAT Recent Decisions	3
Child Support	3
Citizenship	4
Compensation	5
Corporations	6
Education and Research	6
Maritime Law	6
Migration	6
National Disability Insurance Scheme.....	12
Practice and Procedure.....	13
Refugee	15
Social Services	16
Appeals.....	18
Appeals lodged	18
Appeals finalised	18

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

[Kado and Child Support Registry](#) (Child support) [2022] AATA 4801 (17 May 2022); J W Constance, Deputy President

CHILD SUPPORT – child support debt – departure prohibition order – application for departure authorisation certificate refused – whether departure authorisation certificate must be issued – decision affirmed

[Kadeh and Child Support Registrar](#) (Child support) [2022] AATA 4803 (7 July 2022); J W Constance, Deputy President

PRACTICE AND PROCEDURE – JURISDICTION – Child Support Registrar – Departure Prohibition Order – where Applicant requested Tribunal review of the decision to make a Departure Prohibition Order – where relevant enactment does not provide Tribunal jurisdiction to review the making of a Departure Prohibition Order – where appeal lies in the Federal Court of Australia and Federal Circuit and Family Court of Australia against the making of such Order – application dismissed for no jurisdiction

[Bonniwell and Georgeson](#) (Child support) [2022] AATA 3999 (21 September 2022); F Staden, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review affirmed

[Deyes and Child Support Registrar](#) (Child support) [2022] AATA 4103 (19 October 2022); S Hoffman, Member

CHILD SUPPORT – application for extension of time – satisfactory explanation for the lengthy delay – some merit – no prejudice - extension of time granted – decision under review set aside and substituted

[Knapp and Trenholm](#) (Child support) [2022] AATA 4002 (18 October 2022); 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 affirmed

[Maguire and Maguire](#) (Child support) [2022] AATA 4000 (2 November 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

[Wilshere and Portlock](#) (Child support) [2022] AATA 4015 (29 September 2022); Y Webb, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate reconciliation – whether estimate reconciliation correct – decision under review affirmed

Citizenship

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

(Citizenship) [2023] AATA 78 (3 February 2023); L M Gallagher, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – Australian Citizenship Act 2007 s 24(3) – whether Tribunal satisfied of applicant’s identity – applicant claims to be a 41-year-old citizen of Ghana – pillars of identity – biometrics – documents – life story – Tribunal cannot satisfactorily ascertain the applicant’s identity - reviewable decision affirmed

[Pulini and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023]

AATA 59 (19 January 2023); J Sosso, Deputy President

CITIZENSHIP – revocation of citizenship – human trafficking – harbouring an unlawful non-citizen – forced labour – whether it is contrary to the public interest for the Applicants to remain Australian citizens – factors to be considered in determining the public interest – exercise of the discretion to revoke the Applicants’ citizenship – decisions under review set aside and substituted

[Habo and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023]

AATA 85 (3 February 2023); R Bellamy, Senior Member

INTERLOCUTORY APPLICATIONS – EXTENSION OF TIME – whether Tribunal should grant extension of time – application of the Hunter Valley Developments principles – where there is no reasonable explanation for the delay – where there are no reasonable prospects of success – extension of time refused

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

(Citizenship) [2023] AATA 90 (6 February 2023); G Lazanas, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – where applicant has a spouse who is an Australian citizen – whether applicant has a close and continuing association with Australia – decision under review affirmed

[MORJARIA and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 2473 (4 August 2022); The Hon. John Pascoe AC CVO, Deputy President

CITIZENSHIP – by conferral – delegate not satisfied of likelihood to reside or of close and continuing association – applicant not in Australia at time of delegate’s decision – dependent applicant – under the age of 18 – not a permanent resident at the time of the delegate’s decision – decisions under review affirmed.

[Ydkw and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023] AATA 58 (27 January 2023); Mr S Evans, Member

CITIZENSHIP – Application for Australian citizenship by conferral – Refusal of citizenship application – Whether Applicant has satisfied section 21(2)(h) – Good character requirement – Citizenship Policy – Meaning of ‘good character’ – Enduring moral qualities – Common assault – Alleged domestic violence – No pattern of behaviour established – Driving Offences – Decision under review set aside and remitted

Compensation

[CCTS and Comcare](#) (Compensation) [2023] AATA 60 (24 January 2023); Dr L Kirk, Senior Member

WORKERS’ COMPENSATION – whether the Applicant suffered an ailment or an aggravation of an injury for the purposes of section 5A(1)(a) of the Safety, Rehabilitation and Compensation Act 1988 resulting in disease as defined by section 5B(1)(b) of the Act – whether the Applicant’s employment contributed, to a significant degree, the aggravation of the ailment such that she has a ‘disease’ under section 5B(1) of the Safety, Rehabilitation and Compensation Act 1988 – whether employer’s conduct amounted to reasonable administrative action – whether any reasonable administrative action was taken in a reasonable manner – whether any injury is excluded for being a result of reasonable administrative action - decision under review affirmed

[Higgerson and Prosecur Australia Pty Ltd](#) (Compensation) [2023] AATA 115 (2 February 2023); Emeritus Professor P A Fairall, Senior Member

WORKERS COMPENSATION – Self-licenced entity – Prior injury – Osteoarthritis – Whether Applicant suffers from ailment – Whether Applicant suffers from aggravation of prior injury – Whether employee entitled to compensation pursuant to s 12 or s 16 in respect of injury – Concurrent evidence – Inconsistency in medical evidence

[O’Bryan and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 4795 (21 December 2022); R Cameron, Senior Member

COMPENSATION – army service – claimed right medial epicondylitis – respondent accepting a range of claims but denies liability of right medial epicondylitis – decision under review affirmed

Corporations

[Elevate Education Pty Ltd and Australian Securities and Investments Commission](#) [2023] AATA 84 (1 February 2023); Dr L Kirk, Senior Member

BUSINESS NAME REGISTRATION – Business Names Registration Act 2011 (Cth) – Applicant objects to registration of another’s business name – Whether subsequently registered name is ‘identical’ or ‘nearly identical’ to Applicant’s business name – Business names not ‘identical’ or ‘nearly identical’ – Whether business name is available for registration – Tribunal’s jurisdiction to review the application – Decision under review affirmed

Education and Research

[Precious Family Day Care and Secretary, Department of Education](#) [2023] AATA 99 (8 February 2023); Ms A E Burke AO, Member

CHILD CARE – family assistance law – child-care benefit – refusal to approve child care service for Child Care Subsidy (CCS) – whether a fit and proper person – inadequate governance documentation – whether previously a person with management or control where previous breaches of conditions of provider approval – decision affirmed

Maritime Law

[Ahmad and Secretary, Department of Home Affairs](#) [2022] AATA 4779 (7 December 2022); Emeritus Professor P A Fairall, Senior Member

MARITIME SECURITY – Maritime Security Identification Card (MSIC) – decision to refuse issue – threat to maritime security – MISC required for work on maritime and offshore facilities – extensive criminal record – Applicant currently serving sentence – Applicant vulnerability to exploitation – Decision under review affirmed

Migration

[Abdullahi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4798 (17 October 2022); Lee Benjamin, Member

Administrative Appeals Tribunal Act – Applicant’s failure to comply with directions in relation to application for review of a decision under section 501CA of the Migration Act 1958

[Demir and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 62 (30 January 2023); K Raif, 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 No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – family violence committed by the non-citizen – best interests of minor children in Australia – international non-refoulement obligations – impediments to removal – impact on victims – strength, nature and duration of ties to Australia – decision under review affirmed

[Garratt and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4857 (8 December 2022); McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of a Skilled (Class BN) (Subclass 136) 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

[Hurinui and Minister for Immigration, Citizenship and Multicultural Affairs](#)(Migration) [2023]
AATA 86 (6 February 2023) J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 - decision under review is affirmed

[Kirk and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2022] AATA 4858 (08 November 2022), Dr C Huntly, Member

MIGRATION – Migration Act s 501CA(4) – decision of a delegate of the Minister not to revoke the mandatory cancellation of the applicant’s visa – whether there is “another reason” to revoke the cancellation of the applicant’s visa – Applicant is a 27-year-old-male – sexual offences against a child over 13 and under 16 – consideration of “Family Violence” – reference to relevant definitions of family relationships in the Migration Act – interests of children in Australia – “male child” and “female child” – Tribunal determined there is “another reason” – reviewable decision set aside and substituted with decision to revoke visa cancellation

[LPNN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2023] AATA 61 (27 January 2023); A G Melick AO SC, Deputy President

MIGRATION – Cancellation of a Class AH Subclass 117 Child (Migrant) Visa – where Applicant does not pass the character test – whether the discretion to cancel the visa should be exercised – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

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

(Migration) [2023] AATA 4856 (21 December 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether “another reason” for revocation of cancellation decision – Direction 90 – offending increasing in seriousness – serious character concerns relating to drug offences – primary considerations weigh against applicant – likelihood of indefinite detention – third country option unlikely – impediments in Somalia extreme – deprivation of liberty outweighs primary consideration – decision set aside and revocation of cancellation decision substituted

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

(Migration) [2023] AATA 57 (4 January 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether “another reason” for revocation of cancellation decision – Direction 90 – applicant has chronic schizophrenia – offending increasing in seriousness but also long period of no offending – primary considerations weigh heavily against applicant – likelihood of indefinite detention if decision under review affirmed – applicant’s continued deprivation of liberty outweighs primary considerations – decision set aside and revocation of cancellation decision substituted

[Reid and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023]

AATA 79 (3 February 2023); A Nikolic AM CSC, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Scotland – Class BB Subclass 155 Five Year Resident Return visa – failure to pass good character test – substantial criminal record – mandatory visa cancellation – whether another reason to revoke the mandatory cancellation – Ministerial Direction no. 90 applied – decision affirmed

[RNVF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]

AATA 81 (1 February 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – extensive history of offending including intentionally cause serious injury, armed robbery and rape – Applicant is a 42-year-old citizen of Somalia who arrived in Australia when he was 14 years of age – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of minor 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 – Applicant has been held in immigration detention for the last eight years – Applicant has been seriously assaulted twice in immigration detention – Applicant is facing the prospect of prolonged or indefinite detention for a further period spanning years – Applicant has a history of trauma, self-harm and mental health issues – Reviewable Decision set aside and substituted

SHTD and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 91 (6 February 2023); D. J. Morris, Senior Member

MIGRATION – applicant is citizen of Vietnam – applicant refused Partner (Residence)(Class BS) visa on character grounds – application to Tribunal – consideration of whether applicant does not pass character test – applicant found not to pass character test – consideration of ministerial Direction No. 90 – primary considerations – family violence offences – best interests of minor children in Australia – links to Australian community – decision under review set aside and new decision substituted that the discretion to refuse the visa not be exercised

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

(Migration) [2022] AATA 4800 (22 December 2022); K Raif, Senior Member

MIGRATION – visa refusal – Class VB – refuse to grant that visa under s. 501(1) where the applicant does not pass the character test – discretionary cancellation – no criminal record – no risk of future offending – Direction no. 90 considered – relevant law and material considered – decision under review is set aside and remitted

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

(Migration) [2023] AATA 83 (3 February 2023); A G Melick AO SC, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of a WC Subclass 030 Bridging C – where Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – Cultivate a commercial quantity of cannabis – decision under review set aside and substituted

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

(Migration) [2023] AATA 113 (8 February 2023); T Tavoularis, Senior Member

MIGRATION – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – whether Applicant engages s 36(2C)(b) of the Migration Act 1958 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – decision under review affirmed

Thompson and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration)

[2022] AATA 96 (11 January 2023); George, Senior Member

MIGRATION – Class TY 444 Special Category (Temporary) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No.90 – offending very serious – decision under review affirmed

[WQKK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4773 (21 November 2022); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XA Subclass 866 Protection 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 is affirmed

[XFKR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 95 (3 February 2023); Boyle, Deputy President

MIGRATION – s 36(1C) of the Migration Act – refusal to grant a protection visa under s 65 of the Migration Act – whether the applicant has been convicted by final judgment of a particularly serious crime – whether applicant is a danger to the Australia community – domestic violence – alcohol misuse as a risk factor – lack of protective factors against reoffending – applicant would pose a present and serious risk if released into the Australian community – reviewable decision affirmed

[XPLW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4777 (23 November 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether there is “another reason” to revoke mandatory cancellation decision – applicant has strong links to the Australian community and would face significant impediments and serious risk of harm if removed to Egypt – the primary considerations of the protection and expectations of the Australian community are outweighed by the countervailing considerations – the decision under review is set aside and substituted

[ZPRX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4810 (21 December 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – violence against women – family violence – protection of the Australian community – expectations of the Australian community – links to the Australian community – non-refoulement obligations – indefinite detention – decision set aside and substituted

[2218838](#) (Migration) [2023] AATA 112 (3 January 2023); D James, Senior Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – abiding by visa conditions – applicant convicted of several offences – prior application for a permanent visa – periods of unlawful residence – best interests of an Australian child – decision under review affirmed

[Haque](#) (Migration) [2023] AATA 127 (13 January 2023); A McMurran, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – accountant – false or misleading information provided with visa application – previous employment – during site visit, managing director failed to identify applicant from photo shown – passage of time and unscheduled and unexplained visit at busy time – later attempt to correct evidence and provide documentation rejected – consistent oral and documentary evidence – intended employment not proceeding and applicant currently not working but refusal would remain on visa history – utility in continuing review – member of family unit – second applicant’s continuing work – decision under review remitted

[Hardeep Singh](#) (Migration) [2021] AATA 5632 (31 March 2021); T Baxter, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – sales and marketing manager – subject of approved position nomination – refusal of related nomination application affirmed after joint hearing – application made for judicial review of nomination decision – request for adjournment until judicial review determined – no information about likely timeframe – tribunal not required to indefinitely delay decision-making process – member of family unit – decision under review affirmed

[Lluca](#) (Migration) [2022] AATA 4538 (6 December 2022); T Baxter, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – false or misleading information given in relation to application – satisfaction as to identity – birth certificate – documents left behind when family fled home country, confiscated at border or destroyed by authorities since – no registration found in home country – spelling of surname – reasonable attempts to obtain certificate – requirement to travel to region of birth – country information and DFAT travel advice – high degree of caution and reconsideration of need to travel – COVID-related travel restrictions – asylum in third country with strict procedures and passport issued – documentation not required for minister to be satisfied of identity – reliable evidence from mother – decision under review remitted

[Manuhaapai](#) (Migration) [2023] AATA 130 (9 January 2023); B Darcy, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – applicant convicted of several offences and imprisoned – relationship with an Australian resident – period of unlawful residence – no intention to depart Australia – assistance to Australian born children – valid application for a substantive visa – financial hardship – decision under review affirmed

National Disability Insurance Scheme

[GDDC and National Disability Insurance Agency](#) [2023] AATA 66 (31 January 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – Application to review a decision made by a reviewer of the National Disability Insurance Agency in respect of supports relating to a nine-year old child with a diagnosis of Autism Spectrum Disorder (ASD) of level 2 severity - Request for an increase in funding to the Applicant’s Capacity Building Supports Budget for greater hours of weekly Applied Behavioural Analysis (ABA) Therapy, Occupational Therapy and Speech Pathology Therapy – whether the request is reasonable and necessary within the meaning of section 34 of the National Disability Insurance Scheme Act 2013 (Cth) – whether the requested support represents value for money – whether the requested support is effective and beneficial for the Applicant – whether the requested support takes account of what is reasonable to expect families, carers, informal networks, and the community to provide to the Applicant – whether ABA Therapy, Occupational Therapy and Speech Pathology Therapy have helped to improve the Applicant’s behaviours that are associated with her diagnosis of ASD – whether an alternative model of therapy should be included in the Applicant’s Plan on the basis that the existing therapy model has failed to make significant improvements to the Applicant’s behaviours – consideration of differences in expert opinions – duplication of supports – decision under review set aside and remitted with direction

[O’Keeffe and National Disability Insurance Agency](#) [2023] AATA 82 (2 February 2023); Dr S Fenwick, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – various conditions including chronic pain and degenerative spinal disease – whether impairments result in substantially reduced functional capacity to undertake one or more specified activities – mobility and self-care – decision set aside and substituted

[Palin and National Disability Insurance Agency](#) [2023] AATA 94 (17 January 2023); P Goward, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME (NDIS) – significant vision impairment – additional lighting – home modification – legal fees and stamp duty – whether support is reasonable and necessary – jurisdiction under the NDIS Act – whether funding for support is consistent with relevant law and policy

[QFHY and National Disability Insurance Agency](#) [2023] AATA 98 (31 January 2023); D. Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports –Applicant designed and proposed therapeutic approach – effective and beneficial – whether a sex worker for exposure therapy and sexual education is a reasonable and necessary support

[RQWY and National Disability Insurance Agency](#) [2023] AATA 56 (30 January 2023); Dr S Fenwick, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – child applicant with autism spectrum disorder – ABA therapy – centre-based learning model – dispute concerning location and duration of therapy – consideration of best practice – decision set aside and remitted for reconsideration

Practice and Procedure

[Barnett and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 64 (31 January 2023); Mr S Webb, Member

PRACTICE AND PROCEDURE – application for review of AAT first review decision – prescribed period – application for review outside the prescribed period – consideration of relevant factors and circumstances – not reasonable in all the circumstances to grant extension of time – application refused

[CHOK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 114 (9 February 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – citizenship – refusal of application for citizenship by conferral – delegate not satisfied that the applicant had a permanent or enduring physical or mental incapacity – whether the applicant has failed to proceed with his application before the Tribunal – where the applicant has failed to appear repeatedly – where the applicant has failed to comply with directions – application dismissed.

[Gruszka and Migration Agents Registration Authority](#) (Migration) [2023] AATA 80 (30 January 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – objection to the inspection of material produced under summons – whether the scope of the summons was too broad – whether there was a genuine forensic purpose for the summons – whether the summons was a fishing expedition – objection to inspection of the summonsed material disallowed

[Institute of Western Australia Pty Ltd t/a National Community Training and Education and Australian Skills and Quality Authority](#) [2023] AATA 97 (8 February 2023); The Hon. John Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – regulatory – decision to cancel registration as a registered training organisation under the NVR Act – decision to reject an application for renewal of registration as a registered training organisation under the NVR Act – whether the applicant has failed to proceed with the application – where the applicant has continuously failed to comply with directions – no appearance at dismissal hearing – application dismissed

[Johnson and Minister for Immigration, Citizenship and Multicultural Affairs](#) v (Citizenship) [2023] AATA 93 (27 January 2023); Boyle, Deputy President

PRACTICE AND PROCEDURE – AAT Act s 29(7) – application to extend time for making of application to Tribunal – decision of delegate of Minister to cancel approval of applicant’s application for Australian citizenship under Citizenship Act s 25(2) – two-year delay in making application – delay in making application until beneficial change in applicant’s circumstances – prejudice to applicants that comply with time limits for making of applications – application to extend time for making of application to Tribunal for review of decision refused

[Keating and National Disability Insurance Agency](#) [2022] AATA 4797 (6 December 2022); Dr C Huntly, Member

PRACTICE AND PROCEDURE – application for dismissal of application for review – whether Tribunal satisfied that application “has no reasonable prospect of success” – general principles – application for review of decision that applicant’s supports not eligible for funding under National Disability Insurance Scheme Act 2013 (Cth) – application for review dismissed – Administrative Appeals Tribunal Act 1975 (Cth), s 42B(1)(b)

[PLDW and National Disability Insurance Agency](#) [2023] AATA 88 (3 February 2023); K. Parker, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – decision in relation to request for a home lift to be funded under the NDIS – whether Tribunal has power to review the decision – whether decision was made under s 100(6) of the National Disability Insurance Scheme Act 2013 (Cth) – confusion caused by the occurrence of holistic plan review process at the same time that the internal review took place under s 100 of the NDIS Act – Tribunal satisfied decision was made under s 100(6) – Tribunal has power to review decision – Tribunal decided not to dismiss application under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Trading Life Services Pty Ltd and Australian Securities and Investments Commission](#) [2022] AATA 4746 (21 November 2022); B J McCabe, Deputy President

PRACTICE and PROCEDURE – application for stay order – application for confidentiality order – where applicant ceasing to provide financial services – where order sought to prevent news of decision – where applicant victim of fraud – application refused

[Webeck and Comcare](#) (Compensation) [2023] AATA 117 (9 February 2023); O’Donovan, Senior Member

PRACTICE AND PROCEDURE – application for stay of decision– stay application refused

Refugee

[1821018](#) [2022] AATA 4392 (20 September 2022); T Hamilton-Noy, Member

REFUGEE – Protection Visa – Uganda – sexuality – openly bisexual woman – membership of a particular social group – openly bisexual females in Uganda – history of significant sexual assaults – effective protection measures are not available to the applicant – decision under review remitted

[1820125](#) (Refugee) [2022] AATA 4749 (29 September 2022); G Cullen, Member

REFUGEE – protection visa – Sierra Leone – political opinion – All People Congress supporter – campaigned along with uncle – uncle’s death after victory of opposition party – fear of harm from opposition party – credibility issues – inconsistent evidence – referred for Ministerial intervention – Australian citizen daughter – payment of child support – serious, ongoing and irreversible hardship to daughter if applicant removed – decision under review affirmed

[2203480](#) (Refugee) [2022] AATA 4396 (14 October 2022); K Raif, Senior Member

REFUGEE – cancellation – protection visa – Afghanistan – criminal convictions – time spent in remand deemed to be time served – discretion to cancel visa – young Hazara man – unlawful maritime entry as unaccompanied minor – visa now expired – protection findings made and applicant cannot be involuntarily removed – ongoing immigration detention and prospect of indefinite detention – setting aside of cancellation will allow more visa application options – mental health – country information – political and security instability – decision under review set aside

[1904001](#) (Refugee) [2022] AATA 4890 (13 October 2022); N Burns, Member

REFUGEE – protection visa – Ethiopia – race – Oromo ethnicity – imputed or actual political opinion – anti-government/pro-OLF/pro-OLA – Coalition for Unity and Democracy (CUD) – Patriotic Ginbot 7 (PG7) – father’s involvement with the Oromo Liberation Front (OLF) – monitored, threatened, and detained for seven months – country information – political, social and security developments in Ethiopia – decision under review remitted

[1900634](#) (Refugee) [2022] AATA 4802 (24 October 2022); P Katsambanis, Member

REFUGEE – protection visa – Ghana – chieftaincy dispute – Gbama-Yili – Bam-Gyili – Nanumba Konkomba conflict – applicant’s claimed identity and profile – birth certificate – claimed adopted identity – credibility concerns – inconsistent and contradictory evidence – decision under review affirmed

[2117325](#) (Refugee) [2022] AATA 4796 (31 October 2022); N Goetz, Member

REFUGEE – protection visa – Sudan – particular social group – mental health issues – alcohol and drug addictions – denial of basic services – ethnicity – Dinka and Nuba tribe – imputed political opinion – anti-government activity due to ethnicity – religion – Muslim in de facto relationship with Christian – interracial children – failed asylum seeker – homelessness if returned to Sudan – denial of capacity to earn a livelihood – credibility issues – decision under review affirmed

[2003868](#) (Refugee) [2022] AATA 4423 (9 November 2022); P Vlahos, Member

REFUGEE – protection visa – Nigeria – ethnicity and political opinion – Igbo and official of Biafran separatist party – home raided, applicant assaulted and injured, arrested and tortured – employment terminated and arrest warrant issued – credibility – political activities and profile overstated – previous international travel and return – employment with government agency – duties and profile overstated – selected to represent government at international event and allowed to depart without question – country information – not necessary to consider treaty right to enter other countries – decision under review affirmed

[1902044](#) (Refugee) [2022] AATA 4754 (17 November 2022); L Hardy, Member

REFUGEE – protection visa – Venezuela – particular social group – returnees to Venezuela – political opinion – opposition to the government – impact of the COVID19 pandemic – mandatory quarantine centres for returnees – access to medical care and food – criminalising returnees – arbitrary detention and ill-treatment – decision under review remitted

Social Services

[GSRJ and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 87 (20 January 2023); D. J. Morris, Senior Member

SOCIAL SERVICES – benefits, entitlements and pensions – where applicant is recipient of DSP – where applicant incurred recoverable DSP debt – where debt affirmed by Social Services and Child Support Division of Tribunal – where applicant sought second tier review by General Division of Tribunal – where applicant and respondent came to terms and signed an agreement to settle proceedings under Social Security (Administration) Act – where that agreement was given to Tribunal – where in such a case application is taken to have been dismissed by operation of law – where applicant now seeks review of first tier decision – reinstatement power confined to case where dismissal was in error – error not found – Tribunal has no jurisdiction to reinstate matter in these circumstances – written reasons

PRACTICE AND PROCEDURE – where application before the Tribunal deemed to have been dismissed by operation of law – power to reinstate an application in such circumstances – power is only available if Tribunal satisfied dismissal was in error – reinstatement claiming dismissal in error must be sought within 28 days or such longer period as may be allowed by Tribunal – no error in this case so reinstatement power not enlivened

[Kuenstner and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 67 (30 January 2023); P Ranson, Member

SOCIAL SECURITY – DSP and Age Pension Debt – debt raised to recover overpayments – debtor failed to disclose partner's income – whether whole or part of debt should be waived – whether special circumstances exist to warrant a waiver of the debt – financial circumstances merit writing off – Decision varied

[Linke and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 89 (7 February 2023); B J Illingworth, Senior Member

AGE PENSION – application for Australian age pension – claim for age pension – Australian resident – place of residence at time of claim

[Lym and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4778 (18 July 2022); Mr A Maryniak QC, Member

SOCIAL SECURITY – decision to reduce aged pension – assets test – whether purported loan was a charge or encumbrance – decision under review affirmed

Appeals

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

Appeals lodged

CASE NAME	AAT REFERENCE
Andrews and National Disability Insurance Agency	[2022] AATA 4399 [2022] AATA 1532
CCYW and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4452
Demir and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 62
Luck and Department of Human Services	[2010] AATA 6
Mukiza and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1488
PGDX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1034
PYCS and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4426
Ryan and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4204

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Aghbolagh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4269	[2023] FCA 43
Englezos v Secretary, Department of Social Services	[2020] AATA 4650	[2023] FCA 31
Hickey v Australian Postal Corporation	[2021] AATA 1521	[2023] FCA 57
HRZN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2021] AATA 1035	[2022] HCASL 211 [2022] FCAFC 133 [2021] FCA 1431
NRFX v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1577	[2023] FCA 21



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