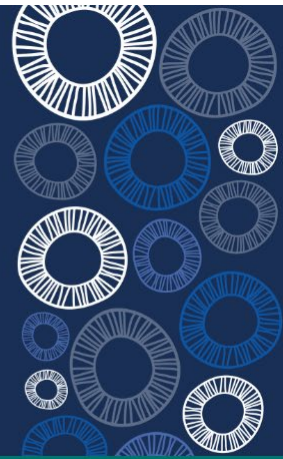




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

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

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

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Enquiries regarding this publication may be directed to LPExtFeedback@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

[Ahiyar and Child Support Registrar](#) (Child support) [2023] AATA 4241 (21 December 2023); C J Furnell, Senior Member

CHILD SUPPORT – Departure Prohibition Order (DPO) issued – application for Departure Authorisation Certificate (DAC) refused – application to revoke DPO refused – whether obligation to issue DAC – whether DAC should be issued on humanitarian grounds – whether obligation to revoke DPO – decisions under review affirmed

[Bennett and Floyd](#) (Child support) [2023] AATA 4286 (13 November 2023); M Kennedy, Senior Member

CHILD SUPPORT – departure determination – costs of education - manner expected by both parents – cost of maintaining the child is significantly affected – a ground for departure established – decision to depart – decision under review set aside and substituted

[JJMC and Child Support Registrar](#) (Child support second review) [2023] AATA 4205 (23 November 2023); D O'Donovan, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change in the pattern of care – decision affirmed

[Koch and Koch](#) (Child support) [2023] AATA 4288 (26 October 2023); J Bakas, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable incomes for past period for the liable parent should be changed – conditions for changing the income is not met – decision under review affirmed

[Marler and Marler](#) (Child support) [2023] AATA 4282 (20 November 2023); S Irvine, 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 – special circumstances exist – tribunal decides to make a determination under section 87AA(2)

[Naylor and Child Support Registrar](#) (Child support) [2023] AATA 4301 (2 November 2023); S De Bono, Senior Member

CHILD SUPPORT – application for extension of time – no satisfactory explanation for the lengthy delay – some merit – not fair and equitable – extension of time refused

[Noyes and Noyes](#) (Child support) [2023] AATA 4292 (6 November 2023); S Letch, Member

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

Citizenship

[Wu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 10 (9 January 2024); B Pola, Senior Member

CITIZENSHIP – application for citizenship by conferral – where applicant approved for grant of citizenship – where applicant failed to make pledge of commitment within 12 month period and approval of application for citizenship cancelled – whether the discretion should be enlivened to cancel the approval of the application for citizenship – where reason for failing to make pledge not captured in statutory provisions – where respondent provided numerous rescheduling arrangements of citizenship ceremony and applicant understood importance of ceremony – discretion enlivened – decision affirmed

Compensation

[Grantham and Australian Capital Territory](#) (Compensation) [2023] AATA 4152 (18 December 2023); Emeritus Professor P A Fairall, Senior Member

WORKERS COMPENSATION – Safety, Rehabilitation and Compensation Act 1983 (Cth) – no present liability – whether Applicant continues to suffer the effect of injuries – whether injuries result in need for medical treatment or incapacity – whether Respondent correct to accept liability to pay compensation – where determination of Comcare disturbed status quo – where Comcare required to persuade Tribunal to disturb status quo – where Tribunal not comfortably satisfied – decision under review set aside

[Perry and Go Marine Group Pty Ltd](#) (Compensation) [2023] AATA 4214 (20 December 2023); R Bellamy, Senior Member

COMPENSATION – aggravation of pre-existing degenerative condition — whether temporary or ongoing aggravation – material degree test – whether employer liable for preinjury sustained in other employment – pre-existing condition – decision affirmed

Education and Research

[Haliem and Secretary, Department of Education](#) [2024] AATA 14 (12 January 2024); A E Burke AO, Member

EDUCATION – HECS-HELP – debt remission – whether special circumstances apply – where all 3 criteria must be met – where accepted that circumstances were abnormal, uncommon or unusual and beyond applicant's control – disputed whether full impact of circumstances was on or after census date – disputed whether circumstances made it impracticable for applicant to complete the requirements for the unit – Tribunal satisfied that special circumstances apply – decision set aside and remitted with direction Applicant found to be entitled to re-credit of HECS-HELP debt

[SAE Institute Pty Ltd and Tertiary Education Quality and Standards Agency](#) [2023] AATA 4250 (21 December 2023); D Mitchell, Member

TERTIARY EDUCATION REGISTRATION – application to change provider registration category – whether the Applicant can be registered as a University College – compliance with the Higher Education Standards Framework (Threshold Standards) 2021 (Cth) – a relevant rather than mandatory consideration – whether there is a discretion that is applied when deciding whether to change a provider category – decision under review set aside and substituted

Freedom of Information

[Fewster and Director-General, National Archives of Australia](#) (Freedom of information) [2023] AATA 4240 (21 December 2023); The Hon. J Pascoe AC CVO, Deputy President

FREEDOM OF INFORMATION – National Archives of Australia – exempt records – information or matter the disclosure of which could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth – whether discretion should be exercised to allow release of part of the records – decision under review affirmed

Migration

[2310784](#) (Migration) [2023] AATA 3820 (1 November 2023); W Shum, Member

MIGRATION – Employer Nomination (Permanent) Visa – Subclass 186 Employer Nomination Scheme – Temporary Residence Transition stream – position of Childcare Centre Manager – nominating business has ceased operations – change of employers – nominated position no longer available – request for Ministerial Intervention – decision under review affirmed

[2310893](#) (Migration) [2023] AATA 3816 (16 October 2023); M Bourke, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – combined stay in Australia for over 12 months – exceptional circumstances – impact of the COVID19 pandemic – Australian citizen child – political and economic developments in Sri Lanka – stepson's education – applicant family seeking permanent residence – decision under review affirmed

[Abdulkareem and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4212 (20 December 2023); Dr C Huntly, Member

MIIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – offences include attempted armed robbery, enter dwelling without consent with intent to commit offence, criminal damage and breaches of court orders – Applicant is a 24 year old citizen of South Africa, who last arrived in Australia at 16 years of age – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no family violence – strength, nature and duration of ties to Australia – best interests of Applicant's biological son – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to South Africa – Reviewable Decision set aside and substituted

[BKRD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 7 (5 January 2024); D J Morris, Senior Member

MIGRATION – applicant is a citizen of the Republic of Sudan – applicant held Class BC subclass 100 spouse visa – visa cancelled under s 501(3A) of Act on the basis applicant did not pass character test as had substantial criminal record – applicant made representations to Department – delegate of Minister decided not to revoke mandatory cancellation – applicant sought review by Tribunal – consideration of ministerial Direction No 99 – primary considerations – other considerations – serious offending – family violence offending – best interests of minor children in Australia – legal consequences of decision – applicant’s ties with Australia – impediments if removed – decision under review is affirmed

[Adefarakan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4216 (20 November 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – Nigerian citizen – Partner (Class BS) (Subclass 801) visa – failure to pass good character test – Section 501(6)(d)(ii) – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – decision under review affirmed

[Amandeep Singh](#) (Migration) [2023] AATA 3774 (4 October 2023); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – dependent spouse – incorrect answers provided in previous and current applications – previous visa refusals for third country not declared – discretion to cancel visa – ground conceded – non-compliance inadvertent – correct answers provided to agent – first application not sent to applicant for checking – second application checked by wife, who thought question related only to her – visa refusal for fourth country declared – compliant travel to multiple countries – visas for third and fifth countries now granted – applicant’s work and care for young child, with current second pregnancy – wife’s study and work plans – hardship if visa cancelled – decision under review set aside

[Bainbridge and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4184 (19 December 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – applicant is a citizen of New Zealand – Direction 99 considered – applicant has lived in Australia for 17 years – extensive criminal record – starting offending shortly after arrival – repeated home burglary offences – serious driving record – high risk of re-offending – primary considerations of protection of the Australian community and expectations of the Australian community outweigh considerations in favour of revoking cancellation of visa – there is not another reason to revoke the decision to cancel the Applicant’s visa – reviewable decision affirmed

[Barone](#) (Migration) [2023] AATA 3649 (13 October 2023); A Dronjic, Member

MIGRATION – Distinguished Talent (Residence) (Class BX) visas – Subclass 858 (Distinguished Talent) – internationally recognised record of exceptional and outstanding achievement in the arts – pianist and composer – international composition competition winner – international festival performances and compositions for films – employment in Australia – relevant qualifications – still prominent – asset to the Australian community – decision under review remitted

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

AATA 4142 (15 December 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – Applicant is a citizen of Democratic Republic of Congo – Refugee (Class XB)(Subclass 200) visa cancelled – Ministerial Direction 99 applied – extensive history of family violence – untreated alcohol abuse – lack of meaningful, recognised rehabilitation - attitude towards women – lack of support if released into community – considerations against revoking the decision to cancel the Applicant's visa, in particular the first primary consideration, the protection of the Australian community, the second primary consideration, family violence and the fifth primary consideration, the expectations of the Australian community, outweigh the primary consideration of ties to the Australian community and the “other” considerations weighing in favour of the revocation of the cancellation – consideration of protection claims more appropriately dealt with through application for a protection visa as envisaged by para 9.1.2(2) of Direction 99 – there is not “another reason” to revoke the cancellation of the visa – reviewable decision affirmed

Blair and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023] AATA 4154 (1 December 2023); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BF transitional visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – where ties to minor children, links to the Australian community and impediments outweigh considerations not in favour of revocation – Tribunal finding there is another reason to revoke the mandatory cancellation of the Applicant's visa – decision under review set aside and substituted

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

AATA 4210 (20 December 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record including family violence – applicant has lived in Australia since he was nine years and for the majority of his life – whether there is 'another reason' to revoke mandatory cancellation decision – the countervailing considerations of ties to Australia and best interests of minor children outweigh the primary considerations of protection and expectations of the Australian community and family violence – decision set aside and substituted

Chen (Migration) [2023] AATA 3769 (31 October 2023); A Mercer, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – incorrect information in the visa application – bogus document – reference from employer in China – employment checks after business was liquidated – successful Australian skills assessment – support from employer's former executive – skills shortage – employer liabilities – labour contracting arrangement in China – employment confirmed – power to cancel the visa does not arise – decision under review set aside

[Eluchie and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4151 (18 December 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 – offences related to receiving monies in his bank accounts from victims of romance scams – Applicant is a 29 year old citizen of Nigeria who arrived in Australia as a 22 year old student – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no family violence – strength, nature and duration of ties to Australia – no minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to Nigeria where Applicant voluntarily returned to Nigeria – impact on victims – Reviewable Decision affirmed

[Ghimire and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 3 (2 January 2024); Dr C Huntly, Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – substantial criminal record – offences including acts of family violence, breaches of family violence orders and traffic offences – Applicant is a 39 year old who arrived in Australia when he was 24 years of age – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of the decision – Australia’s international non-refoulement obligations – extent of impediments if removed – impact on victims – Reviewable Decision affirmed

[JSWC and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 2 (2 January 2024); A E Burke AO, Member

MIGRATION – decision of a delegate of the Respondent to refuse to grant a visa under s 501(1) of the Migration Act 1958 (Cth) – whether the Applicant passes the character test – whether discretion should be exercised not to refuse the grant of the Applicant’s Visa under s 501(1) of the Migration Act – substantial criminal record - Ministerial Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – strength, nature and duration of ties to Australia – best interests of minor child – expectations of the Australian community – legal consequences of the decision – a protection finding has been made with respect to the Applicant – Applicant unable to be removed – Tribunal finds that it should not exercise discretion under s 501(1) of the Migration Act to refuse the Applicant the Visa – Reviewable Decision set aside

[Karaitiana and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 4236 (20 December 2023); Hon. 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 cancelation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 - decision under review is affirmed

[Khalil and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4234 (21 December 2023); J C Kelly, Senior Member

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

[Khalili and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Social services second review) [2023] AATA 4211 (5 December 2023); S Evans, Member

MIGRATION – visa cancelled under subsection 501CA(4) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation of visa - Direction No. 99 considered – reviewable decision set aside and substituted

[LBQY and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4244 (21 December 2023); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of visa – national of Vietnam – Class WE Subclass 050 Bridging E visa – failure to pass character test – single instance of offending – whether another reason mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – application for Protection Visa refused – decision set aside and substituted

[Loulanting and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4249 (18 December 2023); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – decision under review affirmed

[McIntier and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 4150 (18 December 2023); A Maryniak KC, Member

MIGRATION – Mandatory cancellation of visa – failure to pass character test – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – Class BB subclass 155 Five Year Resident Return visa – citizen of United States of America – protection of the Australian community – serious offence – offence of importation and trafficking controlled drugs – low risk of re-offending – strength nature and duration of ties to Australia – best interests of minor child – expectations of the Australian community – extent of impediments if removed – another reason to revoke mandatory cancellation found – decision set aside

[MKJQ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4247 (15 December 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – non-revocation of mandatory visa cancellation – Direction No.99 – protection of Australian community – historic sexual offences against children – long term resident of Australia – family violence committed by the non-citizen – strength, nature and duration of ties to Australia – best interests of minor children in Australia affected by the decision – expectations of the Australian community – extent of impediments if removed – impact on victims – decision under review set aside

[Ng and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4149 (8 November 2023); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – the strength, nature and duration of ties to Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – reviewable decision set aside

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4237 (7 December 2023); S Evans, Member

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

[Pihama and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4153 (15 December 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 – offences include possess prohibited drugs, common assault, possessing stolen property, breaches of court orders, driving offences – Applicant is a 44 year old citizen of New Zealand who arrived in Australia as a 22 year old adult – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – strength, nature and duration of ties to Australia – best interests of minor child – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to New Zealand – Reviewable Decision set aside and substituted

[Rawiri-Pukeroa and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4183 (5 October 2023); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of visa – where the Applicant fails the character test- whether there is another reason to revoke the mandatory cancellation decision- application of Ministerial Direction No. 99 – Tribunal finding there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[RTVK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4235 (21 December 2023); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – sexual intercourse with child – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – family violence – strength nature and duration of ties to Australia – expectations of the Australian community – legal consequences of the decision – impediments to removal – decision affirmed

[SGFZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4353 (22 December 2023); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Protection visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – repeated violent offending and numerous traffic offences – traumatic childhood – drug use and schizophrenia – currently living in the community on a Bridging (Removal Pending) visa – decision under review affirmed

[Unu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4239 (21 December 2023); W Frost, Member

MIGRATION – Cancellation of Applicant’s Class TY (Subclass 444) Special Category visa under s 501(2) of the Migration Act 1958 – whether Applicant passes the character test – reasonable suspicion of association with an organisation pursuant to s 501(6)(b) – Applicant’s criminal offences unrelated any criminal organisation and occurred over two years ago – consideration of Ministerial Direction No. 99 – decision under review set aside and substituted

[Verrill and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4246 (16 November 2023); L Benjamin, Member

MIGRATION – Mandatory visa cancellation – USA citizen - Class BF transitional (permanent) visa – section 501CA of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – where offending includes serious violent offences, offences against public officers and domestic violence offences – whether “another reason” exists for Tribunal to revoke mandatory cancellation of visa under section 501CA of the Migration Act 1958 (Cth) – Ministerial Direction No. 99 applied – Respondent’s delegate’s decision affirmed

[Wihongi-Lim and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration)
[2023] AATA 4182 (16 October 2023); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of visa – where the Applicant fails the character test – whether there is another reason to revoke the mandatory cancellation decision – application of Ministerial Direction No. 99 – Tribunal finding there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[XHKD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4238 (15 December 2023); C J Furnell, Senior Member

MIGRATION – refusal to grant protection visa – whether convicted by final judgement of a particularly serious crime – whether a danger to the Australian community – nature and seriousness of offending – period of offending – risk of recidivism – mitigating circumstances – decision under review affirmed

National Disability Insurance Scheme

[TXDT and National Disability Insurance Agency](#) [2023] AATA 4284 (22 December 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – application to review a decision of the National Disability Insurance Agency to approve a statement of participant supports in a participant’s plan – whether the Applicant’s requests for funding to cover the costs of legal services are reasonable and necessary – whether the Applicant’s request for funding to cover the costs of psychological therapy support are reasonable and necessary – whether the Applicant’s request for funding to cover the costs of scriptwriting support are reasonable and necessary – whether the Applicant’s request for funding to cover the costs of the Applicant’s transport and accommodation to travel to Queensland to visit her biological mother are reasonable and necessary – whether the Applicant’s request for funding to cover the costs of medicinal oil and flower cannabis are reasonable and necessary – whether the Applicant’s request for funding to cover the costs of gluten free diet food items are reasonable and necessary – whether the Applicant’s request for funding to cover the costs of internet usage at her home are reasonable and necessary – whether the Applicant’s Plan should be self-managed – decision under review set aside

[Woodard and National Disability Insurance Agency](#) [2023] AATA 4156 (18 December 2023); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant has a hearing impairment – reasonable and necessary supports – sought funding for Visualert Custom Made Visual and Vibrating Alert System – sought funding for CCTV cameras with motion sensor lighting – sought funding for floodlights – after the hearing sought funding for Tiny Red Box – whether the Visualert system is value for money – whether funding the Visualert system would be a duplication of supports already funded as the Applicant has a Brooks Visual Notification System – whether on the evidence before the Tribunal Tiny Red Box can be considered to meet any of the reasonable and necessary support requirements– whether CCTV cameras are a day-to-day living cost – whether the request for CCTV cameras is due to the Applicant’s disability needs – whether floodlights are related to the Applicant’s disability – decision affirmed

Practice and Procedure

[Bellesini and National Disability Insurance Agency](#) [2024] AATA 9 (9 January 2024); K Parker, Senior Member

PRACTICE AND PROCEDURE – application for extension of time (EOT) for lodgement of application for review – Respondent initially opposed EOT application but, by the end of the hearing, did not oppose it – Applicant is an adult participant in the National Disability Insurance Scheme (NDIS) – Applicant seeks review of a decision by a “reviewer” of the Respondent not to approve funding in the Applicant’s NDIS plan for an electric bed and chair lift, or to recognise that she has a physical disability in addition to her disability attributable to psychosocial conditions – delay in lodgement of approximately four months – consideration of Applicant’s explanation for the delay – Applicant wished to obtain all supporting documentation for the review prior to lodging her substantive application for review – whether any prejudice to the Respondent would arise from the belated lodgement of the substantive application for review – consideration of public interest – alternative avenues of review – Tribunal satisfied that it is reasonable in all the circumstances to extend the time for lodgement of the substantive application for review – EOT application granted

[Dong and Comcare](#) (Compensation) [2023] AATA 4206 (20 December 2023); S Webb, Member

PRACTICE AND PROCEDURE – psychological injury compensation claim – summons – treatment records – objection to inspection – relevant principles – obligation to ensure each party is given a reasonable opportunity to present their case – apparent relevance to statutory questions – legitimate forensic purpose – objections not upheld

[Evans and Ramsay Health Care Australia Pty Ltd](#) [2024] AATA 4 (3 January 2024); Brigadier A G Warner, AM LVO (Retd), Member

PRACTICE AND PROCEDURE – extension of time application – substantive matter refusal of compensation under the Safety, Rehabilitation and Compensation Act 1988 – length of delay – awareness of appeal rights and explanation for delay – merits of substantive application – prejudice – extension of time application refused

[Farrelly and Australian Securities and Investments Commission](#) [2023] AATA 4350 (22 December 2023); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – STAY APPLICATION – application for stay of publication of disqualification order by the Respondent – section 206F of the Corporations Act – where applicants were disqualified for 2 years as directors – where companies were liquidated – where tax debts were owed – where publication of disqualification order may impact further investors – objectives of the regulators in making a decision – where objective of legislation – consumer protection – objective of transparency – where there may be reputational damage – applications refused

[HVYY and National Disability Insurance Agency](#) [2023] AATA 4248 (22 December 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – PRACTICE AND PROCEDURE – request for Tribunal to make a declaration under sub-s 28(5) of the Administrative Appeals Tribunal Act 1975 (Cth) (AAT Act) for a statement of reasons, evidence, and findings of material facts, by the decision-maker of the reviewable decision – interpretation of s 28 of the AAT Act and whether it only applies and permits a request to be made under sub-s 28(1) before the person has lodged an application for review with the Tribunal – consideration of other mechanisms by which directions or orders may be issued or made by the Tribunal after the person has lodged an application for review with the Tribunal, to require the decision-maker to provide further information and further and better particulars, specifically, ss 33 and 38 of the AAT Act of the AAT Act – Tribunal concluded that s 28 of the AAT Act does not apply in the circumstances of this matter because the request for the s 28 declaration was made after the Applicant lodged his application for review – application not granted – Tribunal will not issue a declaration under sub-s 28(5) of the AAT Act

[Masters and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4213 (20 December 2023); Dr C Huntly, Member

SOCIAL SECURITY – application for extension of time – whether no reasonable prospect of success – decision to reduce Applicant's Family Tax Benefit – rent assistance – failure to meet immunisation requirements – opposition to vaccination of child – application dismissed

[SVC Co Pty Ltd and Secretary, Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#) [2023] AATA 4155 (18 December 2023); B J McCabe, Deputy President

AIRPORT REGULATIONS – limitation to compel a third party – controlled activity – application with no reasonable prospect for success

Professions and Trades

[Peroy and Tax Practitioners Board](#) [2024] AATA 12 (10 January 2024); J C Kelly, Senior Member

TAX AGENTS – breach of TASA Code of Professional conduct – tax agent registration termination – whether the applicant has ceased to meet the registration requirements in the TASA as an individual and sole director of the Company – whether the applicant complied with taxation laws – whether sanctions should be imposed – reviewable decisions varied

Refugee

[1733265](#) (Refugee) [2023] AATA 4344 (28 September 2023); S Burford, Senior Member

REFUGEE – protection visa – Malaysia – no Convention nexus – victim of sexual assault – economic conditions – gender-based violence – return visits to Malaysia – state protection – decision under review affirmed

[1813065](#) (Refugee) [2023] AATA 4103 (29 August 2023); P Haag, Member

REFUGEE – protection visa – Pakistan – religion – Shia – active member of Shia religious organisation – Mujlis Wahdat-e-Muslimeen – religious persecution – attacked by Sunni extremists – state protection inconsistent – changed circumstances in Pakistan since delegate's decision – decision under review remitted

[1824416](#) (Refugee) [2023] AATA 4132 (6 September 2023); S Baker, Member

REFUGEE – protection visa – Sierra Leone – membership of particular social group – homosexual man – relationships with men – pressured into marriage by family – attacked and injured by groups – relocation to neighbouring country before departing – conversion to Christianity in Australia – increasingly open expression and participation in general community and activist organisations but not in local community or church – consistent evidence and supporting statements – not required to conceal orientation – country information – laws and societal stigma and discrimination – treaty right to enter and reside in neighbouring countries limited in practice – same-sex sexual acts illegal or not specifically protected – attitudes and actions by non-state actors tolerated by police – decision under review remitted

[1916930](#) (Refugee) [2023] AATA 3925 (3 August 2023); D James, Senior Member

REFUGEE – protection visa – Papua New Guinea – particular social group – family member of persons killed in tribal violence – diagnosed, suffering from and being treated for a mental disease – inter-tribal fighting – attitudes and access to mental health support – decision under review remitted

[1934082](#) (Refugee) [2023] AATA 3714 (21 August 2023); K Chapple, Member

REFUGEE – protection visa – Venezuela – political opinion – public sector employee ideologically opposed to government – witnessed and reported corrupt action by staff and paramilitary members – harassed and threatened by managers, government supporters and paramilitary groups, and denied relevant protection – resigned and lived in third country – return, relocation and second departure unhindered – participation in political opposition activities in Australia – sister and parents living in fourth country and house appropriated – credible claims and evidence not diminished by absence of corroboration or documentation – probable official records of employment and reports in home country – country information – members of family unit – wife’s health condition and treatment – decision under review remitted

[2008272](#) (Refugee) [2023] AATA 3669 (28 July 2023); K Harvey, Senior Member

REFUGEE – protection visa – India – religion – Hindu – Sikh convert – inter-religious marriage – threats of harm by family and community – honour killing – legally changed names – family’s political links provide impunity – delay in applying for protection – inconsistent evidence – credibility issues – decision under review affirmed

[2016755](#) (Refugee) [2023] AATA 3778 (28 July 2023); A Murphy, Member

REFUGEE – protection visa – Vietnam – religion – Catholic – political opinion – anti-government protester – failed asylum seekers – lack of access to health care, education and other services – threats of harassment, arbitrary arrest and imprisonment – second applicant’s risk of separation from mother – decisions under review remitted

Social Security

[Brownlow and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4243 (22 December 2023); B Pola, Senior Member

SOCIAL SECURITY – Eligibility for Disability Support Pension – Appeal of decision of Social Services and Child Support Division – where purported impairments included spinal condition and mental health condition – where spinal condition not fully stabilised or fully treated due to investigations continuing outside of Qualification Period and reasonable treatment measures not followed by applicant – where mental health condition not fully diagnosed per statutory requirements – section 94(1)(b) of Social Security Act 1991 (Cth) not satisfied – decision affirmed

[Emery and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 15 (11 January 2024); Professor A O’Connell, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant’s medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – whether the impairments rated 20 points or more under a single heading of the Impairment Tables – whether there was a continuing inability to work – decision under review set aside and substituted with decision that the Applicant met eligibility requirements

[Moverley and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4208 (20 December 2023); B J Illingworth, Senior Member

SOCIAL SECURITY – overpayment of Centrelink benefits – Parenting Payment Single – Coronavirus Supplement – member of a couple – circumstances of a relationship – separation under one roof – decision under review set aside

[Paget and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4215 (6 September 2023); Dr C Huntly, Member

SOCIAL SECURITY – age pension – application of asset test – disposal of assets – assessable gift – consideration – adequate consideration – meaning of ‘money’s worth’ – whether Applicant’s time with loved ones constitutes adequate consideration – oral decision delivered at hearing – written reasons provided at request of the Respondent – Reviewable Decision set aside

[Rich and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4209 (20 December 2023); Professor A O’Connell, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant’s medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – whether the impairments rated 20 points or more under a single heading of the Impairment Tables – whether there was a continuing inability to work – decision under review set aside and substituted with decision that Applicant met eligibility requirements

Taxation

[Copley and Commissioner of Taxation](#) (Taxation) [2024] AATA 8 (8 January 2024); Dr M Evans-Bonner, Senior Member

TAXATION – income taxation – Applicant claimed deductions for work related car expenses and other work related expenses – financial years ending 30 June 2018, 30 June 2019 and 30 June 2020 – whether expenses incurred in gaining or producing the Applicant’s assessable income – whether substantiation requirements satisfied – Applicant primarily relied upon bank statements as evidence of expenses – a lack of receipts or tax invoices to substantiate expenses – lack of specificity in vehicle logbook – whether deductions allowable under s 8-1 of the Income Tax Assessment Act 1997 (Cth) – Applicant unable to meet burden in s 14ZZK of the Taxation Administration Act 1953 (Cth) – Reviewable Decision affirmed

[Fidge and Commissioner of Taxation](#) (Taxation) [2023] AATA 4245 (22 December 2023); R Olding, Senior Member

TAXATION – INCOME TAX – where full-time Regular Army officer involuntarily transferred to Army Reserves – whether the officer was dismissed because his position was genuinely redundant – whether taxpayer entitled to protection of public ruling – decision set aside

[Lance and Commissioner of Taxation](#) (Taxation) [2024] AATA 11 (5 January 2024); G Lazanas, Senior Member

TAXATION – GST – taxable supply - enterprise – whether sale of property made in the course or furtherance of an enterprise – whether property subdivided for family living arrangement – whether property subdivided for sale – meaning of “in the form of a business” – whether evidence of applicant reliable - whether applicant discharged burden of proof – objection decision affirmed

[WYVW and Commissioner of Taxation](#) (Taxation) [2023] AATA 4242 (21 December 2023); D K Grigg, Senior Member

TAX – review under Part IVC of the Taxation Administration Act 1953 (Cth) – default assessments – whether “all or nothing” approach applies – whether deposits income, proceeds of loan or capital payments – whether interest expenses deductible – onus of proof – Jones v Dunkel inferences – whether fraud or evasion – whether intentional disregard, recklessness or lack of reasonable care – whether base penalty uplift applies – whether penalties should be remitted – shortfall interest charge – decisions varied

Veterans' Affairs

[Evans and Repatriation Commission](#) (Veterans' entitlements) [2024] AATA 6 (9 January 2024); R Cameron, Senior Member

VETERANS' AFFAIRS – veteran deceased – claim for war widow's pension – medic in South Vietnam during Vietnam War – whether death was war-caused – neurocognitive disorder with Lewy bodies dementia – major depressive disorder and posttraumatic stress disorder – Deledio steps – hypothesis connecting death to war service – three statements of principles – hypothesis not reasonable – decision under review affirmed

[Palmer and Repatriation Commission](#) (Veterans' entitlements) [2024] AATA 5 (5 January 2024); D O'Donovan, Senior Member

VETERANS' ENTITLEMENTS – where the veteran is in receipt of a special rate pension – where the veteran qualifies for a GST rebate on motorcycles – whether the motorcycles were purchased after the relevant date to qualify for the scheme – whether the parts are replacement parts as required by the scheme – whether the part to be replaced is no longer fit for purpose – whether the part to be replaced has been destroyed, damaged or stolen – whether the purchase is accompanied by a tax invoice – decision varied

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 |
|---|----------------------------------|
| Adefarakan and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 4216 |
| Barber and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 2651 |
| Bainbridge and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 4184 |
| BCDC and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 4142 |
| CVMW and Commissioner of Taxation | [2023] AATA 4039 |
| Ghimire and Minister for Immigration, Citizenship and Multicultural Affairs | [2024] AATA 3 |
| HNMF and Commissioner of Taxation | [2023] AATA 4067 |
| Manebona and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs | [2023] AATA 4123 |
| Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 4237 |
| Omani and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 4119 |
| Su and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 3919 |
| SWKZ and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 3853 |
| Vega Industries Australia Pty Ltd and Comptroller-General of Customs | [2023] AATA 4091 |
| WKBF and Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 4013 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|----------------------------------|---------------------------------|
| CZQL v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs | [2017] AATA 2715 | [2023] FCA 1610 |
| HKRC v Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 450 | [2023] FCA 1487 |
| Lucas v Minister for Immigration, Citizenship and Multicultural Affairs | [2022] AATA 3151 | [2023] FCA 1653 |
| LVFG v Minister for Immigration, Citizenship and Multicultural Affairs | [2023] AATA 1109 | [2023] FCA 1662 |
| Stark v Commissioner of Taxation | [2021] AATA 2583 | [2023] FCA 1523 |
| VCFR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs | [2022] AATA 621 | [2023] FCA 1606 |



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