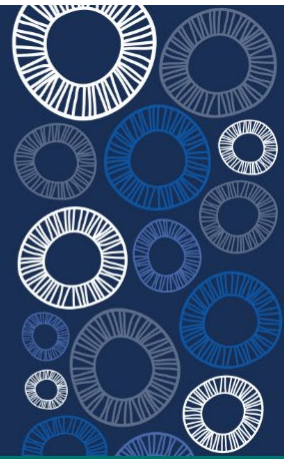




Administrative
Appeals Tribunal

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

[Bishop and Stanley](#) (Child support) [2023] AATA 4298 (16 November 2023); J Longo, Senior Member

CHILD SUPPORT – child support agreement – whether a financial agreement meets the requirements of a binding child support agreement – decision under review set aside and sent back with directions

[Hiern and MacTavish](#) (Child support) [2023] AATA 4279 (14 November 2023); S Irvine, Member

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

[Kemp and Gilliam](#) (Child support) [2023] AATA 4287 (24 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 varied

[Wolfe and Stepney](#) (Child support) [2023] AATA 4283 (17 November 2023); D Benk, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – benefits derived from business – income from family trust – decision under review set aside and substituted

Citizenship

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

(Citizenship) [2024] AATA 37 (19 January 2024); L M Gallagher, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – Australian Citizenship Act 2007 s 24(2)(h) – whether Tribunal satisfied Applicant was of good character – citizen of Afghanistan – Applicant claimed father was deceased upon arrival into Australia – discovered that father was alive – failed to inform the Department father was not deceased – Tribunal cannot satisfactorily ascertain Applicant is of good character – reviewable decision affirmed

Compensation

Jaudzems and Comcare (Compensation) [2024] AATA 32 (17 January 2024); A Ward, Member

WORKERS COMPENSATION – Commonwealth employee – pre-existing condition – significant contribution from employment – arm/wrist injury – decision under review set aside and substituted

PROCEDURE – very late application to adjourn refused – no prejudice demonstrated – right of parties for matter to proceed in timely fashion – Tribunal and parties' resources

Education and Research

GQPH and Secretary, Department of Education [2024] AATA 39 (18 January 2024); S Evans,

Member

HIGHER EDUCATION SUPPORT – FEE-HELP debt – Application for re – credit – Whether requirement that applicant be made before end of application period can be waived – Whether it was or was not possible for the application to be made within the application period – Decision affirmed

Young and Secretary, Department of Education [2024] AATA 31 (17 January 2024); A George,

Senior Member

HIGHER EDUCATION – HECS-HELP – applicant seeks re-credit of HELP balance – application period not waived – decision under review affirmed

Freedom of Information

Redimed Pty Ltd and Australian Information Commissioner (Freedom of information) [2024]

AATA 38 (19 January 2024); Dr M Evans-Bonner, Senior Member

PRIVACY – Privacy Act 1988 (Cth) – Applicant engaged by an employer to conduct a pre-employment medical assessment of an individual – individual requested access to his personal information – personal information provided with redactions – unredacted personal information provided seven months after the individual made a complaint to the Information Commissioner – Information Commissioner found breach of Australian Privacy Principles (APP) – Applicant disputes that it breached APP 12.1 – Applicant claims redacted information fell within exemption in APP 12.3(b) and APP 12.3(j) – whether giving access would reveal evaluative information generated within the entity in connection with a commercially sensitive decision-making process – meaning of “evaluative information generated within the entity in connection with a commercially sensitive decision-making process” – consideration of whether the commercially sensitive decision-making process must be internal to the entity – the nature of remedial action the Applicant should be required to undertake – privacy breach substantiated – Reviewable Decision affirmed

Migration

[2317471](#) (Migration) [2023] AATA 4113 (8 November 2023); A McLean Williams, Member

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – abiding by visa conditions – applicant convicted of several offences – Magistrate set aside the conviction previously recorded – former drug addiction – indefinite detention – disproportionate to custodial term – non-refoulement considerations – mental health issues – decision under review set aside

[2003412](#) (Migration) [2023] AATA 3892 (17 October 2023); J Clarke, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – approved sponsorship – sponsorship limitation – sponsor’s criminal history – ‘significant criminal record’ – length of time since completion of sentence – best interests of the parties’ children – length of the relationship – significant age difference – decision under review remitted

[2301478](#) (Migration) [2023] AATA 3962 (31 October 2023); M Ison, Senior Member

MIGRATION – Partner (Migrant) (Class BC) – Subclass 100 (Partner) – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – joint application for subclasses 309 and 100 – relationship ceased and sponsorship withdrawn – arrived on tourist visa then granted temporary activity visa – family violence final intervention order made and now ceased – sponsor consented to order without making admissions – consent to decision without hearing – application for both visa subclasses refused – applicant had not ever held subclass 309, so did not meet requirements for subclass 100 – standing to apply for review of subclass 100 refusal – short duration and limited evidence of genuine and continuing relationship before relationship ceased – family violence provisions do not apply when sponsorship withdrawn – unintended consequence of legislation – temporary activity visa close to ceasing – Ministerial intervention requested – decision under review affirmed

[2317471](#) (Migration) [2023] AATA 4113 (8 November 2023); A McLean Williams, Member

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – abiding by visa conditions – applicant convicted of several offences – Magistrate set aside the conviction previously recorded – former drug addiction – indefinite detention – disproportionate to custodial term – non-refoulement considerations – mental health issues – decision under review set aside

[BYJH and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 44 (22 January 2024); R Bellamy, Senior Member

MIGRATION – Application for Bridging Visa pending determination of application for substantive visa (Protection visa) – where Applicant does not pass the character test – whether to exercise the discretion to refuse the Bridging visa application – consideration of Ministerial Direction No. 99 – protection claims lacking in substance – decision affirmed

[Bobbe and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 47 (22 January 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – Bangladeshi citizen – Class VB Subclass 885 – Skilled Independent visa – failure to pass good character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – where Applicant has left Australia voluntarily – decision under review affirmed

[Campbell-Smith and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 4417 (23 October 2023); L Benjamin, Member

MIGRATION – Mandatory visa cancellation – New Zealand citizen - Class TY Subclass 444 Special Category (Temporary) Visa – section 501CA of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – where offending includes numerous property, fraud-related and drug-related 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

[Curoglu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 54 (18 January 2024); D J Morris, Senior Member

MIGRATION – applicant is a citizen of the Republic of Türkiye – applicant held Class BF Transitional (Permanent) visa – visa mandatorily cancelled on basis of substantial criminal record and serving sentence of full-time imprisonment – applicant’s sentence reduced – applicant sought revocation of visa cancellation – representations out of time – applicant then renotified of cancellation of visa – applicant invited to make representations and did – delegate of Minister decided not to revoke mandatory cancellation – applicant lodged application with Tribunal for review of decision not to revoke – ministerial direction – Direction No. 99 – primary considerations – protection of the Australian community – family violence conduct – ties with Australia – best interests of minor children in Australia – expectations of the community – other considerations – applicant considered for visa cancellation on two previous occasions – applicant received two written warnings about future conduct potentially jeopardising visa – decision under review is affirmed

[CXWW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 33 (19 January 2024); A G Melick AO SC, Deputy President

MIGRATION – mandatory cancellation of applicant's Partner (Subclass 801) (Residence) visa – applicant has substantial criminal record – whether there is 'another reason' to revoke mandatory cancellation decision – unlawful wounding – unlawful importation of looseleaf tobacco – the countervailing considerations of best interests of minor children, ties to Australia, legal consequences and extent of impediments if removed outweigh primary considerations of protection and expectations of the Australian community – decision set aside and substituted

[HFGJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 50 (23 January 2024); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant came to Australia at five years of age – applicant committed most of his crimes as a teenager – whether there is 'another reason' to revoke mandatory cancellation decision under s 501CA(4) of the Migration Act 1958 – significant impediments and serious risk of harm if removed to South Sudan – the primary considerations of the protection and expectations of the Australian community are outweighed by the countervailing considerations – decision under review is set aside

[HLXZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 45 (22 January 2024); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – extensive criminal record – over 100 offences committed – kidnapping for ransom – importing/exporting marketable quantity of controlled drugs/plants – possessing dangerous drugs – making and possessing counterfeit money – escaping from police custody – possessing an unregistered firearm – 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 – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – impediments to removal – decision affirmed

[HQBW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4372 (22 December 2023); R Reitano, Member

MIGRATION – visa cancellation – protection of the community – very serious criminal offending – risk of reoffending – expectations of the Australian community – relevance of personal circumstances – best interests of minor children – nature, duration and ties to community – legal consequences of decision – six years in immigration detention – impediments if removed to Iraq – mental illness – decision to refuse set aside and substituted

[Huntley and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4370 (22 December 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether “another reason” for revocation of cancellation decision – Direction 99 – conviction of serious offences involving the possession of prohibited sexual material – highly antisocial offending – drug addiction – low risk of re-offending – good start in respect of drug rehabilitation – other considerations contributing to offending behaviour – applicant’s troubled background considered – interest of fiancé considered – decision set aside and cancellation decision revoked

[McMillan](#) (Migration) [2023] AATA 3784 (2 November 2023); K Raif, Senior Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 102 (Adoption) – mother deceased and father unknown – sponsor appointed legal guardian and granted custody (but not sole), care and control of applicant – legal guardianship not customary adoption if guardian not related to child – moratorium on adoption by foreigners not in place at time of guardianship – new legislation allows adoption but moratorium still in place – adoption not limited to provisions of home country – significantly close relationship between applicant and sponsor – full and permanent parental rights – sponsor’s residence overseas for 12 months at time of application – sponsor’s long residence in applicant’s country, with some returns to Australia for work and family, and evacuation during COVID pandemic – delays in process and hardship if visa not granted – no provision for waiver – referred for ministerial consideration – decision under review affirmed

[Murati and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4419 (7 November 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

[NHTK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 35 (18 January 2024); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of visa – national of Pakistan – Protection (Subclass 866) visa – failure to pass character test – firearms, weapons and violence offences – dishonesty and driving offences – whether another reason mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – Applicant in the community – suggested likely mental health condition – legal consequences of the decision – impact of bridging visa and its conditions considered – decision affirmed

[Pan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 55 (24 January 2024); R Cameron, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Class BB Subclass 155 Five Year Resident Return visa – substantial criminal record – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction No. 99 – money laundering – protection of the Australian community – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if removed – decision under review set aside and substituted

[PKVJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 46 (22 January 2024); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – wound person with intent to cause grievous bodily harm – long history of criminal and violent offending – 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 – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – impediments to removal – decision affirmed

[Shields and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 51 (22 January 2024); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a 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 – Applicant’s risk of reoffending found to be low – Applicant found to have multiple protective factors in the community – strong ties to Australia – interest of relevant minor child favour revocation – considerations in favour of revocation outweigh those against – Tribunal finding there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[Su'A and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 48 (22 January 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – New Zealand citizen – failure to pass good character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – where the Applicant voluntarily departed Australia – where family in Australia expressed intention to move to New Zealand if Tribunal’s decision was to affirm – where Applicant has established himself in New Zealand since departing Australia – Tribunal finding considerations against revocation outweigh those in favour – Tribunal finding there is no other reason to revoke the mandatory cancellation decision – delegate’s decision under review affirmed

[Wardhana and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 52 (23 January 2024); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a 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 Applicant fails the character test – where Applicant committed acts of family violence under influence of illicit substances – where Applicant has relapsed into illicit substance consumption multiple times post rehabilitation – Tribunal finding the risk of reoffending to be unchanged- protection and expectations of the Australian community along with family violence committed by the Applicant outweigh ties to Australia, interests of minor children and impediments upon return – Tribunal finding there is no other reason to revoke the mandatory cancellation decision – decision under review affirmed

[Zhang](#) (Migration) [2023] AATA 3995 (20 November 2023); N Hossen, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – labour agreement stream – incorrect information and bogus document in visa application – employment history and work reference certificate – departmental integrity checks – company had ceased operations and did not issue certificates at that time – later clarification by general manager – conflicting evidence of operations and closure of company – forthright and honest evidence by applicant – skills assessment, continuing work and reference from employer – member of family unit – automatic cancellation of wife’s visa with no jurisdiction to review – decision under review set aside

National Disability Insurance Scheme

[VXVL and National Disability Insurance Agency](#) [2024] AATA 29 (16 January 2024); P J Clauson AM, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – severe epilepsy caused by rare genetic disorder – intellectual impairment – degenerative condition – applicant has intense and complex support needs – what it is reasonable to expect families, carers, informal networks and the community to provide – home modifications – value for money – whether there are comparable supports which would achieve the same outcome at a substantially lower cost – provision of social activities as therapy – when personally expended costs for reasonable and necessary supports should be considered – decision set aside and remitted

Practice and Procedure

[Rauhina and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 34 (19 January 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – Migration – Application for extension of time – whether the length of delay was justified – whether there was a reasonable explanation for the delay – whether the substantive application for review has merits – whether granting of extension of time would prejudice the Respondent or the general public – whether there are alternative avenues of relief for the Applicant should the extension of time not be granted – Non-revocation of mandatory cancellation of visa – Applicant not in the migration zone – extension of time request refused

Refugee

[1604415](#) (Refugee) [2023] AATA 4114 (4 September 2023); S Burford, Senior Member

REFUGEE – protection visa – Libya – first named applicant’s application not finalised – third named applicant granted Australian citizenship – fourth named applicant not included in original application – second named applicant member of the same family unit as first named applicant – protection claims remain undetermined – no jurisdiction – decision under review remitted

[1836269](#) (Refugee) [2023] AATA 4357 (22 September 2023); C Cody, Member

REFUGEE – protection visa – Fiji – imputed political opinion – anti-government – detained and assaulted – delay in applying for protection – insufficient evidence – credibility issues – unique or exceptional circumstances – biological father of Australian citizen child – serious, ongoing and irreversible harm and continuing hardship to an Australian citizen – child’s best interest – invaluable asset to remote community – Ministerial intervention requested – decision under review affirmed

[1907714](#) (Refugee) [2023] AATA 3795 (6 September 2023); C Carney-Orsborn, Member

REFUGEE – protection visa – Fiji – Federal Circuit Court remittal – minor child – imputed political opinion – parents’ anti-government views and mother’s claimed unfair dismissal from public sector job – interrogation, harassment and surveillance by army – mother’s claim not accepted and adverse finding on credibility – concession of no fear of harm for applicant on political grounds – complementary protection – mother’s mental health, child abuse, community services intervention and criminal charge – violence by father and older brother – father now deceased, with father’s family blaming and threatening mother, brother and applicant – family members’ influential positions – country information – violence against women and lack of mental health services – real risk of significant harm – decision under review remitted

[1931399](#) (Refugee) [2023] AATA 4318 (18 September 2023); W Banfield, Member

REFUGEE – protection visa – South Africa – race – white Afrikaans Boer – particular social group – older unmarried women – difficulty finding employment – victim of physical and sexual assault – prevalence of crime – Broad-based Black Economic Empowerment (BBBEE) affirmative action policies – delay in applying for protection – decision under review affirmed

[2007343](#) (Refugee) [2023] AATA 4194 (11 September 2023); A Duffield, Senior Member

REFUGEE – protection visa – Pakistan – imputed political opinion – opposition to the Pakistani Taliban – race – Pashtun – particular social group – voluntary work with NGOs – failed asylum seeker from the west – promoting women’s education and peace – fear of extortion – fear of killing – resurgence of the Taliban in the Swat Valley – decision under review affirmed

[2012044](#) (Refugee) [2023] AATA 4376 (4 October 2023); A Murphy, Member

REFUGEE – protection visa – stateless/Burma – imputed political opinion – identity and citizenship – entered Australia using genuine passport – claim that passport issued on basis of fraudulent feeder documents provided by agent – identity card in name of real but deceased person and household list based on applicant’s own family – long residence in refugee camp in third country – oral evidence from cousin, statutory declaration from aid worker, UNHCR registration and third country documentation – humanitarian visa application and social media activity in real name – opposition to regime and financial support for anti-regime groups – country information – prevalence of document fraud – citizenship laws – stateless persons denied fundamental rights – regime’s human rights violations and military actions against opposition groups and individuals – high level of scrutiny – decision under review remitted

[2012487](#) (Refugee) [2023] AATA 4157 (8 September 2023); D James, Senior Member

REFUGEE – protection visa – Iraq – particular social group – women – academic high achievers – religion – Sunni Muslim – conversion from Shi'a to Sunni – secular views – fear of kidnapping – Shi'a militia – sectarian violence – delay in applying for protection – vague evidence – Ministerial intervention requested – decision under review affirmed

[1910124](#) (Refugee) [2023] AATA 3986 (15 August 2023); J Lindsay, Member

REFUGEE – protection visa – Vietnam – religion – Roman Catholic – father donated land to church – member of youth groups – arrested, interrogated and beaten – relocations with family and later by self – one friend killed – unlawful maritime departure – returned failed asylum seeker – credibility – vague and inconsistent claims and evidence about activities and harm – limited knowledge of rituals – young with limited opportunity to provide supporting evidence – limited church membership and activity accepted – claims of harm not accepted – recognised religious organisation – significantly different claims in second application – threatened and fined – claims not accepted in entirety – arrival at Ashmore and Cartier Islands – statutory bar does not apply – first application not invalid therefore second application invalid – decision under review affirmed

[2217348](#) (Refugee) [2023] AATA 4106 (25 August 2023); P Noonan, Member

REFUGEE – protection visa – Burma – political opinion – pro-democracy supporter opposed to military government – assessed as refugee – right to enter and reside in third country – country information – third country's requirement that to renew re-entry permit, an applicant must hold valid travel document – applicant's Burmese passport expired with significant barriers to renewing in Western country – decision made without hearing necessary – decision under review remitted

Social Security

[Byfield and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 49 (22 January 2024); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant's conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant's conditions attracted an impairment rating of at least 20 points – decision under review is affirmed

[Hng; Secretary, Department of Education and](#) (Social services second review) [2023] AATA 4369 (28 March 2023); R West, Member

SOCIAL SECURITY – child care subsidy – application to stay decision of Administrative Appeals Tribunal (Social Services & Child Support) Division – factors relevant to the granting of a stay – stay application refused

[Hng; Secretary, Department of Education](#) (Social services second review) [2024] AATA 36 (19 January 2024); A E Burke AO, Member

CHILD CARE SUBSIDY – whether applicant entitled to child care subsidy in the period 12 July 2021 to 28 November 2021 – where AAT1 set aside and substituted the original determination - tax return lodgement requirements not met – whether special circumstances exist to allow extension of time for tax return lodgement – Tribunal found applicant was entitled to CCS

[Keating and Secretary, Department of Health and Aged Care](#) (Social services) [2024] AATA 64 (25 January 2024); A E Burke AO, Member

SOCIAL SECURITY – residential aged care – basic daily fee – other supplements – whether eligible for hardship supplement – previously in receipt of hardship supplement on basis of covid exemption – subsidy principles – whether commercial property is unrealisable assets – determination of hardship not made – decision under review affirmed

[Manjunath and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 4415 (20 December 2023); D J Morris, Senior Member

SOCIAL SECURITY – where applicant is recipient of disability support pension – where applicant received advance payment – where applicant requested that DSP not be withheld as repayment of advance payment due to hardship – where agency decided recovery of advance payment could not be waived – where applicant sought review by authorised review officer – where original decision affirmed – where applicant sought review by Tribunal – where Tribunal affirmed reviewable decision – where applicant sought Second Review by Tribunal – where respondent sought dismissal on basis application has no reasonable prospect of success – advance payment where person still has social security entitlement is not a debt – debt waiver provisions not available as relief

PRACTICE AND PROCEDURE – where applicant notified of telephone directions hearing – where shortly before hearing applicant sought adjournment – where Tribunal adjourned hearing – where applicant notified of date and time of resumed hearing – where applicant failed to appear – where Tribunal directed applicant to provide written reasons or medical evidence as to non-appearance with failure to do so enlivening a contingent dismissal – where no material provided – application dismissed for non-appearance

[Mears and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 53 (24 January 2024); D O'Donovan, Senior Member

SOCIAL SECURITY – age pension – member of a couple – wife ineligible due to husband's assets – whether living separately and apart – status and application of Social Security Guide – whether section 24 'special reason' – decision set aside and substituted

[Moody and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 65 (18 January 2024); P Ranson, Member

Social welfare and service – Newstart Allowance – Income reporting – Recoverable debt – Waiver – Write off – Financial hardship – DSP – Decision under review affirmed

[Pinto and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 63 (25 January 2024); B Pola, Senior Member

SOCIAL SERVICES – Eligibility for Disability Support Pension – Appeal of decision of Social Services and Child Support Division – where purported impairments included visual conditions, upper limb conditions, and spinal condition amongst others – where applicant's self-reported evidence of conditions in contrast with medical material – where evidence of each of conditions not in support of awarding 20 impairment points per legislative requirements – section 94(1)(b) of Social Security Act 1991 (Cth) not satisfied – decision affirmed

Veterans' Affairs

[Withers and Repatriation Commission](#) (Veterans' entitlements) [2024] AATA 30 (18 January 2024); S Webb, Member

VETERANS ENTITLEMENTS – defence caused disease – degree of incapacity – rate of pension determined at 100 percent of the general rate – claim for increase in rate of pension – intermediate rate – special rate – extreme disablement adjustment – applicable impairment and lifestyle rating thresholds – conjunctive criteria – ‘alone’ tests – application to narrow issues refused

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
LMRD and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3572
TVVT and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 4034

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Amodu v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4230	[2024] FCA 10
Hofman v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3740	[2024] FCA 17
Precious Family Day Care Pty Ltd v Secretary, Department of Education	[2023] AATA 99	[2024] FCA 20

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These took effect from 22 January 2024:

Heat-induced burn (Reasonable Hypothesis) – No. 1 of 2024

<https://www.legislation.gov.au/F2024L00030/asmade/text>

Heat-induced burn (Balance of Probabilities) – No. 2 of 2024

<https://www.legislation.gov.au/F2024L00031/asmade/text>

Chemical burn (Reasonable Hypothesis) – No. 3 of 2024

<https://www.legislation.gov.au/F2024L00032/asmade/text>

Radiation burn (Balance of Probabilities) – No. 6 of 2024

<https://www.legislation.gov.au/F2024L00037/asmade/text>

Malignant neoplasm of the testis and epididymis (Reasonable Hypothesis) – No. 7 of 2024

<https://www.legislation.gov.au/F2024L00038/asmade/text>

Malignant neoplasm of the testis and epididymis (Balance of Probabilities) – No. 8 of 2024

<https://www.legislation.gov.au/F2024L00050/asmade/text>

Hepatitis A infection (Reasonable Hypothesis) – No. 9 of 2024

<https://www.legislation.gov.au/F2024L00040/asmade/text>

Hepatitis A infection (Balance of Probabilities) – No. 10 of 2024

<https://www.legislation.gov.au/F2024L00041/asmade/text>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These took effect from 22 January 2024:

Electrical injury (Reasonable Hypothesis) – No. 13 of 2024

<https://www.legislation.gov.au/F2024L00044/asmade/text>

Electrical injury (Balance of Probabilities) – No. 14 of 2024

<https://www.legislation.gov.au/F2024L00047/asmade/text>

Cut, stab, abrasion and laceration (Balance of Probabilities) – No. 16 of 2024

<https://www.legislation.gov.au/F2024L00049/asmade/text>

Cut, stab, abrasion and laceration (Reasonable Hypothesis) – No. 15 of 2024

<https://www.legislation.gov.au/F2024L00048/asmade/text>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **was revoked** on 22 January 2024:

Malignant neoplasm of the testis and paratesticular tissues – No. 3 of 2015

<https://www.legislation.gov.au/F2014L01813/asmade/text>

Malignant neoplasm of the testis and paratesticular tissue – No. 4 of 2015

<https://www.legislation.gov.au/F2014L01815/asmade/text>

Hepatitis A – No. 64 of 2015

<https://www.legislation.gov.au/F2015L00648/asmade/text>

External burn (Reasonable Hypothesis) – No. 110 of 2015

<https://www.legislation.gov.au/F2015L01330/latest/text>

External burn (Balance of Probabilities) – No. 111 of 2015

<https://www.legislation.gov.au/F2015L01331/latest/text>



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