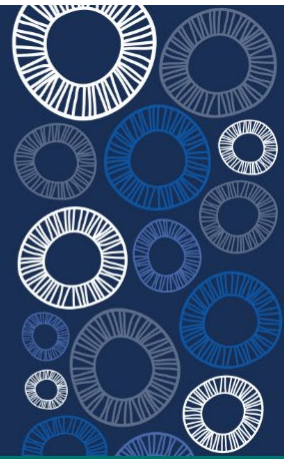




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 03/2024**

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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](mailto: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

[Barker and McCouch](#) (Child support) [2023] AATA 4008 (17 October 2023); K Dordevic, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond the children's eighteenth birthday – whether the children were in full-time secondary education on their eighteenth birthday – application should be accepted – decision under review set aside and substituted

[Ellsworth and Brooks](#) (Child support) [2023] AATA 4005 (17 October 2023); I Sheck, 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

[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

[Marchbank and Robson](#) (Child support) [2023] AATA 4296 (16 November 2023); Y Webb, Member

CHILD SUPPORT – departure determination – costs of education – manner expected by both parents – cost of maintaining the children are significantly affected – a ground for departure established – decision to depart – decision under review affirmed

[Provisor and Barwick](#) (Child support) [2023] AATA 4297 (9 November 2023); R Prasad, 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

[TZBP and Child Support Registrar](#) (Child support second review) [2024] AATA 108 (31 January 2024); L M Gallagher, Member

CHILD SUPPORT – percentage of care – whether there was a change in care – actual care – date of effect – evidence – decision under review set aside and substituted

## Citizenship

### [Aboubakar Kabamba and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 89 (31 January 2024); K Millar, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – whether applicant is of good character under section 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – applicant's criminal history considered – applicant's character references considered – recent convictions and repeated driving offences – decision under review affirmed

### [Cole and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 4488 (7 December 2023); A Poljak, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the applicant is a person of good character under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – where the applicant knowingly possessed/controlled a false foreign travel document – where the applicant has driving offences – consideration of relevant material, law and policy – decision under review affirmed

### [Getachew and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 4478 (4 September 2023); Dr L Kirk, Senior Member

CITIZENSHIP – application for Australian citizenship – whether Tribunal is satisfied the Applicant is of 'good character' for the purposes of section 21(2)(h) – violent offences – false information discovered in context of citizenship application – decision under review affirmed

### [NBCS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 4499 (1 November 2023); Dr L Kirk, Senior Member

CITIZENSHIP – application for citizenship by conferral – delegate not satisfied the Applicant was of good character – paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – CPI 15 – criminal offending – violent offending – enduring moral qualities – passage of time – decision under review set aside

### [PXY and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 81 (23 January 2024); A G Melick AO SC, Deputy President

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship by conferral – reporting obligations – personal circumstances – whether Applicant was aware of Court hearings – whether Tribunal considers Applicant was of good character – Citizenship Policy – decision under review set aside and remitted

### [Sabri and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 4490 (3 October 2023); Dr L Kirk, Senior Member

CITIZENSHIP – Application for citizenship by conferral – delegate not satisfied the Applicant was of good character – paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – CPI 15 – criminal offending – enduring moral qualities – passage of time – decision under review affirmed

[Verma and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 77 (29 January 2024); D O'Donovan, Senior Member

IMMIGRATION & CITIZENSHIP – cancellation of approval to become Australian citizen – Applicant's approval was cancelled under section 25 of the Australian Citizenship Act 2007 – whether Applicant is not of good character – decision under review affirmed

## **Compensation**

[Amidiong-Otyaluk and Australian Capital Territory](#) (Compensation) [2023] AATA 4498 (14 August 2023); Dr L Kirk, Senior Member

COMPENSATION – Australian Capital Territory – psychological injuries – decision made without hearing oral evidence or submissions from the Applicant – performance management actions – whether the Applicant suffered an ailment during her employment – whether the ailment significantly contributed by the Applicant's employment – decision under review affirmed

[Kallimanis and Linfox Australia Pty Ltd](#) (Compensation) [2023] AATA 4496 (19 December 2023); Dr L Kirk, Senior Member

COMPENSATION – whether liability should be accepted under section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – Applicant diagnosed with Adjustment Disorder – whether a consequence of the injury sustained to his left biceps during the work incident on 12 January 2017 and left biceps tendon surgery and recovery period -d whether an ailment – whether a disease – causation – whether ailments contributed to, to a significant degree, by employment – Second and Third Reviewable Decisions affirmed

[RVCQ and Comcare](#) (Compensation) [2024] AATA 88 (23 January 2024); A George, Senior Member

WORKERS COMPENSATION – Commonwealth employee – exposure to high levels of mould – employer accommodation – whether applicant's chronic inflammatory response syndrome is a recognised medical condition – whether applicant's employment significantly contributed to the applicant's claimed condition – decision under review affirmed

[Thurling and Comcare](#) (Compensation) [2023] AATA 4481 (3 July 2023); Dr L Kirk, Senior Member

WORKERS COMPENSATION – injuries to left and right knees – whether employee is entitled to compensation pursuant to section 14 of the SRC Act – whether the symptoms suffered were separate events – where the Applicant did not sustain an injury during the workplace incident – where knee replacement was not reasonably required in relation to the injury – decisions under review affirmed

## Corporations

[Budd and Australian Securities & Investments Commission](#) [2024] AATA 112 (30 January 2024); W Frost, Member

INTERLOCUTORY APPLICATION – Jurisdiction question – Australian Securities and Investments Commission – Corporations Act (2001) – reviewable decision – jurisdiction of the Tribunal – no jurisdiction to review – application dismissed pursuant to section 42A(4) of the AAT Act

## Freedom of Information

[Shafran; Secretary, Department of Veterans Affairs](#) and [2024] AATA 115 (5 February 2024); C. J. Furnell, Senior Member

FREEDOM OF INFORMATION – information sought in relation to an audit log identifying staff and contractors of the Applicant – partial access granted – family names and login details withheld as exempt matter – decision set aside by information commissioner – conditional exemptions – public interest – whether audit log conditionally exempt under s47E or s47F – whether disclosure contrary to the public interest – decision under review set aside and substituted

## Industrial Law

[Whitton and Secretary, Department of Employment and Workplace Relations](#) [2024] AATA 83 (30 January 2024); Dr M Evans-Bonner, Senior Member

FAIR ENTITLEMENTS GUARANTEE – entitlement to redundancy payment – claim for advance on redundancy payment – whether Applicant entitled to an advance under the Fair Entitlements Guarantee Act 2012 (Cth) for redundancy pay – whether Applicant made an effective claim – Applicant filed claim after the relevant time period – no discretion to extend time period – Reviewable Decision affirmed

## Migration

[Culas](#) (Migration) [2023] AATA 4059 (22 November 2023); M Ison, Senior Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – remaining relative of an Australian relative – Australian citizens or permanent residents or eligible New Zealand citizens – visa applicant's health issues – relatives outside Australia – request for Ministerial intervention – decision under review affirmed

[Davies and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 66 (25 January 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Absorbed Person 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. 99 – strong links to the Australian community decisive - decision under review is set aside

**Farcas and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2024] AATA 111 (25 February 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 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.

**FCFF and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2024] AATA 120 (6 February 2024); Dr L Kirk, Senior Member

MIGRATION – visa cancellation – mandatory cancellation under section 501(3A) of the Migration Act 1958 (Cth) – where the Applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Ministerial 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 – decision under review set aside

**GRQV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2023] AATA 4480 (27 July 2023); Dr L Kirk, 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. 99 – nature and seriousness of offending conduct – low risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – expectations of the Australian community – protection finding – non-refoulement obligations – impediments to removal – decision under review set aside and substituted

**HNGT and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2023] AATA 4493 (1 December 2023); Dr L Kirk, Senior Member

MIGRATION – visa cancellation – mandatory cancellation under section 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 following NZYQ – family violence offences – impediments to removal – non-refoulement obligations – reviewable decision affirmed

**JKWL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2023] AATA 4491 (29 September 2023); Dr L Kirk, Senior Member

MIGRATION – refusal to grant a Protection visa – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – where Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – multiple sexual offences – decision under review set aside and substituted

[Nadav](#) (Migration) [2023] AATA 4084 (27 November 2023); K McNamara, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – Medium-term stream – member of the family unit – dependent on the family head – catastrophic injuries due to an accident – medical evidence – incapacitated for work – decision under review remitted

[NJCT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 117 (2 February 2024); The Hon Justice Kyrou, President

MIGRATION – decision refusing to grant a class XA, subclass 866 Protection visa under s 65 of Migration Act 1958 – whether applicant, having been convicted of a particularly serious crime, is a danger to Australian community – applicant suffers from drug addiction and schizophrenia, characterised by command auditory hallucinations, gross thought disorder, delusional beliefs, disorganised behaviour and aggression when unwell – applicant is a danger to Australian community – decision affirmed

MIGRATION – decision refusing to grant a class XA, subclass 866 Protection visa – applicant in immigration detention at time of hearing – applicant released into community on a Bridging E, class WE, subclass 050 visa under s 195A of Migration Act 1958 after hearing concluded – parties permitted to make supplementary submissions – relevance of fact respondent decided to release applicant into community on a Bridging E, class WE, subclass 050 visa instead of a Bridging R, class WR, subclass 070 visa

MIGRATION – issue of danger to Australian community – extent to which principle that imprisonment is a last resort in sentencing assists in assessing seriousness of a person's offending

[Maka and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 106 (2 February 2024); R Reitano, Member

MIGRATION — visa cancellation – protection of the community – very serious criminal offending – harm to community – mid-range risk of reoffending – expectations of the Australian community – best interests of minor children – nature, duration and ties to community – significance of being in Australia during and since formative years – impediments if removed to New Zealand – decision set aside and substituted

[Muller and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 150 (23 January 2024); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed — extent of impediments if returned to New Zealand – Non-Revocation Decision is set aside and substituted with a decision that the cancellation of the visa is revoked



**Sharma** (Migration) [2023] AATA 4108 (30 November 2023); K Raif, Senior Member

MIGRATION – Bridging C (Class WC) visa – Subclass 030 (Bridging C) visa – criminal convictions – driving with high-range PCA, contravention of AVO and assault – fines, corrections orders and rehabilitation programs – discretion to cancel visa – application for partner visa made out of time with no jurisdiction to review – application for judicial review in progress – visa granted not in association with partner visa application, but with application for judicial review – length of residence, partner and two children – circumstances of offences – mandatory legal consequences – applicant will be able to remain in Australia until judicial review finalised in any case – possibility of lengthy detention – best interests of children – decision under review set aside

**SHEDID** (Migration) [2023] AATA 4109 (28 November 2023); J Owen, Deputy President

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – significant multiple health conditions and high dependency – first applicant daughter-in-law not a relative or sponsored as defined – second applicant son the primary carer – former representative’s advice about role of primary applicant – unintentional error – consistent and reliable evidence – departmental policy instructions – at least one member of family unit must satisfy primary criteria – applicants left professional employment in third country – decision under review remitted

**Thieu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2024] AATA 79 (18 January 2024); A Poljak, Senior Member

MIGRATION – mandatory cancellation of Five-Year Resident Return (BB-155) 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. 99 - decision under review is set aside and substituted

**Tushingham and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2024] AATA 94 (31 January 2024); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – Applicant is a citizen of United Kingdom – Direction 99 considered – Applicant had lived in Australia for 25 years – extensive criminal record – starting offending shortly after arrival – repeated violent offences – serious driving record – high risk of re-offending – Applicant already returned to the United Kingdom – 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

[TZYV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 93 (25 January 2024); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – whether applicant passes character test – where applicant sentenced to a 12 month Intensive Corrections Order – whether Intensive Corrections Order is a ‘term of imprisonment’ under the Migration Act – non-revocation of mandatory visa cancellation – Direction No.99 – protection of Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – extent of impediments if removed – domestic violence and drug offences – where applicant’s children in the care of his mother – where expert evidence suggests children would benefit from applicant’s presence – decision under review set aside

[Walter Design & Development Pty Ltd](#) (Migration) [2023] AATA 4112 (28 November 2023); R Skaros, Senior Member

MIGRATION – action in relation to standard business sponsorship – approval as sponsor cancelled for two years – failure to satisfy sponsorship obligations – equivalent terms and conditions – underpayment of worker – payroll system set up incorrectly using default setting – unpaid meal breaks – error corrected but worker not reimbursed – inconsistency in hourly rate – sponsored person working only in nominated occupation – electrical engineer sometimes working as construction supervisor because of COVID-related staff shortages – duties adjusted after department’s monitoring and notice – worker’s visa cancelled after sponsorship cancelled but set aside in separate review – adverse information will affect future applications – possibility that it would be reasonable to disregard such information – substituted shorter bar period now ceased – decision under review set aside

[Younes and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 4430 (21 December 2023); S Evans, Member

MIGRATION – Applicant citizen of Lebanon – visa mandatorily cancelled pursuant to section 501(3A) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record – Sexually touch another person without consent – T2 and Take etc person intend commit serious indictable offence-SI (Attempt) – review of decision to refuse to revoke mandatory cancellation under section 501CA(4) – where the applicant does not pass the character test – issue: is there a reason why the visa should not be refused on character grounds – Direction no. 99 considered – reviewable decision set aside and substituted

[ZJFQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 4492 (5 October 2023); Dr L Kirk, Senior Member

MIGRATION – mandatory cancellation of Applicant’s visa – Applicant has a substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – other considerations – legal consequences of the decision – extent of impediments if removed – decision under review set aside and substituted

## **National Disability Insurance Scheme**

[Duncan and National Disability Insurance Agency](#) [2024] AATA 121 (6 February 2024); P J Clauson AM, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – request for access – major depressive disorder – fibromyalgia/chronic pain syndrome – hypertension/chronic migraine – permanency criteria not met – functional capacity criteria not met – early intervention criteria not met – whether supports are most appropriately funded through the NDIS – decision under review affirmed

[Frost and National Disability Insurance Agency](#) [2024] AATA 114 (24 January 2024); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME DIVISION – Application to adjourn three consecutive days of substantive hearing – Listing Notice provided to Applicant 16 weeks prior to request – Direction made for parties to attend Hearing 16 weeks prior to request – Applicant booked a holiday three weeks after receiving Listing Notice and Direction – Where only one support remains in dispute – Responsible use of public resources – Application refused

[HVMQ and National Disability Insurance Agency](#) [2024] AATA 86 (29 January 2024); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – VACTERL Association – neurogenic bladder and bowel – unable to toilet independently – whether there is substantially reduced functional capacity – whether the provision of early intervention supports is likely to benefit the person – whether early intervention supports are most appropriately funded by the NDIS – decision under review set aside

[Krasnigi and National Disability Insurance Agency](#) [2024] AATA 87 (29 January 2024); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – CRPS – IBS – persistent depressive disorder with anxious distress – permanence – whether substantially reduced functional capacity – what a person can do may differ from what they actually do – Applicant limits activity to reduce pain – need to precisely identify the impairment attributable to a disability per NVRV and National Disability Insurance Agency [2023] AATA 1019 – treatments required are clinical – clinical treatment is not the responsibility of the NDIS – decision under review affirmed

[Last and National Disability Insurance Agency](#) [2024] AATA 122 (6 February 2024); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria under s 21 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) are met – “disability requirements” under s 24 – Applicant has disability arising from numerous physical, sensory, cognitive, and psychosocial impairments – bipolar affective disorder – post-traumatic stress disorder – anxiety – fibromyalgia – degenerative bilateral shoulder conditions requiring nine surgeries – lower back condition – chronic pain – methicillin-resistant Staphylococcus aureus (MRSA) infection – whether impairments are, or likely to be, permanent – whether impairments have resulted in substantially reduced functional capacity in any one of six prescribed activities under s 24(1)(c) of the NDIS Act – decision under review set aside and substituted with decision that Applicant meets access criteria under s 21 of the NDIS Act and access request granted

[Lavers and National Disability Insurance Agency](#) [2024] AATA 84 (25 January 2024); The Honourable P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether the Applicant meets disability requirements – whether the Applicant meets early intervention requirements – obsessive compulsive disorder - whether impairments substantially reduce functional capacity – social and economic participation – decision under review affirmed

[NRNK and National Disability Insurance Agency](#) [2024] AATA 110 (15 January 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – rheumatoid arthritis – whether there is substantially reduced functional capacity – whether modified activity due to pain is substantially reduced functional capacity – whether the Applicant is likely to require support under the NDIS for her lifetime if she has a My Aged Care package – whether early intervention requirements are met – decision affirmed

[QCQY and National Disability Insurance Agency](#) [2024] AATA 153 (8 February 2024); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – definition of reasonable and necessary – sexual therapy – whether sexual therapy is a reasonable and necessary support – schizophrenia symptom management – medical evidence of benefits of sexual therapy for psychological conditions – inadequate pharmacological treatment – decision affirmed

[Stewart and National Disability Insurance Agency](#) [2024] AATA 109 (15 January 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – impairments resulting from hearing loss and Meniere’s disease – whether there is substantially reduced functional capacity – decision set aside and substituted

[Uthenwoldt and National Disability Insurance Agency](#) [2024] AATA 148 (8 February 2024); The Honourable Pru Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – Specialist Disability Accommodation – single occupancy – shared accommodation – value for money – harm to the participant and risk to others – decision under review set aside and remitted with direction

## **Practice and Procedure**

[Gyory and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 67 (25 January); D J Morris, Senior Member

PRACTICE AND PROCEDURE – application by the Respondent for applications to be dismissed – submission from respondent that applications have no reasonable prospect of success – discretionary powers in s 42B of AAT Act – utility of applications – relief that is available to applicant – whether applications for Second Review being brought for collateral purpose – grievances with respondent’s department – applicant concedes First Review decisions were correct – applications dismissed as misconceived

PRACTICE AND PROCEDURE – Tribunal held hearing to consider application for dismissal – decision reserved – applicant requested stay of proceedings – reasons for stay request relate to issues not relevant to reviewable decisions or within jurisdiction of Tribunal – abuse of process of Tribunal - stay request refused as rendered nugatory by dismissal of application

[Kallimanis and Linfox Australia Pty Ltd](#) (Compensation) [2023] AATA 4496 (19 December 2023); Dr L Kirk, Senior Member

PRACTICE AND PROCEDURE – COMPENSATION – estoppel – claims previously made for compensation arising from employment – whether raising same substantive issues – relevance of principles of res judicata, estoppel, issue estoppel in proceedings of Tribunal – whether application frivolous or vexatious – power of Tribunal to limit evidence on matters canvassed in review of previous decisions and subject of extensive findings of fact – First Review Application dismissed

[LZPS and Child Support Registrar](#) (Child support second review) [2024] AATA 92 (31 January 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – extension of time – provisions in AAT Act regarding extending time not applicable in this case – applicant seeks review of First Review decision of Tribunal to affirm a decision not to extend time to make an application to the Social Services and Child Support Division of the Tribunal – party joined as her interests identified as being affected – is it reasonable in all the circumstances to extend time – relevant factors – Tribunal decides not to extend time

[QDKN and National Disability Insurance Agency](#) [2024] AATA 123 (6 February 2024); D Barker, Member

PRACTICE AND PROCEDURE – jurisdiction – National Disability Insurance Scheme – whether a decision is a reviewable decision – whether a support coordinator has standing to make an application – no internal review decision – application not reviewable – application under review dismissed

## Refugee

[1925235](#) (Refugee) [2023] AATA 4125 (11 August 2023); K Chapple, Member

REFUGEE – protection visa – Venezuela – political opinion – opposition to the government – anti-government protests – work for a security agency – repeated interrogations – fear of arbitrary detention and ill-treatment – fear of killing – passport renewals refused – bank accounts frozen – decision under review remitted

[2216655](#) (Refugee) [2023] AATA 4135 (24 August 2023); M McAdam, Member

REFUGEE – cancellation – protection visa – Iraq – Federal Circuit and Family Court remittal – incorrect information in the visa application – race – Bidoon – nationality – stateless – Iraqi citizenship – education – return visit to Iraq for marriage – non-refoulement obligations – best interests of the children – family medical needs – indefinite detention – decision under review set aside

[1831982](#) (Refugee) [2023] AATA 4101 (7 September 2023); M McAdam, Member

REFUGEE – protection visa – Ghana – particular social group – women and girls who have experienced past sexual assault – victim of child sexual abuse – raped by uncle as a child – community ostracism, discrimination and condemnation – impact on mental health – ‘serious harm’ – state protection – reasonableness of relocation – single mother in Ghana – children out of wedlock – serious financial hardship – child’s medical needs – Economic Community of West African States (ECOWAS) – decision under review remitted

[2213906](#) (Refugee) [2023] AATA 4164 (7 September 2023); A Murphy, Member

REFUGEE – protection visa – Burkina Faso – Federal Court remittal – political opinion – student activist – involvement in anti-government protest activities – Youth for Democracy Movement – credibility concerns – inconsistencies – mental health conditions – PTSD and co-morbid depression – language barrier – complementary protection – ‘significant harm’ – generalised violence – Sunni Muslim – criminal conviction in Australia – social media profile – failed asylum seeker – decision under review affirmed

[1906153](#) (Refugee) [2023] AATA 4097 (20 September 2023); D Dragovic, Senior Member

REFUGEE – protection visa – Iraq – young unmarried Kurdish Chaldean Christian woman – workplace harassment and petty crime, claimed to be targeted – physical and mental health – returned failed asylum seeker – support from family, education and employment, including managerial role – information about city and region given greater weight than that for whole country – generally stable and safe region, large Christian community and many returnees – decision under review affirmed

[2004066](#) (Refugee) [2023] AATA 4321 (20 September 2023); K Harvey, Senior Member

REFUGEE – protection visa – Kenya – encouraged people not to vote in the 2007 election – campaigned against political corruption – refused to vote for Kikuyu candidate – targeted in post-2007 election violence by fellow Kikuyu – claims of threats and attempt to kill applicant – third degree burns from attack – unable to relocate as his tribesmen cover a wide geographical area – health and mental health claims – Australian partner – new claims of sexual abuse – credibility issues – delay in protection application – changing, inconsistent and contradictory evidence – decision under review affirmed

## Social Security

[Breen and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 104 (31 January 2024); D O'Donovan, Senior Member

SOCIAL SECURITY – Age Pension – calculation of partnered rate – member of a couple – spouse qualified but failed to apply – claim of defective administration – section 24 discretion – decision affirmed

[Dimer and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 78 (29 January 2024); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – Family Tax Benefit (FTB) – whether a change in care occurred – dispute between Mother and Grandmother about whether there was a change of care for two children – finding that the children were the FTB children of the Grandmother – Reviewable Decision set aside and substituted

[Hulett and Secretary, Department of Social Services](#) (Social services second review) AATA 4501 (22 December 2023); Lee Benjamin, Member

SOCIAL SECURITY – Review of decision of Social Services and Child Support Division – where Applicant transferred proceeds of sale of property to his three children – where proceeds related to Applicant's deceased partner's share of family home - whether proceeds transferred as a gift or pursuant to a constructive trust – whether constructive trust exists at law – whether decision made to reduce Applicant's rate of age pension correct or preferable – decision set aside and substituted

[McDeniel and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 113 (24 January 2024); A Poljak, Senior Member

SOCIAL SECURITY – disability support pension (DSP) application – whether the applicant qualified for the DSP during the relevant qualification period – alcohol dependence – GORD and liver cirrhosis – anxiety – back pain – obesity – whether the applicant has a physical, mental or psychiatric impairment – whether the applicant's disabilities may be assigned a relevant impairment rating – whether the applicant has a continuing inability to work or is participating in a relevant program of support – applicant's conditions not able to be assigned impairment ratings – decision under review affirmed

[Nakamura and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4479 (29 August 2023); Dr L Kirk, Senior Member

FAMILY ASSISTANCE – family tax benefits – rent assistance – whether the decision to case payment of rent assistance was correct – whether the Applicant had been notified that rent assistance had ceased – whether there were special circumstances preventing the Applicant from making an application for review within 52 weeks of being notified of the original decision – decision under review affirmed

[Pham and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 107 (1 February 2024); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Riediger and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 118 (5 February 2024); A McLean Williams, Member

SOCIAL SECURITY – Applicant Newstart Allowance/Jobseeker Payment – Review of Decision of SSCSD - overpayment– debt due to the Commonwealth – whether debt attributable solely to administrative error by the Commonwealth – whether debt or part of debt would be waived or written off – whether special circumstances apply – decision under review affirmed

[Steffensen and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 119 (6 February 2024); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether reasonable treatment has been undertaken – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support has not been undertaken – whether applicant has a continuing inability to work – decision under review affirmed

## **Superannuation**

[Henley and Australian Securities and Investments Commission](#) [2024] AATA 82 (30 January 2024); G Lazanas, Senior Member

SUPERANNUATION – Self Managed Superannuation Fund (SMSF) – where applicant was disqualified from being an approved SMSF auditor – where false information was given by applicant about the auditor of the applicant’s own SMSF on two occasions – whether applicant a fit and proper person – specific and general deterrence - 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
<b>KVRK and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3978</a>
<b>Matangi and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3772</a>
<b>Verrill and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 4246</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>DBWG v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2020] AATA 4800</a>	<a href="#">[2024] FCAFC 3</a> <a href="#">[2022] FCA 570</a>
<b>QHRY v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 93</a>	<a href="#">[2024] FCA 33</a>
<b>SGTX v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2536</a>	<a href="#">[2024] FCA 27</a>



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