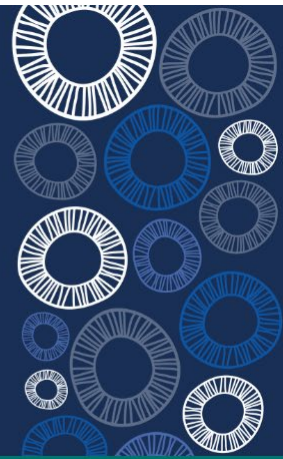




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 06/2024

25 March 2024

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

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

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

Enquiries regarding this publication may be directed to LPExtFeedback@aat.gov.au.

Contents

AAT Recent Decisions	3
Bankruptcy.....	3
Child Support	3
Citizenship.....	4
Compensation.....	4
Conflict of Laws	5
Freedom of Information	5
Migration	5
National Disability Insurance Scheme	8
Practice and Procedure.....	9
Refugee	11
Social Security.....	12
Superannuation	13
Taxation	13
Veterans' Affairs	15
Appeals.....	16
Appeals lodged	16
Appeals finalised	16
Statements of Principles	17
New Statements of Principles	17
Amended Statements of Principles	18
Statements of Principles to be revoked	18

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Bankruptcy

[Petrenko and Australian Financial Security Authority](#) [2024] AATA 448 (15 March 2024); Dr N A Manetta, Senior Member

BANKRUPTCY – application to be registered as a trustee in bankruptcy – committee found applicant did not have requisite capacity to act as registered trustee under the Bankruptcy Act 1966 (Cth) – applicant failed to pass oral examination – number of hours of 'relevant employment' – relatively few hours involving private bankruptcy work – Tribunal asked to administer further oral examination – applicant passed Tribunal examination – Tribunal not satisfied applicant has requisite capacity – observations on whether Tribunal should have been asked to administer oral examination – decision set aside and matter remitted for reconsideration

Child Support

[Andrews and Northmore](#) (Child support) [2024] AATA 372 (30 January 2024); J Bakas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – delay in written notice of objection decision to parties – s 95N subsequently not applicable - decision under review set aside and substituted

[McBeth and Gerard](#) (Child support) [2024] AATA 379 (12 January 2024); P Jensen, Member

CHILD SUPPORT – non-agency payment – liable parent made payments for school fees and school uniforms – made those payments prior to change in care but for school term which would commence after change in care – decision under review affirmed

[Smart and McCouch](#) (Child support) [2024] AATA 382 (6 February 2024); P Jensen, Member

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

[Watkins and Northmore](#) (Child support) [2024] AATA 385 (29 January 2024); S Trotter, Senior Member

CHILD SUPPORT – non-agency payments – liable parent's payment of school fees – multiple decisions under review affirmed or set aside and substituted

[Zeal and Freckleton](#) (Child support) [2024] AATA 386 (18 January 2024); H Moreland, Member

CHILD SUPPORT – determination to extend child support assessment past child's 18th birthday – where liable parent sought review on basis of financial hardship - no applicable exemption – decision under review affirmed

Citizenship

[Haevary and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024]
AATA 445 (15 March 2024); S Boyle, Deputy President

CITIZENSHIP – refusal of a delegate of the Minister to grant the Applicant’s application for conferral of Australian citizenship – delegate not satisfied of the Applicant’s identity – Applicant claims he is a citizen of Iran – conflicting primary documentation – Tribunal satisfied of the Applicant’s identity – prohibition under s 24(3) of the Citizenship Act does not apply – reviewable decision set aside

[Hussaini and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024]
AATA 428 (14 March 2024); S Boyle, Deputy President

CITIZENSHIP – refusal of a delegate of the Minister to grant the Applicant’s application for conferral of Australian citizenship – delegate not satisfied of the Applicant’s identity – delegate found that the Applicant was not of good character – Applicant claims he is a citizen of Afghanistan – conflicting primary documentation – Tribunal not satisfied of the Applicant’s identity – prohibition under s 24(3) of the Citizenship Act applies – reviewable decision affirmed

[Quilatan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024]
AATA 417 (8 March 2024); S Boyle, Deputy President

CITIZENSHIP – s 21(2)(g) of the Australian Citizenship Act 2007 – refusal to approve the Applicant becoming an Australian citizen – delegate not satisfied that first-named applicant is likely to reside, or continue to reside, in Australia or to maintain a close and continued association – second-named applicant (child under 16) applied for citizenship on same application – meaning of “likely to reside” – spouse of Australian citizen – property and bank accounts in Australia – no temporal limitation to a finding that an applicant is likely to reside in Australia – satisfied that applicant intends to reside in Australia – decision set aside and matter remitted with direction that first-named applicant satisfies s 21(2)(g) of the Act.

Compensation

[Hargraves and Military Rehabilitation and Compensation Commission](#) (Compensation) [2024]
AATA 442 (12 March 2024); A George, Senior Member

VETERANS – education and training scheme – whether applicant is an eligible young person – whether applicant entitled to education allowance at tertiary rate – decision under review affirmed

Conflict of Laws

[Little and The Council of the New South Wales Bar Association](#) [2024] AATA 497 (21 March 2024); P Britten-Jones, Deputy President and G Pearson, Chairperson of the New Zealand Trans-Tasman Occupations Tribunal

Trans-Tasman Mutual Recognition Act 1997 (Cth) (TTMRA) – applicant registered as a barrister in New Zealand as an employee with a requirement to be supervised - whether applicant is entitled to be registered as a barrister in New South Wales, Victoria, Western Australia and the Australian Capital Territory by operation of the Trans-Tasman Mutual Recognition Act – consideration of the Trans-Tasman mutual recognition principle – applicant no longer registered as a barrister in New Zealand – whether current registration in New Zealand is required for applicant to be entitled to registration in Australian jurisdictions – whether the occupation of an employed barrister in New Zealand is an equivalent occupation to that of a barrister registered in Australian jurisdictions – whether applicant entitled to be registered by default under s20(4) of the TTMRA – decisions under review are affirmed.

Freedom of Information

[Alcoa of Australia Ltd and Commissioner of Taxation](#) (Freedom of information) [2024] AATA 423 (9 February 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION - review of decision to refuse access to documents related to an audit by the Australian Taxation Office - respondent bears onus under s 61 – claim that documents are exempt under s 42 of the Freedom of Information Act 1982 because subject to legal professional privilege - whether privilege expressly or impliedly waived - claim that documents are exempt under s 38 of the Freedom of Information Act 1982 because secrecy provisions of enactments apply – whether there would be disclosure of protected information under s 355-25 of sch 1 to the Taxation Administration Act 1953 – consideration of exception under s 355-45 of sch 1 to the Taxation Administration Act 1953 because information is available to the public - further exemptions claimed under ss 47 and 47F - whether disclosure of certain documents would disclose trade secrets or information having commercial value that could reasonably be expected to be destroyed or diminished if disclosed - whether access would involve unreasonable disclosure of personal information - whether disclosure is in or contrary to the public interest - decision varied

Migration

[2308179](#) (Migration) [2024] AATA 26 (4 January 2024); M Bourke, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – identity requirements – relative of an Australian relative – death of parents – DNA results – legal concept of parentage – decision under review affirmed

[Ah-San and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 447 (6 February 2024); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where the Applicant does not pass the character test – where the applicant has a substantial criminal record - whether there is “another reason” why the decision to cancel the Applicant’s visa should be revoked – consideration of Ministerial Direction No. 99 – where Applicant’s offending included drug-related and weapons-related convictions - decision under review affirmed

[Blake and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 492 (2 February 2024); S Webb, Member

MIGRATION – mandatory visa cancellation – cancellation decision not revoked – Ministerial Direction No. 99 – failure to pass character test – revocation – primary and other relevant considerations – protection of Australian community – very serious conduct – family violence – risk of re-offending – rehabilitation – strength, nature and duration of ties to Australia – family and social links to Australia – Australian citizen adult children – time residing in Australia – positive contribution to Australian community – adverse impact – expectations of the Australian community – legal consequences of decision – impact on victims – balance of considerations – another reason – decision set aside and substituted

[CRNL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2024] AATA 458 (20 March 2024); T Tavoularis, Senior Member

MIGRATION – remittal- 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 the criminal offending predominantly involved illicit substance abuse and repeated family violence offending – where Applicant’s rehabilitation is unknown - Tribunal finding Applicant’s recidivist risk as unchanged - factors against revocation outweigh factors in favour of revocation- Tribunal finding there is no another reason to revoke the mandatory cancellation decision- decision under review affirmed

[Luckman and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 456 (24 January 2024); A McLean-Williams, Member

MIGRATION – Mandatory cancellation of visa – substantial criminal record – failure to pass character test - whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – Class TY Subclass 444 Special Category visa – citizen of New Zealand – protection of the Australian community – seriousness of offence – risk of reoffending – domestic violence – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of decision – extent of impediments if removed – decision affirmed

[Maharaj](#) (Migration) [2024] AATA 75 (9 January 2024); B Darcy, Member

MIGRATION – Contributory Parent (Migrant) (Class CA) visa – Subclass 143 (Contributory Parent) – health requirement – medical assessment for non-migrating spouse – applicant’s spouse deceased member of the family unit – decision under review remitted

[MTCQ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 491 (5 March 2024); 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 indecent treatment of a child – applicant mistreating granddaughter – frequency of offending – trend of increasing seriousness – impact of jail and threat of deportation significant despite lack of moral insight – applicant elderly with a number of health conditions – strong ties to Australia – impediments on removal weigh considerably in applicant’s favour – decision under review set aside

[Nauer and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 457 (20 March 2024); 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 armed robbery and assault – history of drug dependence – applicant reapplying for visa to facilitate visits to family in Australia – low risk of reoffending – strong familial and personal ties to Australia – Direction speaks strongly against violent offending – decision under review affirmed

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 418 (8 March 2024); B J Illingworth, Senior Member

MIGRATION – Remittal from Federal Court of Australian on finding of jurisdictional error – Application for a Permanent Residence (Spouse Visa) (Class 801) visa Combined Partner (Class UK/BS) visa – Ministerial Direction No 90 - Ministerial Direction No 99 – Primary Considerations – Other Considerations - ss 499, 501(1), (6), 501CA Migration Act 1958 (Cth) - Reviewable decision set aside and remitted to the Respondent

[Pirhaghshenasvali](#) (Migration) [2024] AATA 74 (18 January 2024); P Windsor, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – applicant’s migration history – previous compliant family visits – balance of family in home country – studies and family business in Iran – political and economic situation in Iran – decision under review remitted

[Saunders and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 419 (6 March 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 – family violence – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if returned to Canada – legal consequences – Non-Revocation Decision is set aside and substituted

[Statham](#) (Migration) [2024] AATA 40 (8 January 2024); J Lambie, Senior Member

MIGRATION – cancellation – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – incorrect information in the visa application – de facto relationship with a further person – travel exemption request indicating another partner – incomplete particulars in cancellation notice – claim of fabricated second relationship history – mental health issues – power to cancel the visa does not arise – decision under review set aside

[Wei \(Migration\)](#) [2023] AATA 4396 (18 December 2023); A McMurrin, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – incorrect answers and bogus document given with visa application – employment history and certificate/reference – integrity check conducted after visa granted – brief, undetailed phone call – no references signed by HR/general manager at that time – later detailed written explanations – size of workforce and limited contact with employees – overwhelmed by closure and investigation calls – certificates signed and sealed before company closed – records retained for only two years – consistent and credible evidence – skills assessment, work performance and character references – members of family unit – consequential cancellation with no jurisdiction to review – decision under review set aside

National Disability Insurance Scheme

[Campbell and National Disability Insurance Agency](#) [2024] AATA 410 (12 March 2024); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Application for Review of Decision – Access to Scheme – Applicant not having met the disability and early intervention requirements of the Act – Decision Under Review Affirmed

[Cooper and National Disability Insurance Agency](#) [2024] AATA 420 (12 March 2024); M Mischin, Deputy President

NATIONAL DISABILITY INSURANCE AGENCY – access to scheme – disability requirements – Obesity – sleep apnoea – vertigo and dizziness – ovarian cysts and endometriosis – past diagnosis of Burkitt's Lymphoma – lumbar back pain – whether the Applicant meets the disability requirements in section 24 or the early intervention requirements in section 25 of the National Disability Insurance Scheme Act 2013 (Cth) – whether conditions/impairments are permanent – whether the applicant's impairments result in substantially reduced functional capacity to undertake one or more activities listed in section 24(1)(c) – decision under review affirmed

[Garcia Albiol and National Disability Insurance Agency](#) [2024] AATA 496 (21 March 2024); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access - chronic fatigue syndrome - myalgic encephalomyelitis - whether applicant meets disability requirements – NDIS Act s24(1)(c) - whether impairments substantially reduce functional capacity – s24(1)(e) - whether NDIS required for lifetime – whether supports most appropriately funded through NDIS - Queensland Community Support Scheme – decision under review affirmed

[KGCW and National Disability Insurance Agency](#) [2024] AATA 431 (15 March 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant has a mobility impairment - reasonable and necessary supports – duration of plan – whether transport funding to transport participant children should be included in the Applicant's plan or the children's own plans – whether the Tribunal has jurisdiction to order the Respondent to reimburse or backpay the Applicant for past transport costs – decision remitted for reconsideration

[KGWD and National Disability Insurance Agency](#) [2024] AATA 430 (15 March 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant has autism spectrum disorder (Level 2), a severe intellectual disability, joint hypermobility syndrome, persistent vocal tic disorder and Attention Deficit Hyperactivity Disorder (ADHD) - reasonable and necessary supports – whether transport support should be included in the Applicant’s plan or in his mother’s plan – whether the Tribunal has jurisdiction to order the Respondent to reimburse or backpay the Applicant for past transport supports – decision remitted for reconsideration

[MVGS and National Disability Insurance Agency](#) [2024] AATA 433 (15 March 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant has autism spectrum disorder (Level 2), hypermobility spectrum disorder, and attention deficit hyperactivity disorder - reasonable and necessary supports – whether transport support should be included in the Applicant’s plan or in her mother’s plan – whether the Tribunal has jurisdiction to order the Respondent to reimburse or backpay the Applicant for past transport supports – decision remitted for reconsideration

[SMYG and National Disability Insurance Agency](#) [2024] AATA 432 (15 March 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Applicant has autism spectrum disorder (Level 2), development coordination disorder, social anxiety disorder, hypermobility spectrum disorder, intellectual disability, and weight over the healthy range - reasonable and necessary supports – whether the Tribunal has jurisdiction to order the Respondent to reimburse or backpay the Applicant for past transport supports – decision remitted for reconsideration

[Sutherland and National Disability Insurance Agency](#) [2024] AATA 411 (23 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 24 – Applicant has disability arising from various physical and psychosocial impairments – spinal stenosis and degenerative disc disease – chronic obstructive airways disease (COAD) – hypothyroidism – ischaemic heart disease – ulcerative colitis – chronic pain – whether any one or more impairments are, or likely to be, permanent – whether any one or more impairments have resulted in substantially reduced functional capacity in any one or more of the six prescribed activities – decision under review set aside and substituted with decision that Applicant meets access criteria under s 21 of the NDIS Act

Practice and Procedure

[Binnie and Comcare](#) (Compensation) [2024] AATA 493 (21 March 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE- interlocutory application for release of implied undertaking concerning documents produced under summons process-whether release of such documents sought for collateral and ulterior purposes-whether special circumstances warrant a release of the documents-Tribunal finding release of implied undertaking is warranted-application allowed

[Brindabella Christian Education Limited and Minister for Education](#) [2024] AATA 421 (13 March 2024); D O'Donovan, Senior Member

PRACTICE AND PROCEDURE - application for release from the implied undertaking - - consideration of applicable principles – where the applicant is afforded protection from civil, criminal and administrative liability by another relevant Act - release given in relation to disclosure to the National Anti-Corruption Commission

[Canning and National Disability Insurance Agency](#) [2024] AATA 429 (13 March 2024); L Proske, Member

PRACTICE AND PROCEDURE – applicant failed to appear at directions hearing – appropriate notice given to the applicant as required by s 42(A)(7) of the AAT Act – application for review dismissed pursuant to s 42A(2) of the AAT Act

[Hanel and Comcare](#) (Compensation) [2024] AATA 495 (12 February 2024); B J Illingworth, Senior Member

WORKERS' COMPENSATION – Dismissal under s 42B(1)(a) of the Administrative Appeals Tribunal Act 1975 – Frivolous, vexatious, misconceived or lacking substance - Reconsideration of own motion - Application for compensation pursuant to sections 14 and 16 of the Safety, Rehabilitation and Compensation Act 1988 – Application is dismissed

[O'Hara and Comcare](#) (Compensation) [2024] AATA 422 (13 March 2024); S Webb, Member

WORKERS' COMPENSATION – compensation for injury – review of past rehabilitation program – utility – purchase of electronic application subscriptions – claim for reimbursement of costs – insufficient evidence to include application subscriptions in rehabilitation program – application dismissed

[Obaid and Commissioner of Taxation](#) (Taxation) [2024] AATA 444 (15 March 2024); B J McCabe, Deputy President

ADMINISTRATIVE LAW — Consideration of modification of s 37 Administrative Appeals Tribunal Act 1975 (Cth) by s 14ZZK Tax Administration Act 1953 (Cth) — The discretionary and mandatory powers of s 37 — Summons — Whether summons has the possibility of relevance — Appeals Tribunal to refuses the applicant's application for orders

[Pratten and Commissioner of Taxation](#) (Taxation) [2024] AATA 439 (12 March 2024); G Lazanas, Senior Member

PRACTICE AND PROCEDURE – where applicant has applied for the issue of a summons to the respondent to produce documents – where documents not in the respondent's possession or control – whether the Tribunal can compel the respondent to procure documents from another government agency in order to produce documents under summons – where applicant previously applied for relevantly identical summons to be issued to respondent and to the other government agency – application for issue of summons to the respondent refused

[Stonebridge and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 412 (13 March 2024); D Mitchell, Member

PRACTICE AND PROCEDURE – JURISDICTION of the Tribunal – whether the General division has jurisdiction to review a decision made by the Social Services and Child Support Division to dismiss an application for no reasonable prospects of success pursuant to section 42B(1) of the Administrative Appeals Tribunal Act 1975 (Cth) – request for review of decision to refuse a claim for the disability support pension not made within 13 weeks – no reviewable decision – no jurisdiction – application dismissed

PRACTICE AND PROCEDURE – EXTENSION OF TIME - application for review of decision filed out of time – application for extension of time considered – extension of time refused

Refugee

[1717041](#) (Refugee) [2023] AATA 4386 (29 September 2023); D Creedon, Member

REFUGEE – Protection Visa – Fiji – political opinion – supporter of the Social Democratic Liberal Party – particular social group – person with access to confidential, information regarding key infrastructure – victim of violence and intimidation by Fiji military – unique nature of applicant's job – credible witness – documented cases of abduction, abuse, and torture by the Fijian military – decision under review remitted

[1826114](#) (Refugee) [2023] AATA 4482 (19 October 2023); K Chapple, Member

REFUGEE – protection visa – Solomon Islands – homosexuality/bisexuality – former wife and children in Solomon Islands – currently in a relationship with a woman in Australia – credibility concerns – vague, evasive and inconsistent evidence – delay in seeking protection – decision under review affirmed

[2005555](#) (Refugee) [2023] AATA 4412 (27 September 2023); M Bishop, Senior Member

REFUGEE – protection visa – Pakistan – Swat region – political opinion – member of local Village Defence Committee (VDC) – Awami National Party (ANP) – opposition to the Taliban – active in providing assistance to the Pakistani army – responsible for the death of a local Taliban commander – received direct threats from the Taliban – particular social group – known activists against the Taliban – secular residents of Swat Valley – a returnee from a western country – state protection – internal relocation – Pashtun ethnicity – decision under review remitted

[2008303](#) (Refugee) [2023] AATA 4416 (11 October 2023); L Hardy, Member

REFUGEE – Protection Visa – Colombia – Federal Circuit Court remittal – fear of children being kidnapped for ransom – Colombians in professional careers or returning from long periods abroad perceived as wealthy – pressured to join or assist criminal gang – Revolutionary Armed Forces of Colombia (FARC) – delay in applying for protection – inconsistent evidence – credibility concerns – decision under review affirmed

[2011064](#) (Refugee) [2023] AATA 4422 (23 October 2023); N Burns, Member

REFUGEE – protection visa – Myanmar – race – Chin – religion – Christian pastor – political opinion – suspected Chin National Army supporter – particular social group – failed asylum seeker – detention – air strikes – Civil Disobedience Movement – attacks on churches – financial support for armed groups in Chin state – decision under review remitted

[2102079](#) (Refugee) [2023] AATA 4439 (13 October 2023); A Duffield, Senior Member

REFUGEE – protection visa – Venezuela – political opinion – membership of the Popular Will (Voluntad Popular) Party – anti-Chauvist activity – opposition to Chavist ideology – forced acquisition of apartments – harassed by colectivos – questioned at the airport – credibility concerns – evidence evasive and lacking in relevant detail – delay in seeking protection – Carnet de la patria – current situation in Venezuela – decision under review affirmed

[2207295](#) (Refugee) [2023] AATA 4377 (4 October 2023); J Lambie, Senior Member

REFUGEE – cancellation – protection visa – Iran – risk to the health or safety of individuals – applicant charged with serious criminal offences – domestic violence – partner requested most charges be dropped – best interests of the children would be served, rather than hindered, by cancellation – indefinite detention – decision under review affirmed

Social Security

[Bryars and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 414 (6 March 2024); A Poljak, Senior Member

SOCIAL SERVICES – Age Pension – Assets test – Combined assets exceeding the allowable assets limit – Whether there existed a constructive trust - Whether a sole controller of the Trust - Disposal of assets – Decision under review affirmed.

[Heimdall and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 413 (6 March 2024); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension (DSP) application – whether the applicant qualified for the DSP during the relevant qualification period – right knee arthritis – adjustment disorder with mixed depressed and anxious mood/mental health conditions – Hearing loss – 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 – whether he has participating in a relevant program of support – decision under review affirmed.

[Hodge and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA (13 March 2024); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – pensions, allowances and benefits – disability support pension – whether the Applicant met the eligibility requirements for disability support pension – qualification period – assigning impairment ratings – whether the Applicant suffers from a permanent impairment that attracts 20 points or more under the Impairment Tables – whether Applicant suffers from a severe impairment – whether continuing inability to work – Reviewable Decision set aside and substituted

[Hofer and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 450 (15 March 2024); S Evans, Member

SOCIAL SECURITY — Newstart allowance – Disability support pension - Overpayments and debt recovery — income and assets not declared — Funds from subleasing property – Failure to provide adequate or persuasive explanation for deposits - Whether debt recoverable – Whether debt should be waived — Decision set aside and substituted

[Kamal and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 452 (19 March 2024); A Nikolic AM CSC, 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 – decision under review affirmed

[Price and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 494 (21 March 2024); A Nikolic AM CSC, Senior Member

SOCIAL SECURITY – Newstart Allowance / Jobseeker Payment – whether income needed to be reported to Centrelink – Applicants failed to report change in circumstances within requisite time – Applicants were overpaid benefits – debts due to Commonwealth – whether debts can be written off or waived – no reason to write off debts – no sole administrative error by Commonwealth – no special circumstances – decision under review affirmed

[Thorpe and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 446 (14 March 2024); B Pola, Senior Member

SOCIAL SECURITY – where applicant was recipient of age pension entitlements – where applicant had sources of income including employment and wife's self-employment income – whether the applicant was overpaid the age pension – respondent calculation for parts of income not completed with use of payslips as best available information – applicant had under-reported income and was overpaid age pension – where overpayments constitute a debt to the Commonwealth – whether debt recoverable in part or in full – where there are no special circumstances or sole administrative error in the present case – decision set aside and remitted to respondent

[VRSX and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 451 (18 March 2024); A E Burke AO, Member

SOCIAL SECURITY – Jobseeker Payment – refusal of benefits – failure to provide requested information – complex asset test assessment – whether qualified – whether reasonable excuse for not providing information – decision under review affirmed

Superannuation

[Delbake Pty Ltd and Commissioner of Taxation](#) [2024] AATA 449 (18 March 2024); R Reitano, Member

SUPERANNUATION GUARANTEE CHARGES — superannuation guarantee shortfall — shortfall period – penalty – limit on remission — failure to lodge superannuation guarantee statements – failure to provide particular information - exceptional circumstances that prevented the employer from disclosing information— impact of the pandemic – illness of advisor – previous audit – decision partially set aside and remitted for reconsideration – decision partially affirmed

Taxation

[Collie and Commissioner of Taxation](#) (Taxation) [2024] AATA 440 (12 March 2024); F D O'Loughlin KC, Deputy President

Income Tax (Cth) — Scheme to reduce tax — identification and calculation of tax benefit — Dominant purpose — Penalty — decisions under review set aside and remitted

[GHTZ and Commissioner of Taxation](#) (Taxation) [2024] AATA 453 (14 March 2024); B W Rayment OAM KC, Deputy President

TAXATION – LUXURY CAR TAX – whether Applicant entitled to decreasing luxury car tax adjustments – whether refusal to accept a quote is contrary to the statute – whether Applicant was acting as agent for an undisclosed principle – whether Applicant acted as trustee for other entities – whether transactions were shams – whether s 15-30 of the A New Tax System (Luxury Car Tax) Act 1999 should be construed in the light of its heading and other context – whether Division 165 of A New Tax System (Goods and Services Tax) Act 1999 applies

[GQHC and Commissioner of Taxation](#) (Taxation) [2024] AATA 409 (16 February 2024); D K Grigg, Senior Member

TAX – R&D Tax Incentive – where Commissioner determined applicant had not engaged in core research and development activities – where no findings made by Innovation and Science Australia – jurisdiction of Tribunal – whether activities undertaken by GQHC are eligible research and development activities under the Industry Research and Development Act 1986 (Cth) and Income Tax Assessment Act 1997 (Cth) – whether claimed activities were “experimental” activities – meaning of “hypothesis” – request to adduce late evidence – whether feedstock adjustment under section 355-465 applicable – decision under review affirmed

[Grant and Commissioner of Taxation](#) (Taxation) [2024] AATA 427 (12 March 2024); F D O’Loughlin KC, Deputy President

Income Tax (Cth) — Whether ordinary income or trust income, Scheme to reduce tax — Tax benefit — Dominant purpose — Change in basis of assessment, Procedural fairness — Income Tax Assessment Act 1936 (Cth) Part IVA, ss 25(1), 97 51(1), 177A(1) 177D, 177F — Income Tax Assessment Act 1997 (Cth), s 6-5 — decisions under review set aside and remitted

[Huang and Commissioner of Taxation](#) [2024] AATA 397 (8 March 2024); S Boyle, Deputy President

TAXATION – applications for review of objection decisions – whether income tax assessments issued under s 167 of ITAA 1936 and penalties were excessive or otherwise incorrect – applicant failed to discharge onus of proof pursuant to s 14ZZK of TAA 1953 in respect of the income tax assessments – applicant failure to keep adequate records s 262A of ITAA 1936 – objection to penalty assessments – whether penalties issued pursuant to ss 284-75 of TAA 1936 were incorrect or excessive or should not have been made or been made differently – consideration of whether penalty objection decision comes within s 14ZZK(b)(i) or (ii) – shortfall amount not “as a result of” actions identified by Commissioner as being reckless – objections to penalties allowed – objection decisions varied to allow the Applicant’s objection to the shortfall penalties

Veterans' Affairs

[Lombardini and Repatriation Commission](#) (Veterans' entitlements) [2024] AATA 416 (13 March 2024); Dr M Evans-Bonner, Senior Member

VETERANS' ENTITLEMENTS – claim for increase in disability pension from the general rate to the special rate – when the Applicant ceased work – whether war-caused or other factors contributed to the Applicant not being able to engage in remunerative work during the assessment period – “alone” test in s 24(1)(c) of the Veterans' Entitlements Act 1986 (Cth) applied – Applicant found to be eligible for the special rate of pension – Reviewable Decision set aside and substituted

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
Ah-San and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 447
Alcoa of Australia Ltd and Commissioner of Taxation	[2024] AATA 423
Kabamba and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 89
PLCP and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 198
Rauhina and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 34

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Aged Care Quality and Safety Commissioner v Double Bay Aged Care Pty Ltd & Anor	[2023] AATA 2673	[2024] FCA 242
Comcare v Simeoni	[2022] AATA 2856	[2024] FCAFC 31
Ibrahim v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2021] AATA 3637	[2024] HCASL 45 [2023] FCAFC 173 [2022] FCA 450
JZQQ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2022] AATA 2998	[2024] HCASL 42 [2023] FCAFC 168
Prosegur Australia Pty Ltd v Higginson	[2023] AATA 115	[2024] FCA 203
RDYQ v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2738	[2024] FCA 254

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 take effect from 26 March 2024:

Hallux valgus (Reasonable Hypothesis) – No. 25 of 2024

<https://www.legislation.gov.au/F2024L00221/asmade/text>

Hallux valgus (Balance of Probabilities) – No. 26 of 2024

<https://www.legislation.gov.au/F2024L00223/asmade/text>

Myocarditis (Reasonable Hypothesis) – No. 17 of 2024

<https://www.legislation.gov.au/F2024L00213/asmade/text>

Myocarditis (Balance of Probabilities) – No. 18 of 2024

<https://www.legislation.gov.au/F2024L00215/asmade/text>

Osteomyelitis (Reasonable Hypothesis) – No. 23 of 2024

<https://www.legislation.gov.au/F2024L00219/asmade/text>

Osteomyelitis (Balance of Probabilities) – No 24 of 2024

<https://www.legislation.gov.au/F2024L00220/asmade/text>

Seborrhoeic keratosis (Reasonable Hypothesis) – No. 19 of 2024

<https://www.legislation.gov.au/F2024L00214/asmade/text>

Seborrhoeic keratosis (Balance of Probabilities) – No. 20 of 2024

<https://www.legislation.gov.au/F2024L00216/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 take effect from 26 March 2024:

Cervical intervertebral disc prolapse (Balance of Probabilities) – No. 30 of 2024

<https://www.legislation.gov.au/F2024L00227/asmade/text>

Cervical intervertebral disc prolapse (Reasonable Hypothesis) – No. 29 of 2024

<https://www.legislation.gov.au/F2024L00226/asmade/text>

Depressive disorder (Balance of Probabilities) – No. 28 of 2024

<https://www.legislation.gov.au/F2024L00225/asmade/text>

Factors relating to being in Vietnam (Reasonable Hypothesis) – No. 27 of 2024

<https://www.legislation.gov.au/F2024L00224/asmade/text>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on 26 March 2024:

Hallux valgus (Reasonable Hypothesis) – No. 98 of 2015

<https://www.legislation.gov.au/F2015L01334/asmade/text>

Hallux valgus (Balance of Probabilities) – No. 99 of 2015

<https://www.legislation.gov.au/F2015L01335/asmade/text>

Horseshoe kidney – No. 31 of 2015

<https://www.legislation.gov.au/F2014L01844/asmade/text>

Horseshoe kidney – No. 32 of 2015

<https://www.legislation.gov.au/F2014L01845/asmade/text>

Osteomyelitis No. 90 of 2014

<https://www.legislation.gov.au/F2014L01380/latest/text>

Osteomyelitis – No. 91 of 2014

<https://www.legislation.gov.au/F2014L01381/latest/text>

Seborrhoeic keratosis – No. 55 of 2015

<https://www.legislation.gov.au/F2015L00250/asmade/text>

Seborrhoeic keratosis – No. 56 of 2015

<https://www.legislation.gov.au/F2015L00251/asmade/text>



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

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

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

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).