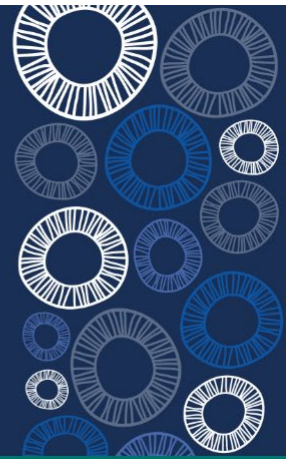




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 08/2024**

**22 April 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.

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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

[Derrick and Derrick](#) (Child support) [2024] AATA 369 (15 January 2024); J Bakas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – late objection under s 87AA – decision under review varied

[George and Wheatley](#) (Child support) [2024] AATA 375 (5 January 2024); 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 determination made – date determined as when written notice given to party – decision under review set aside and substituted

[Heaney and Heaney](#) (Child support) [2024] AATA 370 (8 January 2024); J Longo, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – decision under review set aside and substituted

[Lowe and Tait](#) (Child support) [2024] AATA 377 (1 February 2024); I Sheck, Member

CHILD SUPPORT – percentage of care – whether there was a change to the care arrangements – when liable parent taken to have notified Child Support – decision under review set aside and substituted

[Thaxter and Cawley](#) (Child support) [2023] AATA 4662 (31 August 2023); S Letch, Member

CHILD SUPPORT – departure determination – whether just and equitable to depart – on basis of liable parent's income – decision under review set aside and substituted

## Citizenship

[Bashiryan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 622 (12 March 2024); Dr L Kirk, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the Applicant is a person of good character – meaning of good character – enduring moral qualities – criminal history – migration history – Tribunal satisfied as to good character of Applicant – reviewable decision set aside

## Corporations

### [Duncan and A committee convened under section 40-45 of the Insolvency Practice Schedule](#)

(Corporations) [2024] AATA 609 (4 April 2024); B J McCabe, Deputy President

CORPORATIONS LAW – review of decision to cancel a liquidator’s registration – whether the applicant meets the requirements prescribed by the Insolvency Practice Schedule and Rules – decision under review set aside

## Freedom of Information

### [XJGB and Australian Information Commissioner](#) (Freedom of Information) [2024] AATA 763 (17

April 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION - review of decision to refuse access to a document - document exempt under sections 45 and 47(1)(b) of the Freedom of Information Act 1982 - decision under review affirmed

## Health

### [Blair Athol Medical Clinic Service Trust and Minister for Health and Aged Care](#) [2024] AATA

776 (9 April 2024); B J Illingworth, Senior Member

HEALTH AND AGED CARE – should the Applicants as overseas trained doctors be granted exemptions from s 19AB(1) of the Health Insurance Act 1973 (Cth) to access the Medicare Benefits Schedule, which were previously refused by the Respondent - Distribution Priority Area (DPA) - District of Workforce Shortage (DWS) – inner metropolitan – outer metropolitan – General Practice – application for review affirmed – applications for review set aside

## Migration

### [ARPONSIRI](#) (Migration) [2024] AATA 226 (5 February 2024); N Dougall, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – cook – English language proficiency – competent English – requirement that test undertaken in 36 months before application made – no test undertaken – exemption for completing five years of secondary or higher study in English – ‘higher education’ – ‘institution’ – ‘provider’ – study partly before and partly after national registration body established – history of state and national registration – decision under review remitted

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

(Migration) [2024] AATA 757 (16 April 2024); B W Rayment OAM KC, Deputy President

Migration – refusal to revoke mandatory cancellation – Applicant fled Iraq as refugee – multiple counts of family violence offences – ties to Australian community – consideration of minor children – decision under review set aside and substituted

[Atuaki and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 625 (9 April 2024); W Frost, Member

MIGRATION – Cancellation of Applicant’s Class GD Subclass 403 Temporary Work (International Relations) visa – mandatory cancellation of visa under s501(3A) Migration Act – whether Applicant passes the character test – substantial criminal record – consideration of Ministerial Direction 99 – whether ‘another reason’ why decision should be revoked under s501CA(4) – decision under review affirmed

[Cowgill and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 729 (11 April 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 – Applicant is a 47 year old man who arrived in Australia as a 11 month old infant – extent of impediments if returned to New Zealand – Non-Revocation Decision is affirmed

[Deng and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 738 (28 March 2024); D O’Donovan, Senior Member

MIGRATION – non-revocation of mandatory cancellation of visa – where visa was cancelled under s 501(3A) because applicant did not pass the character test – substantial criminal record under s 501(7) – whether power in s 501CA to revoke mandatory visa cancellation should be exercised – considerations in Direction No 99 – the protection and expectations of Australian community – risk of re-offending – family violence – minor children – strength, nature and duration of ties – legal consequences of the decision – impediments if removed – impact on victim – decision under review affirmed

[Dobrosavljevic and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 775 (18 April 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 - Applicant is a 63 year old man who arrived in Australia as a 12 year old – extent of impediments if returned to Serbia – Non revocation decision is set aside and substituted

[Fazli](#) (Migration) [2024] AATA 251 (1 February 2024); P Windsor, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – Sponsored Family stream – genuine temporary entrant – intention to comply with visa conditions – No Further Stay condition – minor child applicant – mother’s proposed travel during the later stage of pregnancy – legal guardianship of visa applicant given to aunt – decision under review affirmed

[Freestall](#) (Migration) [2024] AATA 213 (8 February 2024); J Owen, Deputy President

MIGRATION – Special Eligibility (Class CB) visa – Subclass 151 (Former Resident) – holder of a substantive visa – long resident applicant or a defence service applicant – lengthy period of unlawful residence – successful businesses – age requirements – referral for Ministerial Intervention – compassionate circumstances – no family in Great Britain - contribution to the community – decision under review affirmed

[GCRM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 736 (15 March 2024); N A Manetta, 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 the visa has been previously mandatorily cancelled – where Applicant has reoffended after being released into the community – Tribunal finding the Applicant’s recidivist risk is mitigated by his ongoing rehabilitation – Tribunal finding circumstances surrounding the Applicant’s minor child strongly favour revocation – Tribunal finding that factors in favour of revocation outweigh factors against revocation and that there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[Kami](#) (Migration) [2024] AATA 177 (29 January 2024); C Cartwright, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – holder of a substantive visa at date of application – compelling reasons to waive Schedule 3 criteria – period of unlawful residence – parties married for six years – applicant’s NDIS provider business – decision under review remitted

[KZHP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 631 (28 March 2024); D J Morris, Senior Member

MIGRATION – mandatory cancellation of a global humanitarian visa – applicant likely to be citizen of Republic of South Sudan – visa cancelled mandatorily as delegate satisfied of substantial criminal record – applicant invited to make representations – delegate of Minister refuses to revoke mandatory cancellation – review by Tribunal – substantial criminal record conceded by applicant – is there another reason to revoke visa cancellation – application of ministerial direction – primary considerations – other considerations – serious offending – all but two of applicant’s offences committed as a minor – this fact and impediments he would face if removed to South Sudan determinative that there is another reason to revoke mandatory cancellation of visa – decision under review set aside and new decision substituted

[Lee](#) (Migration) [2024] AATA 178 (2 February 2024); R Skaros, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – incorrect information and bogus document provided with previous visa application – English language test – forensic examination of photos provided with application and test – photo provided with test matches another identity – discretion to cancel visa – non-compliance admitted – course of action suggested by agent and applicant paid additional fee – knowing participation – no attempt to notify department – length of residence – visa, study and work history – church, social and community activities – supporting statements – consequential cancellation of partner and child’s visas – applicant and partner from different countries – no current right to reside permanently in each other’s country, and political and language difficulties – best interests of child – decision under review set aside

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

(Migration) [2023] AATA 4771 (20 December 2023); 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

[Long and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]

AATA 726 (12 April 2024); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include attempt to possess prohibited drugs with intent to sell or supply, possession of stolen or unlawfully obtained property, dishonesty offences, multiple driving and traffic offences, drug offences – Applicant is a 61-year-old citizen of the United Kingdom who arrived in Australia as an 18-year-old – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – strength, nature and duration of ties to Australia – best interests of minor grandchildren – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to the United Kingdom – impact on victims – Reviewable Decision set aside and substituted

[Nadeem and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]

AATA 774 (17 April 2024); R Maguire, Member

MIGRATION – non revocation of a mandatory cancellation of 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 criminal offending involved multiple breaches of protection orders and commission of family violence against multiple victims – where Tribunal finding the Applicant’s recidivist risk remains unchanged- where Tribunal finding that factors in favour of revocation outweighed by factors against revocation- Tribunal finding there is no another reason to revoke the mandatory cancellation decision- decision under review affirmed

[Pessoa Firme and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 773 (12 April 2024); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class EN subclass 186 Employer Nomination Scheme 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 – multiple serious violent offences including family violence – insufficient evidence of rehabilitation – decision under review affirmed

[Pillay and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 739 (15 April 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 family violence offending – where Applicant was previously warned by the Respondent’s Department – 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

[Ranguia and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 608 (12 March 2024); R Maguire, Member

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

[Rowe and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 617 (21 February 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – failure to pass the character test – criminal offending involved threats to distribute intimate images and visual recordings – contravention of domestic violence order– Ministerial Direction 99 applied -whether there is another reason why the mandatory visa cancellation should be revoked — decision under review affirmed

[Stamenkovic and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 607 (5 April 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class AR Subclass 151 Former Resident visa under section 501(3A)- where Applicant does not pass the character test– Applicant has substantial criminal record – whether the discretion to revoke the visa cancelation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 - decision under review is affirmed



[Trad and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 626 (22 January 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

[Trout and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 629 (5 April 2024); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include possessing prohibited drugs, dishonesty and property offences, contravention of domestic violence order – Applicant is a 40-year-old citizen of New Zealand who arrived in Australia as a 26-year-old adult – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor son and daughter – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to New Zealand – impact on victims – impact on Australian business interests – Reviewable Decision set aside and substituted

[VRYP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 624 (21 February 2024); W Pennell, 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 the criminal history contains a single offence – where Tribunal is satisfied that the Applicant’s risk of reoffending is low – Tribunal finding Applicant has strong familial and social ties in Australia - factors in favour of revocation outweigh factors against revocation- Tribunal finding there is another reason to revoke the mandatory cancellation decision- decision under review set aside and substituted

[Wereta and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2024] AATA 737 (8 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 – frequent and extensive record of offending – history of drug dependence – troubled upbringing and poor associations – applicant’s desire to have visa reinstated motivated by concern for her children’s welfare – interests of minor children weigh substantially in applicant’s favour – outstanding warrant for applicant’s arrest in Australia – substantial public interest in the Australian criminal justice system prosecuting outstanding charges – decision set aside and revocation of cancellation decision substituted

[WQKK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 634 (11 April 2024); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XA Subclass 866 Protection visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – persistent offending including after visa previously cancelled and reinstated – decision under review affirmed

[YNPX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 627 (5 April 2024); J Pennell, Senior Member

MIGRATION – Visa refusal – citizen of South Sudan – Global Special Humanitarian (Class XB) (Subclass 202) visa – Applicant does not satisfy character test – Common Assault – Destroy or damage property – Assault police officer in execution of his duty – Resist or hinder police officer in execution of his duty – Wilfully use of offensive language on train or public area – fail to appear in accordance with bail undertaking - Make threat to kill – Unlawful assault intentionally cause injury Contravene Community Corrections Order – Commit indictable offence while on bail – Aggravated burglary – Contravene Family Violence Order – diagnosis of PTSD – expert evidence considered – strength, nature and duration of ties to Australia – risk of impediments if returned – reviewable decision affirmed

## **National Disability Insurance Scheme**

[Harrison and National Disability Insurance Agency](#) [2024] AATA 610 (5 April 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – rheumatoid arthritis - whether there is substantially reduced functional capacity – whether supports needed are most appropriately met by other systems – whether the Applicant is likely to require support under the NDIS for a lifetime – decision set aside and substituted

[HTDD and National Disability Insurance Agency](#) [2024] AATA 725 (12 April 2024); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Specialist Disability Accommodation - whether Applicant is eligible for SDA - whether Applicant has extremely reduced functional capacity or psychosocial functioning in undertaking self-care and self-management – psychosocial impairment - whether Applicant has high need for person-to-person supports in undertaking self-care and self-management – whether Applicant meets SDA needs requirement – whether SDA is a reasonable and necessary support - what form of SDA is appropriate if Applicant is eligible - Robust class - decision set aside and remitted

[MKKX and National Disability Insurance Agency](#) [2024] AATA 805 (19 April 2024); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – consideration of s 34 National Disability Insurance Scheme Act 2013 (Cth) – Thermomix - fixed air-conditioning unit – minor home modifications – locks - domestic assistance – assistive technology – compression garments – briefs – leggings – recumbent bicycle – lever taps - CPAP accessories – out-of-pocket psychology expenses – 36-month review date - decision set aside and remitted to the Respondent.

## Practice and Procedure

[Gabriela and Chief Executive Officer, National Disability Insurance Agency](#) [2024] AATA 741 (15 April 2024); P French, Member

PRACTICE AND PROCEDURE – objection by the Applicant to the issue of a summons to a registered plan management provider – where registered plan manager is no longer the Applicant's registered plan manager – where objection was made after issue of summons – where summons has been complied with as at the date of the hearing – whether documents the subject of the summons are relevant to the review – whether summons constitutes a fishing expedition - whether summons lacks necessary particularity – application to set aside summons dismissed

[Guan and Australian Securities & Investments Commission](#) [2024] AATA 772 (18 April 2024); B J McCabe, Deputy President

PRACTICES AND PROCEDURES – Applicant's failure to proceed and failure to comply with directions in banning order decision review application – application dismissed

[Koutroumanis and Decision Maker](#) [2024] AATA 803 (5 March 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – applicant has brought decision to Tribunal for review – applications out of time – applicant also misled by fact that documents advised him to seek review by Administrative Appeals Tribunal – that tribunal was in fact a state tribunal – state tribunal since abolished – no power to review decisions of which applicant aggrieved because made under Victorian statutes – pathway for applicant may be to seek review by replacement state administrative decisions tribunal – application dismissed for want of jurisdiction – written reasons provided

[Nwokeiwu and Tax Practitioners Board](#) [2024] AATA 804 (24 March 2024); R Reitano, Member

PRACTICE AND PROCEDURE - STAY APPLICATION – tax agents registration – false and misleading statements – underreported income – good and services tax shortfall – fringe benefits tax shortfall - failure to lodge returns and business activity statements prospects of success - public interest – hardship – early hearing – dissolution of interim stay

[Rundell and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 604 (5 April 2024); L M Gallagher, Member

SOCIAL SECURITY – extension of time application – Applicant's poor health – length of delay – awareness of appeal rights – explanation for delay – prejudice to Respondent or the general public – merits of substantive application – alternative avenues of relief – extension of time application refused

[Rundell and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 606 (5 April 2024); L M Gallagher, Member

SOCIAL SECURITY – extension of time application – length of delay – awareness of appeal rights – explanation for delay – prejudice to Respondent or the general public – merits of substantive application – alternative avenues of relief – extension of time application refused

[Smith and Military Rehabilitation and Compensation Commission](#) (Compensation) [2024] AATA 599 (4 April 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – applicant has brought decision to Tribunal for review – application appears to relate to review of a decision of the Military Rehabilitation and Compensation Commission – applicant asserts that he sought internal review – Department contends there is no reviewable decision – tribunal satisfied that applicant requested internal review but no evidence of internal reconsideration decision – is this a case where refusal to act or failure to act can be taken to be a decision – insufficient evidence of positive decision by respondent to refuse to act – no reviewable decision – application therefore dismissed for want of jurisdiction – written reasons to be sent to purported decision-maker

VETERANS' APPEALS – decision relating to rate of incapacity payments – recipient advised reconsideration can be requested – reconsideration request made – respondent appears not to have acted on request – in absence of reconsideration decision there is no reviewable decision

## Refugee

[1805385](#) (Refugee) [2023] AATA 4754 (8 November 2023); J Silva, Member

REFUGEE – protection visa – United Kingdom – no protection claims – psychological harm due to separation from daughter – compassionate grounds to maintain relationship with daughter – Ministerial intervention requested – decision under review affirmed

[1815440](#) (Refugee) [2023] AATA 4566 (6 November 2023); A Murphy, Member

REFUGEE – protection visa – Pakistan – capacity to give evidence and meaningfully participate in the hearing – non-disclosure certificate – particular social group – elderly widows in Pakistan – Shia religion – Hazara ethnicity – internal relocation – state protection – decision under review remitted

[1821422](#) (Refugee) [2023] AATA 4540 (31 October 2023); J Marquard, Member

REFUGEE – protection visa – Sierra Leone – particular social group – lesbian – physical assault – violent death of a partner – fear of detention – Economic Community of West African States (ECOWAS) entry and residence – decision under review remitted

[1920272](#) (Refugee) [2023] AATA 4568 (8 November 2023); W Pennell, Senior Member

REFUGEE – protection visa – Papua New Guinea – initial claim of fear of harm from step-mother – verbal and physical abuse from young age, and accusation of sorcery – significant changes to claims at and after departmental interview – limited study, work and financial opportunities, and possibility of forced marriage – single woman without family support – delay in applying for protection – applied on day visitor visa due to cease – decision under review affirmed

[1926805](#) (Refugee) [2024] AATA 756 (19 January 2024); D Dragovic, Senior Member

REFUGEE – protection visa – Saudi Arabia – religion, political opinion and membership of particular social group – renunciation of Islam – deeply thought reading, discussion and writing on political issues shared with friendship groups – fear of publishing online even anonymously – country information – government known to pursue even anonymous social media activists – claim on grounds of gender diverse identity better described as expression of male identity in traditionally feminine ways – appearance and activity – third country protection in Gulf Cooperation Council countries – passport expired and possibility of deportation to home country – decision under review remitted

[2010154](#) (Refugee) [2023] AATA 4574 (20 November 2023); A Duffield, Senior Member

REFUGEE – Protection Visa – Vietnam – particular social group – single mother in Vietnam with a bi-racial child – claims based on flawed legal advice – partner withdrew support for partner visa after birth of child – Australian citizen daughter – Family Court consent orders prevent removal of child from Australia – should applicant be required to depart Australia daughter would be placed in care of the State – Ministerial intervention requested – decision under review affirmed

[2214946](#) (Refugee) [2023] AATA 4765 (9 November 2023); W Banfield, Member

REFUGEE – protection visa – Nigeria – particular social group – eldest daughter of yam cult lineage – Ahianjoku – forced to assume mother's role – persecuted due to Christian religion – credibility issues – decision under review affirmed

[2218735](#) (Refugee) [2023] AATA 4616 (27 November 2023); K Vernon, Senior Member

REFUGEE – protection visa – Samoa – Federal Circuit and Family Court remittal – particular social group – persons in conflict with village matai – persons charged with serious criminal offences – right to a fair trial – credibility concerns – delay in seeking protection – false information in visa application – decision under review affirmed

[2300230](#) (Refugee) [2023] AATA 4582 (9 November 2023); M Sripathy, Member

REFUGEE – cancellation – protection visa – Iran – satisfied of the visa holder's identity – Iranian Citizenship – Faili Kurd – refugee Green and White cards issued in Iran – return visits to Iran – Iranian passports – unlawful relationship – family violence – power to cancel the visa does not arise – decision under review set aside

[2307602](#) (Refugee) [2023] AATA 4575 (9 November 2023); D Creedon, Member

REFUGEE – protection visa – Kenya – political corruption – minority ethnicity and bullying at school – economic hardship – mental health – social media activity under criminal investigation – honest witness but vague, unsupported and unpersuasive claims – delay in applying for protection – criminal convictions and immigration detention – country information – decision under review affirmed

[2313648](#) (Refugee) [2023] AATA 4770 (14 November 2023); N Goetz, Member

REFUGEE – protection visa – Sri Lanka – political opinion – anti-government protester – interrogated and repeatedly sexually assaulted by police – failed asylum seeker – access to mental health support – complementary protection – decision under review remitted

## Social Security

[Dewan and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 777 (3 April 2024); W Frost, Member

SOCIAL SECURITY – Family Tax Benefit - whether an overpayment is a debt owing to the Commonwealth – whether all or part of the debt should be recovered – failure to update taxable income – whether a debt should be written off – whether a debt should be waived – definition of severe financial hardship – definition of sole administrative error – definition of special circumstances – decision affirmed

[Grossi and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 632 (8 April 2024); Professor A O'Connell, Senior Member

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

[Ma and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 747 (14 April 2024); Mr S Evans, Member

GRANT OF AUSTUDY PAYMENT – qualifications for Austudy payment – whether undertaking full – time study – whether intention to return to full-time study once 'reasonable excuse' circumstances resolved – Applicant does not meet the requirements of the activity test – automatic cancellation of a social security payment when notice is given – debts to the Commonwealth arising out of overpayment of Austudy – decision under review is affirmed

[Michael and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 734 (12 April 2024); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension (DSP) – whether the applicant qualified for DSP during the relevant qualification period – whether the applicant has a continuing inability to work – whether the applicant has a severe impairment rating of 20 points or more under a single Impairment Table – cervical and lumbo-sacral spondylosis and multiple discopathies – shoulder condition – interstitial lung disease / chronic obstructive pulmonary disorder – major depression – right knee/s – coronary artery disease – diabetes mellitus – constipation – bilateral sensorineural hearing loss – dizziness – cataract – thyroid disease – obstructive sleep apnoea – other conditions – reviewable decision affirmed

[NYSY and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 620 (8 April 2024); A E Burke AO, Member

SOCIAL SECURITY – Family Tax Benefit – establishing a pattern of care – percentage of care – determination of the extent of actual care – where both parents accept a change in the pattern of care but dispute the date on which the change commenced – relevant factors – desire for a flexible approach - limited and conflicting evidence – decision set aside

[Spicer and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 771 (18 April 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

[White and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 623 (9 April 2024); S Webb, Member

SOCIAL SERVICES – application for Disability Support Pension – impairments – threshold for assignment of impairment ratings – permanence of conditions – chronic pain symptoms from underlying medical conditions – further reasonable treatment recommended – impairments likely to persist for more than 2 years – cervical and lumbar spine conditions not permanent – evidence of functional impairment resulting from permanent left shoulder condition not sufficient to assign impairment rating – qualification thresholds not met – decision affirmed

## **Taxation**

[Mackie and Commissioner of Taxation](#) (Taxation) [2024] AATA 619 (3 April 2024); R Reitano, Member

TAXATION – whether to disregard or relocate all or part of Applicant’s non-concessional superannuation contributions – whether discretion to disregard non-concessional contributions should be applied – whether ‘special circumstances’ exist to justify discretion being applied – circumstances do not justify discretion being exercised – decision affirmed

[Oldenburger and Commissioner of Taxation](#) (Taxation) [2024] AATA 635 (11 April 2024); D Mitchell, Member

TAXATION – superannuation – excess contribution tax – whether concessional contribution can be disregarded or allocated to another financial year – whether special circumstances – decision under review affirmed

## **Veterans’ Affairs**

[Searle and Repatriation Commission](#) (Veterans’ entitlements) [2024] AATA 764 (17 April 2024); M Williams, Member

VETERANS’ AFFAIRS – Defence-related claims – disability pension – whether the Applicant suffered an injury or disease – whether injury or disease caused or contributed to by defence service – where date of onset of clinical symptoms many years after service – whether clinical or other evidence consistent with requirement under relevant statement of principles – factors inconsistent with finding that injury or disease connected to relevant service – 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>Collie and Commissioner of Taxation</b>	<a href="#">[2024] AATA 440</a>
<b>CRNL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2024] AATA 458</a>
<b>GHTZ and Commissioner of Taxation</b>	<a href="#">[2024] AATA 453</a>
<b>Grant and Commissioner of Taxation</b>	<a href="#">[2024] AATA 427</a>
<b>Lyll and Secretary, Department of Social Services</b>	<a href="#">[2024] AATA 332</a>
<b>Molla and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 311</a>
<b>Pallier and National Disability Insurance Agency</b>	<a href="#">[2024] AATA 157</a>
<b>Rangiua and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 608</a>
<b>TGRN and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 155</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Buzadzic v Commissioner of Taxation</b>	<a href="#">[2021] AATA 4820</a>	<a href="#">[2024] FCAFC 50</a> <a href="#">[2023] FCA 954</a>
<b>Inas Karem Holdings Pty Ltd v Secretary, Department of Health and Aged Care</b>	<a href="#">[2023] AATA 754</a>	<a href="#">[2024] FCA 352</a>
<b>Kassem v Minister for Immigration, Citizenship and Multicultural Affairs &amp; Anor</b>	<a href="#">[2022] AATA 4043</a>	<a href="#">[2024] HCASL 97</a> <a href="#">[2023] FCAFC 193</a> <a href="#">[2023] FCA 451</a>



<b>LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs &amp; Anor</b>	<a href="#">[2021] AATA 2224</a>	<a href="#">[2024] HCA 12</a> <a href="#">[2023] FCAFC 64</a> <a href="#">[2022] FCA 810</a>
<b>Miller v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2021] AATA 1623</a>	<a href="#">[2024] HCA 13</a> <a href="#">[2022] FCAFC 183</a> <a href="#">[2022] FCA 489</a>
<b>Omani v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 4119</a>	<a href="#">[2024] FCA 376</a>
<b>QYFM v Minister for Immigration, Citizenship and Multicultural Affairs &amp; Anor</b>	<a href="#">[2020] AATA 2161</a>	<a href="#">[2024] HCASL 94</a> <a href="#">[2023] FCAFC 195</a> <a href="#">[2020] FCA 1810</a>





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