



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 1/2023**

**16 January 2023**

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 [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Aviation.....	3
Child Support .....	3
Citizenship .....	3
Compensation.....	4
Education and Research .....	5
Freedom of Information .....	5
Migration.....	5
National Disability Insurance Scheme.....	10
Practice and Procedure.....	11
Professions and Trades .....	13
Social Services .....	13
Taxation.....	14
Transport .....	15
Veterans' Affairs.....	15
<b>Appeals.....</b>	<b>16</b>
Appeals lodged .....	16
Appeals finalised.....	17
<b>Statements of Principles .....</b>	<b>18</b>
Notification of Investigations relating to existing Statements of Principles.....	18
Notification of Investigations (where there is no existing Statement of Principles).....	20
New Statements of Principles.....	20
Statements of Principles to be revoked.....	20

# 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.

NOTE: Summaries of recent Child Support, Migration and Refugee decisions will be provided in the next bulletin to be released on Monday 30 January 2023

## Aviation

[Jones and Civil Aviation Safety Authority](#) [2022] AATA 4407 (20 December 2022); R I Hanger AM KC, Deputy President

Civil Aviation – cancellation of applicant's aeroplane category (CPL), commercial pilot License – helicopter category (CPL(H), private pilot license – aeroplane category (PPL) and recreational pilot License (RPL) – whether applicant failed in his duty with respect to matter/s affecting the safe navigation/ operation of an aircraft – whether applicant fit and proper person – two incidents involving an aircraft – applicant's conduct – await final submissions – exiting orders remain in force

## Child Support

[LWRL and Child Support Registrar](#) (Child support second review) [2022] AATA 4450 (23 December 2022); Lee Benjamin, Member

CHILD SUPPORT – percentage of care decision – actual care – pattern of care – dispute about percentage of care – date of effect – consideration of evidence as to percentage of care – decision affirmed

## Citizenship

[Mohammadi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 4433 (22 December 2022); A Maryniak KC, Member

CITIZENSHIP – Refusal of Australian citizenship by conferral – Whether the applicant has satisfied paragraph 21(2)(h) of Australian Citizenship Act – Whether the Applicant is of good character – enduring moral qualities – Where Applicant provided inconsistent statements – Where inconsistencies in Applicant's evidence required clarification during the substantive hearing of the application – decision affirmed

**[PNMP and JWTZ and Minister for Immigration, Citizenship and Multicultural Affairs](#)**

(Citizenship) [2022] AATA 4451 (23 December 2022); D. J. Morris, Senior Member

CITIZENSHIP – applications for citizenship by conferral – applicants are citizens of Afghanistan – applications heard concurrently by agreement between parties and the tribunal – applicants are brothers – applicants met certain requirements – delegate of minister not satisfied of identities of applicants – review by tribunal – consideration of citizenship policy – certain documents from Pakistan do not provide chain of provenance supportive of identity – suggestion by Department that a document is a bogus document but that document not provided to tribunal – taskeras and passports carry significant weight as to identity – state of satisfaction – decisions under review each set aside and remitted with directions

**Compensation**

**[Aloi and Commonwealth Bank](#)** (Compensation) [2023] AATA 14 (12 January 2023); Ms A E Burke AO, Member

COMPENSATION – permanent impairment – accepted condition - whether condition is permanent – whether reasonable treatment undertaken – degree of permanent impairment - whether a “need” for supervision and direction – non-economic loss score - decision affirmed

**[Heiderich and Military Rehabilitation and Compensation Commission](#)** (Compensation) [2022] AATA 4408 (20 December 2022); J Sosso, Deputy President

COMPENSATION – distal sigmoid colon adenocarcinoma – Tables 8.1 and 13.2 – whole person impairment value – conflicting medical opinion – concurrent evidence – decision under review set aside and substituted and remitted with respect to quantum of compensation payable under s 27 of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth)

**[Rose and Australian Capital Territory](#)** (Compensation) [2022] AATA 3 (4 January 2023); O'Donovan, Senior Member

Incapacity payments – normal weekly earnings (NWE) – application of subsection 8(10) of the Safety, Rehabilitation and Compensation Act 1988 – whether the applicant’s normal weekly earnings as calculated under subsection 8 exceeds the amount he would receive if he were not incapacitated – respondent failed to establish that it would – decision set aside

**[Stancevska and Comcare](#)** (Compensation) [2023] AATA 15 (12 January 2023); Ms A E Burke AO, Member

WORKER'S COMPENSATION – printers assistant – note printing Australia – denial of liability – whether injury is work related – conflicting medical evidence – decision set aside

## Education and Research

[Ayurveda College Pty Ltd and Australian Skills Quality Authority](#) [2022] AATA 4429 (23 December 2022); K Parker, Senior Member

VOCATIONAL EDUCATION AND TRAINING – suspension of registered vocational education and training organisation (RTO) – allegations of inappropriate conduct by Applicant toward students and staff – whether Applicant failed to ensure its executive officer and high managerial agents met “fit and proper person requirements” – whether Applicant’s executive officer and high managerial agent made false statements to ASQA and the Tribunal – consideration of other alleged non-compliances with RTO Standards – decision under review set aside and substituted with a decision to impose several conditions of registration on the Applicant’s registration as an RTO

[Ayurveda College Pty Ltd and Australian Skills Quality Authority](#) [2022] AATA 4427 (23 December 2022); K Parker, Senior Member

VOCATIONAL EDUCATION AND TRAINING – suspension of registration as a CRICOS provider under the Education Services for Overseas Students Act 2000 (Cth) – allegations of inappropriate conduct by Applicant toward overseas students and Applicant’s staff – whether Applicant is “fit and proper person” to operate as a CRICOS provider – whether Applicant made false statements to ASQA and the Tribunal – consideration of non-compliances with National Code – decision under review set aside and substituted with a decision to impose several conditions of registration on the Applicant’s registration as a CRICOS provider

## Freedom of Information

[Patrick and Chief Executive Officer, Services Australia](#) (Freedom of information) [2022] AATA 4416 (20 December 2022); Britten-Jones, Deputy President

FREEDOM OF INFORMATION – request for access to consultant report – Information Commissioner refused access – Cabinet documents – application of s 34(1)(a)(ii) of the Freedom of Information Act 1982 (Cth) – whether document brought into existence for dominant purpose of submissions for consideration by Cabinet – consideration of exception to exemption in s 34(4) – decision under review affirmed

## Migration

[Afegogo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4448 (23 December 2022); Theodore Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Temporary Work (International Relations) (Class GD)(Subclass 403) 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. 90 – decision under review affirmed

[Al Kasha and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 10 (9 January 2023); D. J. Morris, Senior Member

CITIZENSHIP – Australian citizenship by conferral – applicant fulfils certain requirements – applicant has attempted citizenship test on seven occasions but has not completed test – mandatory requirements for grant of citizenship therefore not met – application cannot succeed on substantive review – no statutory limit on number of times a person can attempt test – however continual unsuccessful attempts being permitted is inconsistent with other provisions of the Act requiring approval or refusal of citizenship – application to extend time refused – written reasons provided

[Bishop and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 4446 (23 December 2022); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 90 – protection of the Australian community – expectations of the Australian community – impediments to removal – links to the Australian community – decision set aside and substituted

[CCYW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 4452 (23 December 2022); Boyle, Deputy President

MIGRATION – s 36(1C) of the Migration Act – refusal to grant a protection visa under s 65 of the Migration Act – whether the applicant has been convicted by final judgment of a particularly serious crime – whether applicant is a danger to the Australian community – sexual offending – applicant claims religion as a protective factor against reoffending – applicant previously reoffended after claiming religion to be a protective factor – claim of childhood sexual abuse – engagement with treatment – applicant plans to live with convicted sex offender if released into the community – applicant an unacceptable risk of reoffending – reviewable decision affirmed

[CGCM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 4440 (20 December 2022); Dr D Dragovic, Deputy President

MIGRATION – applicant held a global humanitarian (class XB) visa – visa cancelled under s 501(3A) of the Migration Act – applicant applied for protection (class XA) visa – applicant found to be owed protection obligations – found applicant was ineligible for a visa under ss 36(1C) and 36(2C) of the Migration Act – applicant satisfy s 36(1C) – refusal to grant under s 501(1) – does applicant pass character test – if not should discretionary power to cancel visa be exercised – South Sudan – ministerial Direction No. 90 – primary considerations – serious offending – family violence offending – interpretation and application of s 197C(3) and s 197D – weight to be given to impact to victims when victim forgives – decision under review set aside and new decision substituted

[CSYS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 4425 (23 December 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958, subsection 501CA(4) – Direction No. 90 – violence against women – domestic violence – intentionally choke – protection of the Australian community – expectations of the Australian community – links to the Australian community – impediments to relocation – decision set aside and substituted

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

AATA 7 (9 January 2023); C. J. Furnell, Senior Member

MIGRATION – mandatory cancellation of Class XD Subclass 785 Temporary Protection visa – Migration Act 1958 (Cth) s 501(3A) – Applicant does not pass character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 90 – primary and other considerations – Iran – where protection finding made – indefinite detention – decision under review set aside and substituted

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

AATA 16 (3 January 2023); Theodore Tavoularis, Senior Member

MIGRATION – Cancellation of Applicant’s Class TY (Subclass 444) Special Category (Temporary) visa under s 501(2) of the Migration Act 1958 (Cth) – where Applicant does not pass the character test – reasonable suspicion of association with an organisation pursuant to s 501(6)(b) – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

[GNHW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 4439 (23 December 2022); Dr L Bygrave, Member

MIGRATION – mandatory cancellation of Class XB Global Special Humanitarian visa – Applicant had substantial criminal record at time of cancellation – where sentence reduced on appeal – whether the Applicant passes the character test – whether there is another reason to revoke mandatory cancellation decision – decision affirmed

[Henry and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 4572 (20 December 2022); G Lazanas, Senior Member

MIGRATION – mandatory visa cancellation – Applicant does not pass the character test – whether there is another reason why the visa cancellation should be revoked – consideration of Ministerial Direction No. 90 – nature and serious of offending conduct – resist or hinder police officer – assault police officer – intimidate police officer – family violence – risk of re-offending – protection of the Australian community – expectations of the Australian community – the best interests of minor children – strength, nature and duration of ties to Australia – impediments to removal – decision under review set aside and substituted

[Jubraeel and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]

AATA 2 (4 January 2023); A. Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Iraq – Global Special Humanitarian (Class XB) (Subclass 202) Visa – failure to pass good character test – substantial criminal record – murder conviction – robbery and weapon possession offences – drug offences – visa cancellation warning in 2009 – persistent misconduct while imprisoned – expectations of the Australian community – non-refoulement obligations – strength of ties to Australia – whether another reason to revoke the mandatory cancellation – Ministerial Direction No. 90 applied – decision affirmed

[NZPC and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4443 (19 December 2022); S Burford, Senior Member

MIGRATION – decision of delegate of Minister to refuse to grant the Applicant a protection visa – character test – Direction No 90 – 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 – best interests of children – expectations of the Australian community – strength, nature and duration of ties to Australia – international non-refoulement – other consideration legal consequences of the decision and the prospect of indefinite detention – Applicant is a 29 year old man who arrived in Australia as a 16 year old – extent of impediments if returned to Sierra Leone – decision of the delegate of Minister to refuse to grant the Applicant a protection visa is set aside and substituted

[PYCS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4426 (22 December 2022); D J Morris, Senior Member

MIGRATION – applicant is citizen of Afghanistan but has never lived there – applicant held Resident Return visa – visa cancelled because of substantial criminal record – applicant sought revocation of visa cancellation – delegate of Minister decided not to revoke – applicant sought review by Tribunal – Tribunal affirmed decision – Federal Court quashed decision and remitted matter for fresh determination – consideration of ministerial Direction No. 90 – primary considerations – other considerations – special consideration relating to prolonged detention – decision under review is affirmed

[SCDZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4442 (22 December 2022); J L Redfern PSM, Deputy President

MIGRATION – mandatory visa cancellation – where the applicant does not satisfy the character test – whether there is another reason to revoke the mandatory cancellation – Ministerial Direction 90 – protection of the Australian community – expectations of the Australian community – international non-refoulement obligations – extent of impediments if removed – links to the Australian community – prolonged or indefinite immigration detention – potential breach of Australia's international obligations – reviewable decision set aside and substituted

[Selwyn and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4413 (16 December 2022); K Raif, Senior Member

MIGRATION – mandatory cancellation of visa – Class TY Special Category (Subclass 444) visa – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – expectations of the Australian community – family violence – decision affirmed

[Sio and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 9 (10 January 2023); Mr S. Webb, Member

MIGRATION – mandatory cancellation of visa – representations – decision not to revoke cancellation – effect of *Pearson v Minister for Home Affairs* – decision to cancel visa invalid – visa taken to be not cancelled – no authority to consider revocation – decision subject to review a nullity – proceeding with review misconceived – application dismissed



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

(Migration) [2022] AATA 4524 (7 December 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether another reason for revocation of cancellation decision – Direction 90 – serious offending including family violence - best interests of minor children – child exhibiting behavioural concerns – protective factors on release of applicant to Australian community – on balance decision set aside and revocation of cancellation decision substituted

**[VKVH and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2022]

AATA 4573 (8 December 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether “another reason” for revocation of cancellation decision – Direction 90 – serious offending in short period – primary considerations weigh against applicant – likelihood of indefinite detention considered – applicant’s continued deprivation of liberty outweighs primary considerations – decision set aside and revocation of cancellation decision substituted

**[VLCN and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2022]

AATA 4410 (29 November 2022); Rebecca Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class EN Subclass 186 Employer Nomination (Permanent) 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. 90 – persistent offending – decision under review affirmed

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

(Migration) [2022] AATA 4447 (23 December 2022); R Bellamy, 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 – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – multiple violent offences including against minor females – decision under review affirmed

**[XSHM and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2023]

AATA 5 (4 January 2023); R Cameron, Senior Member

MIGRATION – mandatory cancellation of visa – Class WE Subclass 050 Bridging General (Temporary) visa – applicant non-citizen born in Egypt – substantial criminal record – impact of Pearson – decision not reviewable by the Tribunal – application dismissed

[ZPXP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4444 (21 December 2022); The Hon. John Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 90 – protection of the Australian community – expectations of the Australian community – best interests of minor children – impediments to removal – links to the Australian community – decision set aside and substituted

## **National Disability Insurance Scheme**

[FYSK and National Disability Insurance Agency](#) [2022] AATA 4414 (21 December 2022); Buxton, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – review of supports in plan – how Applicant will receive scheme funding for reasonable and necessary supports related to their disabilities – whether various supports are reasonable and necessary in accordance with s34 of the NDIS Act – decision under review set aside and substituted

[LPRK and National Disability Insurance Agency](#) [2022] AATA 4428 (20 December 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Access Criteria – Applicant not having met the disability and early intervention requirements of the Act – Section 24 disability requirements not met by Applicant – Early intervention supports unlikely to benefit the Applicant – Subsection 25(1)(b) and (c) of the Act not satisfied – Decision under review affirmed

[NJSC and National Disability Insurance Agency](#) [2022] AATA 4449 (23 December 2022); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – application for review of a reviewable decision – young boy with severe and complex Autism Spectrum Disorder who engages in dangerous and unsafe behaviours – older siblings also have a diagnosis of severe Autism Spectrum Disorder – whether supports are reasonable and necessary – whether supports represent value for money – whether supports are effective and beneficial – whether the supports are most appropriately funded or provided through the NDIS and not more appropriately funded or provided through other systems of service delivery or support services – whether insufficient evidence to make assessment of reasonable and necessary supports – decision under review affirmed

[TODD and National Disability Insurance Agency](#) [2022] AATA 4445 (21 December 2022); Mr Rob Reitano, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – whether the applicant has a ‘substantially reduced functional capacity’ – whether the applicant is likely to require the support of the NDIS for his lifetime - whether the applicant can participate ‘effectively or completely’ in the activity, or perform tasks or actions required to participate ‘effectively and completely’ in the activity – whether the applicant usually requires assistance – meaning of ‘effectively and completely’ – whether the applicant’s functional capacity in the activity of mobility is substantially reduced – whether the applicant’s functional capacity in the activity of self-care is substantially reduced – where the applicant has reduced functional capacity for mobility – satisfied that it is substantially reduced – satisfied that the functional capacity for self-care is reduced – applicant will require the support of the NDIS for their lifetime – applicant meets access requirements – decision under review set aside and substituted

## Practice and Procedure

[Craig and Secretary, Department of Foreign Affairs and Trade](#) (Freedom of information) [2022] AATA 4412 (20 December 2022); Britten-Jones, Deputy President

INTERLOCUTORY APPLICATION – request for a summons to issue under s 40A of the Administrative Appeals Tribunal Act 1975 (Cth) – evidence of the proposed witness not relevant to the issue for determination under the Freedom of Information Act 1982 (Cth) – request to issue summons refused

[Glady & Co Mental Health Support and National Disability Insurance Agency](#) [2023] AATA 18 (13 January 2023); K. Parker, Senior Member

PRACTICE AND PROCEDURE – application for reinstatement of review proceedings previously dismissed by this Tribunal for failure by the Applicant to appear at an earlier interlocutory hearing – application lodged in the name of a disability advocate and not in the name of the NDIS participant to which the decision relates – no appearance for or on behalf of the Applicant or the NDIS participant at the interlocutory hearing in respect of the reinstatement application – consideration of written reasons for seeking reinstatement submitted by NDIS participant’s mother (and appointed plan nominee) prior the interlocutory hearing – Tribunal not satisfied there is a good reason to reinstate this proceeding – reinstatement application not granted

[KMGX and National Disability Insurance Agency](#) [2023] AATA 11 (11 January 2023); K. Parker, Senior Member

PRACTICE AND PROCEDURE – request for extension of time for lodgement of application for review – substantive decision is an internal review decision in relation to a statement of participant supports approved for the Applicant under the National Disability Insurance Scheme – beneficial legislation – reasonable explanation for the delay – length of delay – request not opposed – no prejudice to National Disability Insurance Agency – public interest – Tribunal satisfied that it is reasonable in all the circumstances to extend the time for lodgement of application for review – extension of time request granted

[Kuklis and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 4411 (21 December 2022); S Barton, Member

PRACTICE AND PROCEDURE – extension of time application – social security – age pension – recoverable debt – length of delay – explanation for delay – prejudice to Respondent – merits of the application – extension of time refused

[Neville and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 4 (6 January 2023); Damien O'Donovan, Senior Member

PRACTICE & PROCEDURE – application for review of AAT 1st Review decision – prescribed time for making application – application filed out of time – discretion to extend time – no reasonable explanation – no prejudice – no reasonable prospects of success – not appropriate to exercise discretion – extension of time application refused

[NYNP and National Disability Insurance Agency](#) [2022] AATA 1 (5 January 2023); K. Parker, Senior Member

PRACTICE AND PROCEDURE – request for extension of time for lodgement of application for review – substantive decision is a decision to affirm an earlier decision to approve a statement of participant supports (SOPS) forming part of the Applicant's National Disability Insurance Scheme (NDIS) plan – beneficial legislation – child participant – reasonable explanation for the delay – length of delay relatively short – request not opposed – no prejudice to NDIA – not against the public interest to grant request – Tribunal satisfied that it is reasonable in all the circumstances to extend the time for lodgement of application for review – extension of time request granted

[Quagliato and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 4434 (23 December 2022); S Webb, Member

PRACTICE AND PROCEDURE – application for review of AAT first review decision – prescribed period – application for review outside the prescribed period – explanation for delay – consideration of relevant factors and circumstances – prospects of success – not reasonable to grant extension of time – application refused

[Sitki and Comcare](#) (Compensation) [2022] AATA 4435 (22 December 2022); S Webb, Member

PRACTICE AND PROCEDURE – psychological injury compensation claim – summons – treatment records – objection to summons – relevant principles – professional confidential relationship privilege – risk of harm – therapeutic relationship – legitimate forensic purpose – apparent relevance – obligation to ensure each party is given a reasonable opportunity to present their case – summons not oppressive or speculative – obligation to comply – objections refused

## Professions and Trades

[Meagher and Victorian Bar Incorporated](#) [2022] AATA 4415 (20 December 2022); Britten-Jones, Deputy President

Trans-Tasman Mutual Recognition Act 1997 (Cth) – applicant registered as a barrister in New Zealand – whether applicant is entitled to be registered as a barrister in Victoria by operation of the Trans-Tasman Mutual Recognition Act – consideration of the Trans-Tasman mutual recognition principle – Victorian Bar imposed insurance conditions on registration under s 19(5) of the Trans-Tasman Mutual Recognition Act – whether insurance conditions are more onerous than would be imposed in similar circumstances – general responsibilities of the local registration authority – whether Victorian Bar acted contrary to the Trans-Tasman Mutual Recognition Act – decision under review affirmed

## Social Services

[Chaker and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4424 (22 December 2022); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – whether applicant has impairments that were fully diagnosed, treated and stabilised – whether impairment rating was 20 points or more under the impairment tables during the relevant period – reviewable decision affirmed

[Danaro and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4571 (23 December 2022); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – Age pension – Italian Agreement – whether contributions recognised under Article 2 – decision affirmed

[Jashar and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4431 (22 November 2022); A Maryniak KC, Member

SOCIAL SECURITY – Disability support pension – Impairment Tables in the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 – Respondent accepts two claimed conditions fully diagnosed, treated and stabilised – where one condition not fully diagnosed, treated and stabilised – whether conditions attracted sufficient points in Impairment Tables to qualify – decision affirmed

[Mansour and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4438 (22 December 2022); S Barton, Member

SOCIAL SECURITY – disability support pension – whether the Applicant met the eligibility requirements for a disability support pension – fully diagnosed, treated and stabilised – Qualification Period – assigning impairment ratings – Applicant has a total impairment rating of 20 points – Applicant has not participated in a program of support – Reviewable Decision affirmed

[O'Connor and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4405 (20 December 2022); D O'Donovan, Senior Member

SOCIAL SERVICES – application for review of AAT Tier 1 decision – disability support pension – Meniere's disease – multiple medical conditions – whether condition fully treated and fully stabilised – 'severe' descriptor met – functional impact severe – work capacity – inability to work apparent – criteria met for the Disability Support Pension – decision under review set aside

[Pearson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4441 (22 November 2022); L Benjamin, Member

SOCIAL SECURITY – disability support pension entitlement after cancellation – portability – whether the qualifying circumstance for unlimited portability were satisfied in accordance with section 1218AAA of the Act – decision under review affirmed

[TWZK and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4437 (23 December 2022); George, Senior Member

SOCIAL SECURITY – Disability Support Pension – financial assets – deeming – where financial calculations had been mathematically incorrect – decision under review remitted for reconsideration

## Taxation

[Dermatis and Commissioner of Taxation](#) (Taxation) [2022] AATA 13 (13 January 2023); Britten-Jones, Deputy President

PRACTICE AND PROCEDURE – jurisdiction question – decision of Commissioner of Taxation to refuse a request to remit a shortfall interest charge – applicant seeks to review decision – application to dismiss for lack of jurisdiction – right to object against such a decision provided the shortfall interest charge that was not remitted is more than 20% of the tax shortfall amount – shortfall interest charge less than 20% – definition of "taxation decision" under the Taxation Administration Act 1953 (Cth) – application

[Domestic Property Developments Pty Ltd as trustee for the Dals Property Trust and Commissioner of Taxation](#) (Taxation) [2022] AATA 4436 (23 December 2022); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – where residential premises leased then made available for either leasing or sale – whether premises are "new residential premises" – whether "excess GST" passed on to buyer – decision affirmed

## Transport

[Lennox and Minister for Infrastructure, Transport, Regional Development and Local Government](#) [2023] AATA 12 (11 January 2023); D Mitchell, Member

MOTOR VEHICLE STANDARDS – importation of nonstandard vehicle – electric bicycles – whether road vehicles – whether a class of vehicles that are not road vehicles for the purpose of the Act – whether discretion should be exercised to allow vehicles to be imported – decision under review affirmed

## Veterans' Affairs

[Steley and Principal Member of the Veterans' Review Board](#) (Veterans' entitlements) [2022] AATA 4432 (19 December 2022); D J Morris, Senior Member

VETERANS' ENTITLEMENTS – applicant sought review of rate of disability pension by Repatriation Commission – Commission continued pension at 100 per cent of general rate and refused claim for pension at the intermediate or special rate – applicant sought review by Veterans' Review Board – Board dismissed application for being out of time – applicant sought review by Tribunal – interlocutory hearing – examination of service by post presumptions – Tribunal satisfied applicant did not apply for review within three months of being notified of decision – Tribunal satisfied no discretion under enactment for Board to extend time – therefore satisfied no prospect of success on review of reviewable decision – oral decision – written reasons provided

PRACTICE AND PROCEDURE – dismissal of matter where no reasonable prospect of success – power should be used with caution – even apparently weak but arguable case might succeed – enactment in this case renders application futile

# 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>Aljobori and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4070</a>
<b>Amodu and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4230</a>
<b>Dobrosavljevic and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4046</a>
<b>DGYT and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3895</a>
<b>FGBP and Minister for Home Affairs</b>	<a href="#">[2018] AATA 3971</a>
<b>GKYW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 4119</a>
<b>Hanna and Secretary, Department of Social Services</b>	<a href="#">[2022] AATA 3772</a>
<b>Jadidi and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2217</a>
<b>JFJF and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2021] AATA 3888</a>
<b>Knight and Commonwealth Ombudsman</b>	<a href="#">[2021] AATA 2504</a>
<b>Manikantan and Secretary, Department of Education</b>	<a href="#">[2022] AATA 4051</a>
<b>NDBR and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4042</a>
<b>Okoh and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2021] AATA 1662</a>
<b>Peng and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2279</a>
<b>Pihama and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 4383</a>
<b>RYTV and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3835</a>



---

<b>Franklin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 77</a>
---	--------------------------------

---

<b>XRZG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 3952</a>
---	----------------------------------

---

## Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>AFF20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 2948</a>	<a href="#">[2022] FCA 1564</a>
<b>BGW22 v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 443</a>	<a href="#">[2022] FCA 1569</a>
<b>Jadidi v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2217</a>	<a href="#">[2022] FCA 1560</a>
<b>Li v Minister for Immigration, Citizenship, Migrant Services and Multicultural</b>	<a href="#">[2021] AATA 169</a>	<a href="#">[2022] FCA 1594</a>
<b>LRMM v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2731</a>	<a href="#">[2022] FCA 1571</a>
<b>Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v ZRTY</b>	<a href="#">[2022] AATA 1330</a>	<a href="#">[2022] FCA 1529</a>

---

# 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.

## Notification of Investigations relating to existing Statements of Principles

The AAT was advised that the RMA intends to carry out [investigations](#) under subsections 196B(7) and 196B(7A) of the VEA in respect of the following:

### Multiple Conditions – (Number 2) - Instruments Sunsetting On 1 October 2025

<https://www.legislation.gov.au/Details/C2023G00013>

### External Burn

<https://www.legislation.gov.au/Details/C2023G00004>

These investigations will be carried out in the context of the following Statement of Principles Instruments:

Notice of Investigation	Relevant Statement of Principles
<b>Multiple Conditions – (Number 2) - Instruments Sunsetting On 1 October 2025</b> <a href="https://www.legislation.gov.au/Details/C2023G00013">https://www.legislation.gov.au/Details/C2023G00013</a>	<b>Chickenpox – No. 87 of 2015</b> <a href="https://www.legislation.gov.au/Details/F2015L00919">https://www.legislation.gov.au/Details/F2015L00919</a>
	<b>Chickenpox – No. 88 of 2015</b> <a href="https://www.legislation.gov.au/Details/F2015L00920">https://www.legislation.gov.au/Details/F2015L00920</a>
	<b>Fracture (Reasonable Hypothesis) – No. 94 of 2015</b> <a href="https://www.legislation.gov.au/Details/F2015L01340">https://www.legislation.gov.au/Details/F2015L01340</a>
	<b>Fracture (Balance of Probabilities) – No 95 of 2015</b> <a href="https://www.legislation.gov.au/Details/F2015L01343">https://www.legislation.gov.au/Details/F2015L01343</a>

	<p><b>Hereditary spherocytosis – No. 67 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2015L00649">https://www.legislation.gov.au/Details/F2015L00649</a></p>
	<p><b>Hereditary spherocytosis – No. 68 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2015L00650">https://www.legislation.gov.au/Details/F2015L00650</a></p>
	<p><b>Mesothelioma (Reasonable Hypothesis) – No. 104 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2017C00858">https://www.legislation.gov.au/Details/F2017C00858</a></p>
	<p><b>Mesothelioma (Balance of Probabilities) – No. 105 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2017C00860">https://www.legislation.gov.au/Details/F2017C00860</a></p>
	<p><b>Myasthenia gravis – No. 75 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2015L00907">https://www.legislation.gov.au/Details/F2015L00907</a></p>
	<p><b>Myasthenia gravis – No. 76 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2015L00908">https://www.legislation.gov.au/Details/F2015L00908</a></p>
	<p><b>Myelodysplastic syndrome – No. 73 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2017C00821">https://www.legislation.gov.au/Details/F2017C00821</a></p>
	<p><b>Myelodysplastic syndrome – No. 74 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2017C00816">https://www.legislation.gov.au/Details/F2017C00816</a></p>
	<p><b>Trigeminal neuralgia – No. 77 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2015L00909">https://www.legislation.gov.au/Details/F2015L00909</a></p>
	<p><b>Trigeminal neuralgia - No. 78 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2015L00910">https://www.legislation.gov.au/Details/F2015L00910</a></p>
	<p><b>Trigeminal neuropathy – No. 79 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2017C00814">https://www.legislation.gov.au/Details/F2017C00814</a></p>
	<p><b>Trigeminal neuropathy – No. 80 of 2015</b>  <a href="https://www.legislation.gov.au/Details/F2017C00812">https://www.legislation.gov.au/Details/F2017C00812</a></p>
<b>External Burn</b>	<p><b>External burn (Reasonable Hypothesis) – No. 110 of 2015)</b>  <a href="https://www.legislation.gov.au/Details/F2017C00862">https://www.legislation.gov.au/Details/F2017C00862</a></p>
	<p><b>External burn (Balance of Probabilities) – No. 111 of 2015)</b>  <a href="https://www.legislation.gov.au/Details/F2017C00861">https://www.legislation.gov.au/Details/F2017C00861</a></p>

## Notification of Investigations (where there is no existing Statement of Principles)

The AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

**Plantar fibromatosis** - <https://www.legislation.gov.au/Details/C2022G01286>

**Retinal burn** - <https://www.legislation.gov.au/Details/C2023G00001>

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 23 January 2023:

**Atrial fibrillation and atrial flutter (Reasonable Hypothesis) – No. 1 of 2023**

<https://www.legislation.gov.au/Details/F2023L00016>

**Atrial fibrillation and atrial flutter (Balance of Probabilities) – No. 2 of 2023**

<https://www.legislation.gov.au/Details/F2023L00011>

**Epicondylitis (Reasonable Hypothesis) – No. 5 of 2023**

<https://www.legislation.gov.au/Details/F2023L00019>

**Epicondylitis (Balance of Probabilities) – No. 6 of 2023**

<https://www.legislation.gov.au/Details/F2023L00020>

**Malignant neoplasm of the prostate (Balance of Probabilities) – No. 4 of 2023**

<https://www.legislation.gov.au/Details/F2023L00003>

**Malignant neoplasm of the prostate (Reasonable Hypothesis) – No. 3 of 2023**

<https://www.legislation.gov.au/Details/F2023L00001>

## 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 23 January 2023:

**Atrial fibrillation and atrial flutter No. 49 of 2014**

<https://www.legislation.gov.au/Details/F2014L00481>

**Atrial fibrillation and atrial flutter – No. 50 of 2014**

<https://www.legislation.gov.au/Details/F2014L00482>

**Epicondylitis – No. 7 of 2015**

<https://www.legislation.gov.au/Details/F2014L01784>

**Epicondylitis – No. 8 of 2015**

<https://www.legislation.gov.au/Details/F2014L01786>

**Malignant neoplasm of the prostate – No. 54 of 2014**

<https://www.legislation.gov.au/Details/F2017C00059>

**Malignant neoplasm of the prostate No. 53 of 2014**

<https://www.legislation.gov.au/Details/F2017C00076>



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](https://creativecommons.org/licenses/by/3.0/au/). 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](mailto: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](https://www.austlii.edu.au/au/other/dfat/page/aaat.html).