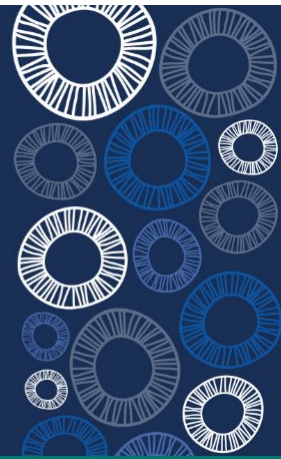




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

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

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

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

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AAT Recent Decisions

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

Child Support

[LWTK and Child Support Registrar](#) (Child support second review) [2023] AATA 1264 (17 May 2023); Ms A E Burke AO, Member

CHILD SUPPORT – review of care percentage determinations – change in care – actual care not varied from arrangements as provided for in Court orders – interpretation of the percentage of care in dispute – conflicting evidence of extent of impact of special days on actual care provided – decision under review affirmed

[WYBM and Child Support Registrar](#) (Child support second review) [2023] AATA 1263 (17 May 2023); W Frost, Member

CHILD SUPPORT – Administrative Appeals Tribunal Tier 1 review – where the Mother applied for review outside the 28 day period – 'special circumstances' – whether there were circumstances that prevented lodgement – do full-time work and care duties constitute 'special circumstances' – Tribunal not satisfied – decision under review affirmed

[Napier and Tanfield](#) (Child support) [2023] AATA 851 (3 February 2023); S De Bono, Senior Member

CHILD SUPPORT – particulars of the administrative assessment – whether a fixed annual rate of child support should not apply – the application for fixed annual rate not to apply correctly refused – decision under review affirmed

[Grainger and Grainger](#) (Child support) [2023] AATA 837 (8 February 2023); H Moreland, Member

CHILD SUPPORT – departure determination – income, property and financial resources – special needs – a ground for departure established – decision to depart – decision under review set aside and substituted

[O'Cawley and Milnes](#) (Child support) [2023] AATA 829 (10 February 2023); R Ellis, Senior Member

CHILD SUPPORT – percentage of care – what was the likely pattern of care from the start of the administrative assessment – decision under review set aside and substituted

CHILD SUPPORT – date of effect of the tribunal's decision – late application for review – whether there were special circumstances that prevented the application for review being lodged in time – special circumstances exist – tribunal decides to make a determination under subsection 95N(2)

CHILD SUPPORT – percentage of care – date of effect provisions – no requirement to make determination – decision set aside and substituted

[Dalding and Dalding](#) (Child support) [2023] AATA 430 (15 February 2023); K Dordevic, Senior Member Presiding and K Synon, Deputy President

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – written agreement not complied with – reasonable action taken – interim period applied – decision under review set aside and substituted

[Brimson and Vernon](#) (Child support) [2023] AATA 834 (28 February 2023); P Jensen, Member

CHILD SUPPORT – percentage of care – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review affirmed

Citizenship

[Abuuh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1091 (9 May 2023); R Bellamy, Senior Member

CITIZENSHIP – revocation of citizenship by conferral following conviction for serious offences – section 34(2) of the Australian Citizenship Act 2007 – where revocation would not render the Applicant stateless – exercise of discretion to revoke citizenship where allowing Applicant to remain an Australian citizen would be contrary to the public interest – decision under review affirmed

[Arora and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1101 (10 May 2023); B W Rayment OAM KC, Deputy President

CITIZENSHIP – application for citizenship by conferral – whether the applicant is of good character pursuant to s 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – decision under review set aside and remitted

[Bilash and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 1102 (3 April 2023); G Lazanas, Senior Member

CITIZENSHIP – whether applicant is of good character – history of offences including domestic violence and damaging property – failure to disclose all criminal offences in citizenship application – decision under review affirmed

[Dhir and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1228 (16 May 2023); Mr S Webb, Member

AUSTRALIAN CITIZENSHIP – application for conferral of citizenship refused – child under 15 residing with non-citizen parent – permanent resident – applicable citizenship policy – relevant considerations – history and effects of family violence – significant hardship, disadvantage or detriment – best interests of the child – latitude to consider particular circumstances – decision set aside and substituted

[Omara and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1104 (21 April 2023); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – whether the good character requirement under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) is satisfied – relevant law and policy considered – applicant's background and criminal history considered – character references considered – decision under review affirmed

[Sharma and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1262 (18 May 2023); Dr L Bygrave, Member

CITIZENSHIP – approval of citizenship by conferral under section 21 of the Australian Citizenship Act 2007 (Cth) – whether to cancel the approval of citizenship under subsection 25(2) of the Australian Citizenship Act 2007 (Cth) – whether Applicant likely to reside in Australia or maintain a close and continuing association with Australia – decision under review affirmed

Compensation

[Bian and Australian Capital Territory](#) (Compensation) [2023] AATA 1278 (18 May 2023); W Frost, Member

WORKERS' COMPENSATION – whether applicant's psychiatric condition is attributable to her employment as a teacher – whether injury resulted in post-traumatic stress disorder – whether psychiatric problem is a permanent mental impairment – decision set aside

[Hyndman and Australian Postal Corporation](#) (Compensation) [2023] AATA 1134 (11 May 2023); Dr L Bygrave, Member

WORKERS COMPENSATION – postal delivery officer – bilateral hip osteoarthritis diagnosis – whether ailment is work related – whether ailment is a pre-existing degenerative condition – where pre-existing ganz lesions – whether nature of work aggravated ailment – ongoing pain and discomfort – medical opinion recommending bilateral hip replacement – decisions set aside

[Keceski and Comcare](#) (Compensation) [2023] AATA 1265 (18 May 2023); Emeritus Professor P A Fairall, Senior Member

WORKERS COMPENSATION – Whether employee entitled to compensation pursuant to s 12 or s 16 in respect of injury – repetitive strain injury (RSI) – chronic pain condition – conflicting medical evidence – somatic condition – causation – decision under review affirmed

Education and Research

[Forer and Secretary, Department of Education](#) [2023] AATA 1271 (27 April 2023); Ms A E Burke AO, Member

EDUCATION – HECS-HELP – debt remission – whether special circumstances apply – enrolled in two courses – full impact not on or after census date – decision affirmed

Freedom of Information

[Roberts-Smith and Inspector-General of the Australian Defence Force](#) (Freedom of information) [2023] AATA 1095 (9 May 2023); Justice T Thawley, Deputy President

FREEDOM OF INFORMATION – request for access to documents – whether documents exempt because disclosure would disclose the existence or identity of confidential sources (FOI Act s 37(1)(b)) – whether disclosure would be contrary to an order made or direction given (FOI Act s 46(b)) – whether disclosure would involve unreasonable disclosure of personal information (FOI Act s 47F) – whether disclosure is in the public interest – decision under review affirmed

Health

[Support Services for Aged Care Pty Ltd and Aged Care Quality and Safety Commissioner](#)

[2023] AATA 1205 (15 May 2023); Mrs J C Kelly, Senior Member

AGED CARE – refusal of application for approval as a provider of aged care – whether the Applicant has experience in providing aged care or other relevant forms of care – whether the Applicant demonstrated understanding of its responsibilities as a provider of the type of aged care for which approval is sought (home care) – whether the Applicant has systems, or proposes to have systems, in place to meet its responsibilities as a provider of the type of aged care for which approval is sought – whether the Applicant has sound financial management – reviewable decision affirmed

Migration

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

AATA 1106 (28 April 2023); The Hon. J Pascoe AC CVO, Deputy President

REFUGEE – protection visa – whether the Applicant meets the criteria for a Protection visa in s 36(1C)(b) of the Migration Act 1958 – whether Applicant has been convicted by final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – decision under review affirmed

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

AATA 1191 (13 April 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – South Sudanese citizen – Global Special Humanitarian (Class XB) (Subclass 202) visa – failure to pass good character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate's decision set aside and substituted

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

AATA 1222 (7 February 2023); R Cameron, Senior Member

MIGRATION – mandatory cancellation of visa – request for revocation of cancellation – character test – substantial criminal record – murder conviction – Ministerial Direction No. 90 applied – whether another reason why original decision should be revoked – primary and other considerations – protection of the Australian community – nature and seriousness of conduct – risk to the Australian community – best interests of child – international non-refoulement obligations – links to the Australian community – decision under review affirmed

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

AATA 864 (24 April 2023); Dr D Dragovic, Deputy President

MIGRATION – visa refusal on character ground – foreign conviction – sentence of a term of imprisonment of more than 12 months – whether s 501(7)(c) of Migration Act 1958 (Cth) applies to a sentence imposed by a foreign court – crime of sexual nature against a child – allegations of corruption in the foreign judicial system – decision affirmed

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

AATA 1269 (19 May 2023); S 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 Australia community – multiple violent offences – several terms of imprisonment – alcohol and drug misuse as a risk factor – lack of protective factors against reoffending – applicant would pose a real or significant risk or possibility of harm if released into the Australian community – reviewable decision affirmed

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

(Migration) [2023] AATA 1266 (18 May 2023); R Cameron, Senior Member

MIGRATION – non-revocation of a mandatory visa cancellation – remittal – citizen of Iran – protection finding – Class BB Subclass 155 Five Year Resident Return Visa – where applicant does not pass the character test – substantial criminal record – whether ‘other reason’ to revoke mandatory visa cancellation – consideration of Ministerial Direction No. 99 – Decision under review set aside

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

AATA 1135 (10 May 2023); T Tavoularis, Senior Member and J Rau SC, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – Subsequent refusal of a Protection (Class XA) visa under s 501(1) of the Migration Act 1958 (Cth) – where the Applicant does not pass the character test- whether there is not another reason to revoke the mandatory cancellation and not to exercise the discretion to refuse the Protection visa under s 501(1) of the Migration Act 1958 (Cth) - where Applicant’s criminal history in Australia displays an increasing trend of seriousness –where Australia’s non-refoulement obligations are engaged – indefinite detention as a legal consequence of the Tribunal’s decision considered – consideration of Ministerial Direction No. 99 – decisions under review affirmed

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

AATA 1063 (8 May 2023); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Vietnam – Class BS Subclass 801 Partner visa – failure to pass good character test – substantial criminal record – recklessly cause serious injury – other general offending – Ministerial Direction No. 99 applied – reviewable decision set aside and substituted

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

AATA 1109 (9 May 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of a delegate of the Respondent to refuse to grant a visa under s 501(1) of the Migration Act 1958 (Cth) – whether the Applicant passes the character test – whether discretion should be exercised not to refuse the grant of the Applicant’s Visa under s 501(1) of the Migration Act – substantial criminal record – serious driving offences and drug possession offences – Applicant is a 45-year-old citizen of Iran who arrived in Australia in 2013 – Ministerial 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 daughter and stepchildren – minor daughter and three stepchildren are in the care of the Department of Child Protection – expectations of the Australian community – legal consequences of the decision – a protection finding has been made with respect to the Applicant – extent of impediments if removed – Applicant unable to be removed and faces indefinite detention – Tribunal finds that it should exercise discretion under s 501(1) of the Migration Act to refuse to grant the Applicant the Visa – Reviewable Decision affirmed

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

AATA 1276 (19 May 2023); K Raif, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – crimes of a violent nature against women and children – constituted family violence – risk of reoffending – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength, nature, and duration of ties to Australia – impediments to removal – other considerations – decision set aside and substituted

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

(Migration) [2023] AATA 1203 (16 May 2023); The Hon. D Cowdroy AO KC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – best interests of minor children – expectations of the Australian community – strength, nature, and duration of ties to Australia – impediments to removal – decision set aside

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

AATA 1202 (15 May 2023); Brigadier AG Warner, AM LVO (Retd), Member

MIGRATION – decision of delegate of Minister to refuse not to revoke mandatory cancellation of visa – character test – Direction 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 minor children – expectations of the Australian community – extent of impediments if removed – Applicant is a 38 year old man who arrived in Australia as a 3 year old – reviewable decision affirmed

[TXFB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1142 (12 May 2023); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of visa – national of South Sudan – Class XB Subclass 200 Refugee visa – failure to pass character test – public order, family and other violence, and breach offences – whether another reason cancellation should be revoked – best interests of minor children – impact on victims – previously undisclosed head injury – decision set aside and substituted

[Deng](#) (Migration) [2023] AATA 698 (28 February 2023); J Owen, Deputy President

MIGRATION – Cancellation – Subclass 010 (Bridging A) visa – criminal conviction – ground for cancellation exists – applicant has a genuine determination and commitment to successfully complete his tertiary studies – applicant has a compelling need or purpose to remain in Australia – potential operation of Public Interest Criteria (PIC) 4013– knock-on effect of ensuring the applicant’s outstanding Student visa is in all likelihood refused – genuine hardship to the applicant – applicant’s risk of criminally reoffending is low – decision under review set aside

[Chan](#) (Migration) [2023] AATA 565 (2 March 2023); A Dronjic, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Graduate Work stream – applied under the wrong stream – cannot change the stream selected in visa application – no power to grant visa in a different stream – skills assessment – Life Scientist – application not accompanied by requisite evidence – decision under review affirmed

[2215281](#) (Migration) [2023] AATA 543 (8 March 2023); A Murphy, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – visit to attend brother’s wedding – employment and business investment in home country – family property management – regular compliant visits of applicant’s parents to Australia – offer of security bond – decision under review remitted

[SUMMER'S CAFFEINE PTY LTD](#) (Migration) [2023] AATA 497 (9 March 2023); B Cullen, Senior Member

MIGRATION – sponsorship cancellation or bar – ensuring the sponsored person worked in the nominated occupation – false or misleading information – termination of the business lease – operations transferred twice – impact of the COVID-19 pandemic – evidence of full-time employment – restructuring of operations – specified work performed offsite – power to take an action does not arise – decision under review set aside

[2203610](#) (Migration) [2023] AATA 664 (10 March 2023); N Lamont, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect information in a previous visa application – Pakistani citizenship – whereabouts of the applicant’s father – fraudulent Pakistani ID cards – verified Afghan citizenship – power to cancel the visa does not arise – decision under review set aside

National Disability Insurance Scheme

[Cianci and National Disability Insurance Agency](#) [2023] AATA 1093 (9 May 2023); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – CPAP machine – vaping – sex therapy/sex worker – iPhone – transport – decision affirmed

[Grant and National Disability Insurance Agency](#) [2023] AATA 1206 (16 May 2023); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether the impairment is permanent when surgery has been suggested – whether there is substantially reduced functional capacity – osteoarthritis – cervical spondylosis – lumbar spondylosis — cervical spine disc degeneration — decision affirmed

[Salter and National Disability Insurance Agency](#) [2023] AATA 1273 (19 May 2023); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – osteoarthritis - chronic pain – permanence - whether substantially reduced functional capacity – decision under review set aside

[Spires and National Disability Insurance Agency](#) [2023] AATA 1230 (17 May 2023); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Hydrotherapy pool – reasonable and necessary support – consideration of section 34 National Disability Insurance Scheme Act 2013 (Cth) – decision set aside and remitted to the Respondent

Practice and Procedure

[Allan and National Disability Insurance Agency](#) [2023] AATA 1270 (19 May 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – Applicant is party to a rooming accommodation agreement with an adult NDIS participant – participant’s disability arises from impairments attributable to psychiatric conditions – Applicant seeks payment for providing support worker assistance to participant – Applicant is not a NDIS-registered service provider – participant’s plan is Agency-managed restricting participant to engage only NDIS-registered service providers – Applicant lodged an application for review with the Tribunal under his own name – whether Tribunal has power to substitute Applicant for another person – whether Applicant has standing under s 27(1) of the Administrative Appeals Tribunal Act 1975 (Cth) to lodge the application in his own right – whether Applicant is a person whose interests are affected by the decision under review – internal review decision potentially impacts the Applicant, indirectly, but does not directly affect the Applicant – Tribunal considers “ripple of affection” insufficient to constitute an affected interest under s 27(1) – decision that Applicant is not a person whose interests are affected by the internal review decision – Applicant does not have standing – no valid application before the Tribunal – participant is at liberty to lodge an application for review with the Tribunal in his own name

[Biletskyy and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1062 (4 April 2023); A E Burke AO, Member

PRACTICE AND PROCEDURE – interlocutory application – jurisdiction – whether the General Division (AAT2) has jurisdiction to review a decision made by the Social Services and Child Support Division (AAT1) to dismiss an application for no reasonable prospects of success pursuant to paragraph 42(4) of the Administrative Appeals Tribunal Act 1975 (Cth) – decision reviewable

[Briggs and National Disability Insurance Agency](#) [2023] AATA 1094 (5 May 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – Applicant is a participant in the National Disability Insurance Scheme – Applicant seeks review of his NDIS statement of participant supports – Notice of Withdrawal signed by the Applicant and lodged with the Tribunal based on mistaken and misleading advice provided by Applicant’s disability advocate – Tribunal was taken to have dismissed the application for review upon lodgement of the Notice of Withdrawal – Tribunal satisfied that the withdrawal in these circumstances constitutes the application being “dismissed in error” – Tribunal’s discretion to reinstate the proceeding is enlivened under s 42A(10) of the Administrative Appeals Tribunal Act 1975 (Cth) – Tribunal exercises discretion in favour of reinstating application – Applicant sought extension of time to lodge his application for review – Respondent opposed EOT request – significant delay – consideration of explanation for the delay – whether delay has caused prejudice to Respondent – whether against the public interest to grant EOT request – whether application for review lacked merit – context of beneficial legislation – Tribunal satisfied that it is reasonable in all the circumstances to extend the time for lodgement of application for review – EOT request granted

[Centurion Custodian Funds Management Ltd and Australian Securities and Investments Commission](#) [2023] AATA 1110 (4 May 2023); B J McCabe, Deputy President

Application for stay of decision – where applicants holds AFSL – where AFSL not used by the applicant – where AFSL cancelled as a result of dormancy – application refused

[Clearview AI Inc and Australian Information Commissioner](#) [2023] AATA 1069 (8 May 2023); D O'Donovan, Senior Member

PRIVACY ACT 1988 – biometric Information - extra-territorial operation – whether a foreign corporation which collects images of Australians from Australian servers is carrying on business in Australia – whether requesting and receiving data hosted on Australian servers amounts to information collection in Australia – whether an image of a person’s face is personal information – whether an image of a face is biometric information – whether collecting images of faces without consent is a breach of APP 3.3 or APP 1.2

[Dole and National Disability Insurance Agency](#) [2023] AATA 1236 (16 May 2023); Mr S Webb, Member

PRACTICE AND PROCEDURE – application for extension of time in which to make an application for review – no reasonable explanation for delay – prejudice – prospect of success – availability of alternative remedy – not reasonable in all the circumstances to exercise discretion – application refused

[Keightley and National Disability Insurance Agency](#) [2023] AATA 1136 (10 May 2023); K Buxton, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – interlocutory application for objection to issuing of summonses – evidence gathering powers during internal review process – issuing of summons would be oppressive to Applicant – application refused

[Parikhan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1195 (15 May 2023); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – Citizenship – Reinstatement Request – review application dismissed for the Applicant’s non-appearance – Reason for non-appearance accepted by the Tribunal – request for reinstatement granted

PRACTICE AND PROCEDURE – Citizenship – Application for extension of time – whether the length of delay was justified – whether there was a reasonable explanation for the delay – whether the substantive application for review has merits – whether granting of extension of time would prejudice the Respondent or the general public – whether there are alternative avenues of relief for the Applicant should the extension of time not be granted – Refusal of Citizenship by conferral – pending proceedings in relation to criminal charges – extension of time request refused

[Tootell and National Disability Insurance Agency](#) [2023] AATA 1267 (18 May 2023); D Connolly, Senior Member

PRACTICE AND PROCEDURE – jurisdiction – National Disability Insurance Scheme – decision made after reassessment at the CEO’s own initiative – whether internal review conducted by National Disability Insurance Agency in accordance with section 100 of the Act – whether Tribunal has jurisdiction to review a decision that has not been internally reviewed – application dismissed

[Worrall and Civil Aviation Safety Authority](#) [2023] AATA 1143 (9 March 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – civil aviation – jurisdiction – where employer decision-maker holds authorisation from relevant authority – whether Tribunal has jurisdiction to hear application – where decision does not affect applicant’s licence from relevant authority – Tribunal does not have jurisdiction

[WSNY and Child Support Registrar](#) (Child support second review) [2023] AATA 1261 (18 May 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – application for an extension of time – application for disability support pension – where the application is 10 days out of time – whether there is an adequate explanation for delay – whether the application has strong prospects of success – whether there are alternative avenues of relief – application for extension of time refused

Refugee

[2106266](#) (Refugee) [2022] AATA 5164 (4 November 2022); A Younes, Senior Member

REFUGEE – cancellation – Subclass 866 (Protection) visa – Iraq – Federal Court remittal – multiple returns for significant periods of time – religion – Sunni faith – desertion from the army – race – Bidoon ethnicity – compelling and compassionate reasons for the return trips – no non-compliance by the applicant in the way described in the s 107 notice – decision under review set aside

[1837291](#) (Refugee) [2022] AATA 5182 (28 November 2022); R Shanahan, Member

REFUGEE – protection visa – Egypt – religion – Christianity – discrimination and threats in workplaces, especially from one colleague – accusation of negligence after death of patient and demand for payment by brother – court summonses for contempt of religion – fear of harm from extremists – continuing attacks and threats to family – credibility – vague and implausible claims and evidence – no attempt to seek work at church hospital – no information about result of court proceedings provided – no public activity or profile – member of family unit – elderly father – country information – decision under review affirmed

[1812573](#) (Refugee) [2022] AATA 5183 (20 December 2022); M Sheargold, Member

REFUGEE – Protection Visa – Vietnam – particular social group – membership of extended family with anti-communist history – political opinion – anti-communist – anti-corruption – pro-South Vietnamese – victim of sexual harassment – a woman without defence against rape or exploitation – State protection not available – decision under review remitted

[2105131](#) (Refugee) [2023] AATA 646 (9 January 2023); W Pennell, Senior Member

REFUGEE – protection visa – Nigeria – political opinion – member of Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) – member of Indigenous People of Biafra (IPOB) – race – Igbo tribe – detained and tortured – involvement in protests – leadership role within IPOB – decision under review remitted

[2113923](#) (Refugee) [2023] AATA 735 (6 February 2023); S Roushan, Senior Member

REFUGEE – Protection Visa – Iraq – religion – Sunni Muslim – sexual orientation – homosexual man – actual/imputed political opinion for being pro-Western – prior employment with a company that provided services to the USA Army – mental health issues – substantial criminal record – state protection is not available to the applicant – decision under review remitted

[1814077](#) (Refugee) [2023] AATA 729 (10 February 2023); G A F Connolly, Senior Member

REFUGEE – protection visa – Vietnam – political opinion – member of opposition party Viet Tan – active participation in Viet Tan activities – birth of children in Australia – births not registered in Vietnam – relevant to exercise of Crown's executive power – non-Australian citizen children born within Australian Crown's realm – known no other country than Australia – face threats with removal from Australia – Crown's rights and duties enlivened – applicant and children face high likelihood of significant harm if returned – decision under review remitted

[2014052](#) (Refugee) [2023] AATA 995 (10 February 2023); D Dragovic, Senior Member

REFUGEE – cancellation – protection visa – stateless – risk to the Australian community – applicant sentenced to a Youth Supervision Order – intellectual disability – previously subjected to family violence – crime age patterns – adolescent development – power to cancel the visa does not arise – decision under review set aside

[1826690](#) (Refugee) [2023] AATA 874 (17 February 2023); J Silva, Member

REFUGEE – protection visa – Bangladesh – political opinion – supporter of opposition party – membership and activities with student wing and campaigning for local candidate – harassment, intimidation and threats by governing party supporters – false criminal charges against brother later dismissed – short-term and low-level activities and no well-founded fear of harm – returned failed asylum seeker – mental health diagnosis and treatment – vulnerability to stress and relapse – incapable of doing paid work – country information – limited availability of mental health treatment, and social stigma – mental health ground claimed only in regard to complementary protection and relocation – claims considered cumulatively – small but real chance of serious harm under refugee criterion – decision under review remitted

[2216762](#) (Refugee) [2023] AATA 643 (6 March 2023); D Crawshay, Member

REFUGEE – protection visa – Fiji – application for review made more than 28 days after notification of visa refusal decision – adequacy of notification of review rights – visa application made together with husband and child – notification addressed to husband only – ‘you’ stated to refer to each applicant in respect of own application – notifications given to any taken to be given to each – notification adequate – no jurisdiction

Social Security

[Benstead and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1108 (10 May 2023); S Evans, Member

SOCIAL SECURITY – pensions, benefits and allowances – Family Tax Benefit – claim lodged out of time – whether Tribunal should exercise discretion to allow claim out of time – whether “special circumstances” existed – whether “special circumstances” prevented lodgement of claim on time – whether pandemic restrictions are special circumstances – decision under review set aside and substituted

Taxation

[Tschierschky and Commissioner of Taxation](#) (Taxation) [2023] AATA 1201 (21 April 2023); K James, Senior Member

TAXATION – income tax – failure to disclose capital gains income – reviewable decision to disallow a remission of administrative penalty – whether administrative penalty excessive or otherwise incorrect – false or misleading statement – meaning of ‘recklessness’ within the context of section 284-90 of the Taxation Administration Act 1953 (Cth) - decision affirmed

Veterans' Affairs

[Skinner and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 1227 (17 May 2023); Mr A Maryniak KC, Member

VETERANS' AFFAIRS - War widow's pension - Whether veteran's death war-caused - Statement of Principles - Whether alcohol consumption increase caused by service - Held factor connecting death by suicide to service - Held Applicant entitled to war widows' pension - Decision set aside and substituted

[The Estate of Esther Whitby and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 1235 (17 May 2023); A George, Senior Member

VETERANS – conditions – war caused – Statement of Principles – Deledio steps – Veterans Entitlement Act – Veterans Review Board – Royal Australian Air Force – decision under review is set aside.

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
DBKX and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 673
Edmonds and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3191
HKRC and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 450
Lennox and Minister for Infrastructure, Transport, Regional Development and Local Government	[2023] AATA 12
Mamaku and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2023] AATA 753
MKBL and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 279

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Brownlie v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1485	[2023] FCA 436
He v Secretary, Department of Education, Skills and Employment	[2021] AATA 4307	[2023] FedCFamC2G 356
JFJF v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 3888	[2023] FCAFC 69 [2022] FCA 1401
Kassem v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4043	[2023] FCA 451
McEwan v Comcare	[2022] AATA 1586	[2023] FCA 447
Migration Agents Registration Authority v Gruszka	[2022] AATA 2128	[2023] FCA 473
Minister for Immigration, Citizenship and Multicultural Affairs v HSRN	[2022] AATA 4377	[2023] FCAFC 68

**QYFM v Minister for Immigration,
Citizenship, Migrant Services and
Multicultural Affairs**

[\[2020\] AATA 2161](#)

[\[2023\] HCA 15](#)

[\[2021\] FCAFC 166](#)

[\[2020\] FCA 1810](#)

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.

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from 30 May 2023:

Restless legs syndrome (Balance of Probabilities) – No. 61 of 2023

<https://www.legislation.gov.au/Details/F2023L00558>



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