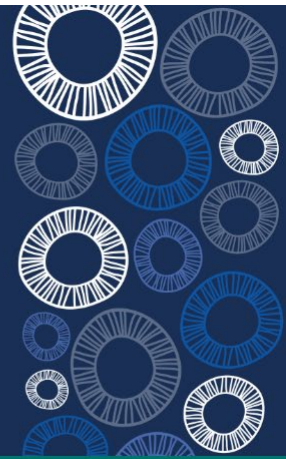




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 10/2024**

**20 May 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

[Barrows and Barrows](#) (Child support) [2024] AATA 875 (12 March 2024); C Breheny, Member

CHILD SUPPORT – departure determination – school fees of the child – a ground for departure established – decision to depart - decision under review affirmed

[Dashwood and Donelan](#) (Child support) [2024] AATA 876 (13 March 2024); P Jensen, Member

CHILD SUPPORT – departure determination – school fees of the child – special needs of the child – a ground for departure established – decision to depart - decision under review set aside and substituted

[Kavanagh and Kavanagh](#) (Child support) [2024] AATA 878 (13 March 2024); F Petrone, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review varied

[Nolan and Nolan](#) (Child support) [2024] AATA 877 (19 March 2024); S Irvine, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – existing percentage of care determinations revoked and new determinations made – no interim care determination can be made - decision under review affirmed

[PXYP and Child Support Registrar](#) (Child support second review) [2024] AATA 1093 (16 May 2024); Dr N A Manetta, Senior Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – conflicting evidence – child clearly reluctant to spend time with one parent – interpretation of evidence before the Tribunal – decision under review set aside and change in the percentage of care decision substituted

[Rooney and Durant](#) (Child support) [2024] AATA 799 (15 March 2024); J Thomson, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

## Citizenship

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

(Citizenship) [2024] AATA 964 (28 March 2024); A Poljak, Senior Member

CITIZENSHIP – Application for citizenship by conferral – Whether the applicant meets the general residence requirement – Permanent resident – Whether applicant has a close and continuing association – Substantial periods of absence – Spouse or de facto – Intention to reside – Purchase of property – Continual employment – Engagement in community – Decision under review set aside and remitted

## Compensation

### [Marshall and Comcare](#) (Compensation) [2024] AATA 976 (28 March 2024); D O'Donovan, Senior Member

WORKER'S COMPENSATION – claims for psychological injury under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – adjustment disorders precipitated by events in the workplace – perception of bullying and harassment – whether injury/aggravation as a result of reasonable administrative action – failure to obtain a benefit – inappropriate conduct on part of applicant – whether administrative action taken in a reasonable manner – decisions under review affirmed

### [VCBV and Australian Postal Corporation](#) (Compensation) [2024] AATA 1023 (9 May 2024); Dr M Evans-Bonner, Senior Member

WORKERS' COMPENSATION – Whether liability should be accepted under s 14 of the Safety, Rehabilitation & Compensation Act 1988 (Cth) for a claim of “mental stress” – whether the Applicant suffered from an “ailment”? – disease – whether the ailment was contributed to, to a significant degree by the Applicant's employment with Australia Post – whether the Applicant was entitled to incapacity payments under s 19 of the Act for right knee pain for periods including 30 July 2020 to 5 August 2020 – no jurisdiction to broaden period of incapacity payments – whether any incapacity was due to a non-compensable psychological ailment – reasonable administrative action – competing expert evidence – Reviewable Decisions affirmed

## Corporations

### [Love and Australian Securities and Investments Commission](#) [2024] AATA 1095 (7 May 2024);

B W Rayment OAM KC, Deputy President

FINANCIAL – where applicant ceases to be a relevant provider of financial services – where applicant failed to complete exam requirement under new rules – whether Tribunal should exercise power to exempt applicant from statutory requirement – where special circumstances found – COVID19 affected business – decision under review set aside and substituted

## Education and Research

### [Ward and Secretary, Department of Employment and Workplace Relations](#) [2024] AATA 955

(19 April 2024); J C Kelly, Senior Member

HIGHER EDUCATION SUPPORT – VET FEE-HELP debt – application to re-credit Applicant's VET FEE-HELP balance – dismissal application – no reasonable prospects of success

## Freedom of Information

[NCKX and Australian Information Commissioner](#) [2024] AATA 1100 (10 May 2024); B W Rayment OAM KC, Deputy President

PRIVACY - breach of privacy – publication of applicant’s information by third party on a register for period of time – where third party accepts adverse findings – hurt and humiliation – whether quantum of compensation determined by third party was adequate – award to be restrained but not minimal – decision under review set aside and substituted

[Patrick and Secretary, Department of Defence](#) (Freedom of information) [2024] AATA 1029 (10 May 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – review of decision to refuse access to any letters to Australian Defence Force personnel rescinding awards – conditional exemptions under sections 47E and 47F of the Freedom of Information Act 1982 – whether disclosure of documents would have a substantial adverse effect on management of personnel and operations of the Department of Defence – whether disclosure of documents would have a substantial adverse effect on the proper and efficient conduct of operations of the Department of Defence – whether disclosure would involve unreasonable disclosure of personal information – whether disclosure is in or contrary to the public interest – whether parts of the letters could be redacted – decision affirmed

[Singh and Commonwealth Ombudsman](#) (Freedom of information) [2024] AATA 969 (6 May 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – review of decision to refuse access to documents related to a complaint lodged with the Commonwealth Ombudsman about the Department of Immigration – claim that documents are exempt under s 42 of the Freedom of Information Act 1982 because documents would be privileged from production on the ground of legal professional privilege – further exemptions under sections 47E(d) and 47F – whether disclosure of documents would have a substantial adverse effect on the operations of the office of the Commonwealth Ombudsman – whether disclosure would involve unreasonable disclosure of personal information – whether disclosure is in or contrary to the public interest – whether parts of a document are irrelevant to the access request – decision affirmed

## Migration

[2209615](#) (Migration) [2024] AATA 425 (28 February 2024); M Ison, Senior Member

MIGRATION – cancellation – Bridging A (Class WA) – Subclass 010 (Bridging A) – granted after application for protection visa – visa refused and review application in progress – criminal conviction and community corrections order – discretion to cancel visa – arrived on tourist visa intending to apply for protection – also holds Bridging E visa with no-work condition – hardship to applicant and family members – wife and child in Australia and three children in home country – wedding and education of children in home country – best interests of child in Australia primary but not sole consideration – education, friends and community – decision under review affirmed

[2314333](#) (Migration) [2024] AATA 851 (26 February 2024); B Cullen, Senior Member

MIGRATION – cancellation – Bridging A (Class WA) visa – Subclass 010 (Bridging A) – ground for cancellation – convicted of an offence – consideration of discretion – circumstances of offence – medical condition – impact of guilty plea on visa status – financial, psychological and emotional hardship – favourable character references – decision under review set aside

[BJKY and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1000 (8 May 2024); A E Burke AO, Member

MIGRATION – applicant is a citizen of Albania – applicant held a Class BC Subclass 100 Spouse (Permanent) visa – visa mandatorily cancelled under Migration Act – substantial criminal record – delegate of Minister decided not to revoke mandatory cancellation – serious offence – consideration of the Ministerial Direction 99 – primary considerations – protection of the Australian community – nature and seriousness of the conduct – conduct found to be very serious – risk to the Australian community – expectations of the Australian community – links to the Australian community – best interests of minor children in Australia – extent of impediments if applicant removed to Albania – decision under review set aside and new decision substituted that there is another reason for visa not to be revoked

[BPBR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 1002 (26 April 2024); D O'Donovan, Senior Member

Applicant fails character test on basis of custodial sentence greater than 12 months – application to review exercise of discretion to cancel visa – Albanian citizen – multiple convictions associated with cultivation of cannabis – inconsistencies between basis of sentencing and version of events given to the Tribunal – serious offending – risk of re-offending due to criminal associations – limited ties to the Australian community – expectations of the Australian community – formative years and family in Albania – discretion to cancel exercised

[Brar and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 886 (12 March 2024); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of visa – where the Applicant fails the character test- whether there is another reason to revoke the mandatory cancellation decision- application of Ministerial Direction No. 99 – Tribunal finding there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[Chavez](#) (Migration) [2024] AATA 717 (28 February 2024); G Bartley, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine spousal relationship – financial aspects – nature of the household – social aspects – nature of the parties' commitment – decision under review remitted

[Engelina and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 965 (27 March 2024); A Poljak, Senior Member

MIGRATION – Cancellation of Skilled (Provisional) (Class VC) visa under subsection 501(2) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion under section 501(1) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside

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

AATA 1099 (1 May 2024); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of an Ex-Citizen Subclass 150 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 sexual offences against a child family member – otherwise of good character – strong ties to the community – decision under review affirmed

[Hamana Hen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration)

[2024] AATA 1098 (16 May 2024); D J Morris, Senior Member

MIGRATION – applicant is a citizen of the State of Israel – applicant applied for an Australian visa – applicant does not pass the character test in the Migration Act – visa was refused on basis of predominantly overseas offending – applicant made representations – delegate affirmed visa refusal – applicant sought review by Tribunal – ministerial direction applied – primary and other considerations – applicant has several domestic violence offences within marriages – some other general offending – parties concede risk of family violence re-offending is low to moderate – risk of general offending low – parties concede best interests of minor child in Australia supports granting of visa – rehabilitative steps taken by applicant – decision under review set aside and new decision substituted

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

AATA 1056 (15 May 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – New Zealand citizen – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass good character test – criminal record – fraud – possessing or receiving tainted property – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate’s decision not to revoke is affirmed

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

AATA 1108 (9 April 2024); A Julian-Armitage, Member

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

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

AATA 975 (11 March 2024); A Julian-Armitage, Member

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

**Hillard and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2023] AATA 4840 (4 December 2023); K Millar, Senior Member

MIGRATION – mandatory cancellation of Subclass 444 Special Category (Temporary) (Class TY) visa under section 501(CA)(4) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501(CA)(4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside

**HKRC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2024] AATA 1119 (17 May 2024); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has been convicted of crimes of a sexual nature against a minor – whether under s 501CA(4) of the Migration Act 1958 there is ‘another reason’ to revoke mandatory cancellation decision – the meaning of ‘formative years’ in paragraph 8.3(4) of Direction 99 - the primary considerations of the protection and expectations of the Australian community and family violence outweigh the countervailing considerations – even a low to moderate risk of reoffending is unacceptable because of the inherent seriousness of the applicant’s offending - decision under review is affirmed

**Hong and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2024]

AATA 1001 (9 May 2024); R Reitano, Member

MIGRATION – visa cancellation – protection of the community – serious criminal offending – risk of re-offending – expectations of the Australian community – nature duration and ties to community – long period in Australia since childhood – close ties to mother – legal consequence of decision – impediments if removed – mental illness – severe and recurring depression – weight or respective considerations when compared to one another – satisfaction about other reason – decision to refuse set aside and substituted

**Ismath** (Migration) [2024] AATA 404 (26 February 2024); A McMurrin, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Australian study requirement – courses completed within 6 months before visa application – visa application delayed by plans for further study – student enrolment terminated – impact of the COVID19 travel restrictions – applicant departed Australia prior to course completion – delay not caused by absence from Australia – extended concessional period – decision under review affirmed

**Jama and Minister for Immigration, Citizenship, and Multicultural Affairs** (Migration) [2024]

AATA 1111 (17 May 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – New Zealand Citizen – Class TY Subclass 444 Special Category (Temporary) visa – aggravated armed robbery – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate’s decision set aside and substituted with a decision revoking the original visa cancellation



**Koroinaciwa and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs** (Migration) [2024] AATA 963 (3 May 2024); A Poljak, Senior Member

MIGRATION – mandatory cancellation of class GD subclass 403 temporary work (international relations) visa under section 501(3A) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed

**Midiana and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2024] AATA 1041 (13 May 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – Papuan New Guinea (PNG) citizen – Class BB Subclass 155 Five Year Resident Return visa – failure to pass good character test – criminal record – fraud – stealing – gambling – depression – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate’s decision not to revoke is affirmed

**Mitchell and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2024] AATA 967 (29 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 27 year old man who arrived in Australia as a 12 year old – ties to Australia – best interests of children – non revocation decision is set aside and substituted

**Montsho and Minister for Immigration, Citizenship and Multicultural Affairs** (Migration) [2024] AATA 1053 (15 May 2024); S Webb, Member

MIGRATION – mandatory visa cancellation – review of decision not to revoke visa cancellation – failure to pass character test – Ministerial Direction No. 99 – primary and other relevant considerations – protection of Australian community – very serious conduct – risk of harm – strength, nature and duration of ties to Australia – best interests of minor child – expectations of the Australian community – legal consequences of decision – effect on partner visa application – impediments if removed – impact on victims – balance of considerations – no other reason established for revocation – threshold for exercise of power to revoke not surpassed – decision affirmed

[MQGZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 1017 (8 May 2024); Dr M Evans-Bonner, Senior Member

MIGRATION – partner visa cancellation – character test – Applicant convicted of a sexually based offence involving a child – Applicant is a 40-year-old citizen of Pakistan who arrived in Australia as a 30-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 – family violence conduct – strength, nature and duration of ties to Australia – no minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to Pakistan – impact on victims – impact on Australian business interests – Tribunal satisfied that discretion should be exercised to cancel the Applicant’s Visa – Reviewable Decision affirmed

[RBPQ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 4842 (28 November 2023); Dr N A Manetta, Senior Member

MIGRATION – refusal of bridging visa – Migration Act – whether to exercise statutory discretion to refuse bridging visa – section 501(1) – Direction 99 – one instance of very serious offending – very low risk of re-offending – community expectations consideration weighs substantially against applicant – applicant has visa-related application pending in the Federal Court – applicant unable to obtain legal representation in detention – applicant has a legitimate interest in being released into the community to earn money and to engage counsel to assist him in the presentation of his case – limited nature of bridging visa adverted to – decision under review set aside

[RCWV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 1036 (10 May 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 – Applicant is a 35-year-old Sudanese national who arrived in Australia as a 20-year-old child – 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 – Applicant does not meet tripartite test for being indigenous – best interests of minor daughter and two minor indigenous sons – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to Sudan – impact on victims – Reviewable Decision set aside and substituted

[Samaranayake and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1096 (16 May 2024); D O'Donovan, Senior Member

MIGRATION – mandatory cancellation of the applicant’s Class Five Year Resident Return visa – applicant is a citizen of Sri Lanka – sexual offences including against a child – minor child living in Sri Lanka with his mother – allegations of family violence – failure to pass character test – whether there is another reason to revoke the cancellation – Direction No 99 – protection of the Australian Community – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – health system in Sri Lanka – threats by ex-wife’s new partner - decision under review affirmed

[Sanam](#) (Migration) [2024] AATA 396 (26 February 2024); R Skaros, Senior Member

MIGRATION – Skilled Employer Sponsored Regional (Provisional) (Class PE) visa – Subclass 494 - Skilled Employer Sponsored Regional (Provisional) – no approved nomination – no hearing for the nomination review application – decision under review affirmed

[Singh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1055 (14 May 2024); R Maguire, Member

MIGRATION – non revocation of a mandatory cancellation of visa- remittal- 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 Applicant’s criminal history is lengthy for associated time in the community- where Tribunal finding the Applicant’s evidence to be untrustworthy- Tribunal not satisfied Applicant’s recidivist risk is acceptable- 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

[WCHR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 1092 (16 May 2024); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – conviction for kidnapping, theft and assault - applicant does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – decision set aside

[Wright and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1054 (14 March 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 Applicant has been in Australia since he was five- where the Applicant’s criminal history is lengthy – where Tribunal is satisfied that the Applicant’s recidivist risk is acceptable – 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

[YCNS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 966 (6 May 2024); R Reitano, Member

MIGRATION – visa cancellation – protection of the community – very serious criminal offending – risk of reoffending – expectations of the Australian community – nature duration and ties to community – legal consequence of decision – international non-refoulment obligations – impediments if removed – relevance of personal circumstances – decision set aside and substituted

## National Disability Insurance Scheme

[Armstrong and National Disability Insurance Agency](#) [2023] AATA 4843 (7 November 2023); I Thompson, Member

PRACTICE AND PROCEDURE – access request to become a participant of the NDIS rejected – decision affirmed on internal review – application for review by the Tribunal not lodged in time – application for extension of time – whether reasonable in all the circumstances to extend time – application granted

[Greville and National Disability Insurance Agency](#) [2024] AATA 977 (7 May 2024); L Proske, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – whether impairments result in substantially reduced functional capacity to undertake one or more of the six prescribed activities – decision under review set aside and substituted

[Lougher and National Disability Insurance Agency](#) [2024] AATA 1057 (15 May 2024); A Younes, Deputy President

National disability insurance scheme — reasonable and necessary supports — Specialist Disability Accommodation (SDA) — Building type — value for money — harm to the participant and risk to others — behaviours of concern — reviewable decision set aside and remitted with direction

[Rossow and National Disability Insurance Agency](#) [2024] AATA 1004 (8 May 2024); S Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – request for access – functional neurological disease – major depressive disorder – fibromyalgia/chronic pain syndrome – post-traumatic – stress-disorder – whether impairments result in substantially reduced functional capacity – decision under review affirmed.

## Practice and Procedure

[Abeyasinghe Herath Mudiyansele and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1016 (6 May 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – applicant was self-represented - applicant objected to respondent being legally represented – Tribunal asked applicant if he wanted adjournment to seek legal representation – applicant said he wanted respondent to appear in person or be represented by an officer who was not a lawyer – Tribunal explained that parties are entitled to represent themselves or be represented by an advocate or lawyer – was another remedy available – was the applicant afforded procedural fairness – Tribunal decided condition imposed by applicant was intolerable – matter dismissed for applicant failing to proceed – written reasons provided

SOCIAL SERVICES – pensions, benefits and allowances – jobseeker payment cancelled because applicant failed to report – whether exceptional circumstances exist

[Corbett and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1094 (16 May 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE- review application lodged out of time- where the Applicant claims he previously submitted his application within time- where the claimed in time submission was sent by email- where the recipient email address for the in time submission does not exist – Tribunal finding the in time submission was never received by the Tribunal – whether Tribunal has discretion to extend time for lodgement of the review application - consideration of section 500(6B) of the Migration Act 1958 (Cth) - Tribunal finding it is legislatively barred from considering an extension of time application- Tribunal finding lack of jurisdiction - application dismissed

[International Animal Health Products Pty Ltd and Australian Pesticides and Veterinary Medicines Authority](#) [2024] AATA 1038 (10 May 2024); Dr L Kirk, Senior Member

PRACTICE AND PROCEDURE – application for approval and registration of a product under s 14(1) Agricultural and Veterinary Chemicals Code – release of documents – whether documents relevant to application – whether non-disclosure obligations apply to release – Respondent directed to release documents

[Mizzi and National Disability Insurance Agency](#) [2024] AATA 1003 (16 April 2024); J Toohey, Member

National Disability Insurance Scheme – Jurisdiction Issue – Where no request for review made under subsection 100(3) – Where no review decision made under subsection 100(6) – Request for written reasons – Tribunal does not have jurisdiction under section 103

[NQ Fitness Pty Ltd and Commissioner of Taxation](#) (Taxation) [2024] AATA 978 (7 May 2024); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – reinstatement of application for review – where application dismissed for non-payment of prescribed fee – whether application for review dismissed in error – reinstatement refused

[O'Hara and Comcare](#) (Compensation) [2024] AATA 1052 (14 May 2024); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – summons – objections to grant of access – scope of summons – documents within scope – objections refused

[Rogers and Australian Securities and Investments Commission](#) [2024] AATA 954 (3 May 2024); G Lazanas, Senior Member

PRACTICE AND PROCEDURE – application for stay of decision – decision regarding making of instrument cancelling applicant's registration as a relevant provider and prohibiting applicant from re-registration for period of two years – provision of scoped advice – whether discretion of the Tribunal is enlivened to grant a stay – whether a stay is desirable for the purpose of securing the effectiveness of the hearing – applicant no longer providing financial services involving scoped advice – financial consequences for applicant – public interest considerations – significant portion of the ban period would have passed before the hearing and determination of the application of review – application for stay granted on condition that applicant not to give scoped advice for duration of stay

[Wiseway Logistics Pty Ltd and Secretary, Department of Home Affairs](#) [2024] AATA 1032 (6 May 2024); A Poljak, Senior Member

AVIATION TRANSPORT SECURITY – Application for a stay of respondent’s decision not to renew applicant’s designation as a registered air cargo agent – Stay hearing – Whether appropriate for an application for a stay to be relitigated – Whether there is a change in circumstances – application refused

[Wiseway Logistics Pty Ltd and Secretary Department of Home Affairs](#) [2024] AATA 1033 (30 April 2024); A Poljak, Senior Member

Practice and procedure – request made to the Tribunal by the applicant to exercise its discretion under subsection 40A(1)(b) of the Administrative Appeals Tribunal Act 1975 (Cth) to issue summonses – Whether request is relevant to the substantive issues the Tribunal is yet to determine – Whether the Tribunal should exercise the discretion in subsection 40A(2) of the AAT Act to refuse the Applicant’s request – Request to issue summons refused

## Refugee

[1913372](#) (Refugee) [2023] AATA 4847 (15 December 2023); R Smidt, Member

REFUGEE – protection visa – Iraq – viewed as traitors or opponents by Shia militias – applicant’s brothers’ work with US military – moderate Shia – hold anti-ISIS views – offended student with moderate views – son of leader of militia – children westernised – risk for women – credibility issues – applicant granted refugee visa in the US – residence in the US – Trump policies – decision under review affirmed

[1923418](#) (Refugee) [2023] AATA 4839 (11 December 2023); B Cullen, Senior Member

REFUGEE – protection visa – Turkiye – religion – conversion to Christianity – physical assault – detention – mental health issues – punishment for church attendance – decision under review remitted

[1928084](#) (Refugee) [2024] AATA 443 (22 January 2024); D Dragovic, Deputy President

REFUGEE – protection visa – Saudi Arabia – political opinion – opposition to the Saudi regime – religion – Shia – particular social group – women – opposition to regime expressed on social media – fear of killing – Shia prayer practices – detention – sexual assault – employment – right to enter and reside in Bahrain – decision under review remitted

[1929727](#) (Refugee) [2024] AATA 1106 (31 January 2024); K Vernon, Senior Member

REFUGEE – protection visa – Kenya – particular social group – victim of domestic violence – imputed political opinion – opposition to the Mungiki – threat of public circumcision – fear of physical assault – renewed hope in the political process in Kenya – delay in applying for protection – decision under review affirmed

[2009629](#) (Refugee) [2024] AATA 434 (5 January 2024); R Gagliardi, Member

REFUGEE – Protection Visa – Cambodia – actual / imputed political opinion – anti-Cambodian government – particular social group – crew members who desert foreign ships – crew members who do not complete the obligations of their contracts under foreign ships – account lacks specificity – lack of evidence of enrolment in training – delay in lodging application – credibility concerns – decision under review affirmed

[2118231](#) (Refugee) [2024] AATA 1030 (31 January 2024); D Creedon, Member

REFUGEE – protection visa – Vietnam – irregular maritime arrival – earlier applications invalid with no jurisdiction to review – extensive incorrect information given at entry interview to protect identity – reasonable account and attempt to correct information – religion – Roman Catholic – church attendance from childhood – disruption by police – participation in major incident, beaten by police and parents threatened – political opinion – member of Viet Tan – organisational role in state chapter, participation in protests and social media activity – supporting statements from Viet Tan chapter and church, and photos – country information – fear of persecution under refugee criteria not well-founded – real risk of harm under complementary protection criteria – decision made without hearing necessary – decision under review remitted

[2219303](#) (Refugee) [2023] AATA 4675 (7 December 2023); P Vlahos, Member

REFUGEE – protection visa – China – Federal Circuit Court remittal – religion – Church of Almighty God – member with family from young age – partner arrested and applicant questioned – internal relocation through church network – understanding of teachings, and activities in China and Australia – social media activity in Australia – supporting statements – country information – state oversight of religion and persecution of those which do not conform – secret meetings and use of pseudonyms – fear of persecution well-founded – decision under review remitted

## Social Security

[McClure and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1018 (9 May 2024); B Pola, Senior Member

SOCIAL SECURITY – applicant recipient of Austudy payments and ceased to be a full-time student for purposes of participation requirements – where applicant incurred debts to Commonwealth – whether applicant failed to comply with notification obligations and was overpaid by Centrelink – whether special circumstances exist to waive or write off debt – payments not found to be received in good faith – notional entitlement to Newstart considered not appropriate to apply in present case – decision varied

[Page and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 962 (3 April 2024); A Poljak, Senior Member

SOCIAL SECURITY – Parenting payment single – Overpayment – Did not report employment – Did not report fortnightly income – Should recovery of debt be written off or waived – Debt not attributable solely to error made by Centrelink – Special circumstances not found – Recalculation of Debt – Decision under review set aside and substituted

[Pirwani and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 999 (7 May 2024); A Poljak, Senior Member

SOCIAL SECURITY – lump sum preclusion period – disability support payment – Whether a compensation preclusion period has been correctly applied – whether special circumstances exist – compensation lump sum – no evidence that special circumstances exist – decision under review affirmed

## Superannuation

[Merchant and Commissioner of Taxation](#) [2024] AATA 1102 (16 May 2024); Justice T Thawley, Deputy President

SUPERANNUATION – Commissioner of Taxation’s decision under s 126A(2) to disqualify the Applicant from acting as trustee of self-managed superannuation funds – contraventions of ss 34(1), 62(1) and 63(1) of the SISA – contraventions established – Applicant found to be fit and proper person by decision-maker whose decision reviewed – Applicant was fit and proper person – Applicant undertook transaction giving rise to contraventions in accordance with proposal put forward by the superannuation fund’s advisor – no material suggesting that Applicant was informed of possible risk of breaches of SISA – decision under s 126A(2) set aside

## Taxation

[Duncan and Commissioner of Taxation](#) (Taxation) [2024] AATA 974 (7 May 2024); Dr N A Manetta, Senior Member

INCOME TAX – whether applicant, a long-haul driver, entitled to claim food and drink expenses as a deduction – Income Tax Assessment Act 1936 (Cth) requires a person who claims a deductible work expense to keep appropriate records – applicant did not keep appropriate records – whether applicant eligible to claim substantiation exception – conditions of substantiation exception – not all conditions satisfied – no evidentiary basis for claimed level of expense – applicant bears the onus of showing what the correct assessment should have been under the Taxation Administration Act 1953 (Cth) – 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>Ash and Minister for Immigration, Citizenship and Multicultural Affairs</b>                       | <a href="#">[2024] AATA 890</a>  |
| <b>Cowgill and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b> | <a href="#">[2024] AATA 729</a>  |
| <b>O'Hara and Comcare</b>  | <a href="#">[2024] AATA 422</a>  |
| <b>Pessoa Firme and Minister for Immigration, Citizenship and Multicultural Affairs</b>              | <a href="#">[2024] AATA 773</a>  |
| <b>Pham and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>    | <a href="#">[2024] AATA 535</a>  |
| <b>Singh and Minister for Immigration, Citizenship and Multicultural Affairs</b>                     | <a href="#">[2024] AATA 1055</a> |
| <b>Stamenkovic and Minister for Immigration, Citizenship and Multicultural Affairs</b>               | <a href="#">[2024] AATA 607</a>  |

## Appeals finalised

| CASE NAME   | AAT REFERENCE                    | COURT REFERENCE  |
|---|----------------------------------|--|
| <b>Kamal v Minister for Immigration, Citizenship and Multicultural Affairs &amp; Anor</b>                         | <a href="#">[2020] AATA 959</a>  | <a href="#">[2024] HCASL 152</a><br><a href="#">[2023] FCAFC 159</a><br><a href="#">[2023] FCA 200</a> |
| <b>Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs</b>                                   | <a href="#">[2023] AATA 2543</a> | <a href="#">[2024] FCA 468</a>   |
| <b>TCXM v Minister for Immigration, Citizenship and Multicultural Affairs</b>                                     | <a href="#">[2022] AATA 2820</a> | <a href="#">[2024] FCA 451</a>   |
| <b>Walker Group Holdings Pty Ltd v Secretary, Department of Climate Change, Energy, the Environment and Water</b> | <a href="#">[2023] AATA 2307</a> | <a href="#">[2024] FCA 504</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

On 3 May 2024, the AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

**"perceived lack of control over tasks performed and stressful workloads", and "having severe financial hardship" as factors in hypertension –**

<https://www.legislation.gov.au/C2024G00262/asmade/text>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

**Hypertension (Reasonable Hypothesis) – No. 21 of 2022**

<https://www.legislation.gov.au/F2022L00258/asmade/text>

**Hypertension (Balance of Probabilities) – No. 22 of 2022**

<https://www.legislation.gov.au/F2022L00259/asmade/text>



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