



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 11/2022

30 May 2022

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.

Bankruptcy

[Weston and Inspector-General in Bankruptcy](#) [2022] AATA 1135 (17 May 2022); J C Kelly, Senior Member

BANKRUPTCY – trustee's objection to discharge – where special grounds specified in objection – failure to comply with request to provide written information about the bankrupt's property, income or expected income – failure to pay an amount that the bankrupt was liable to pay under s139ZG – where there is sufficient evidence to support the existence of a special ground – where bankrupt does not have a reasonable excuse for the conduct or failure – decision affirmed

Child Support

[LJSS and Child Support Registrar](#) (Child support second review) [2022] AATA 1319 (23 May 2022); R West, Member

CHILD SUPPORT ASSESSMENT – application for review – child care percentage – alleged change of percentage – appeal from decision of the Social Services and Child Support Division of the Administrative Appeals Tribunal – care period affected by COVID restrictions – decision set aside and remitted

[Amberg and Lineker](#) (Child support) [2022] AATA 351 (4 January 2022); R Anderson, Member

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

[Archer and Child Support Registrar](#) (Child support) [2022] AATA 636 (9 February 2022); J Bakas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – date of effect provisions – decision under review varied and sent back with direction about date of effect

[Mercer and Leonardi](#) (Child support) [2022] AATA 630 (15 February 2022); P Jensen, Member

CHILD SUPPORT – opt-in arrears – whether there were unpaid amounts – application for collection of unpaid amounts should be accepted – decision under review set aside and sent back with directions

[Roper and Child Support Registrar](#) (Child support) [2022] AATA 229 (13 January 2022); H Moreland, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – date of effect of the tribunal’s decision – no special circumstances exist that prevented the application for review being lodged in time – tribunal declines to make a determination under subsection 95N(2) – decision under review set aside and substituted

[Tuckey and Giles](#) (Child support) [2022] AATA 312 (1 February 2022); P Jensen, Member

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

Citizenship

[CTBP and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 1318 (16 May 2022); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant’s good character at the time of the Tribunal’s decision – Applicant is a 21-year-old man who pled guilty and was convicted of three child sex offences when he was a 14-year old-minor – further conviction for failing to comply with sex offender reporting obligations when he was 17 years of age – Applicant a registered sex offender until August 2023 – Applicant denies offending – extent to which the Applicant can challenge the facts on which his convictions were based – character referees have no knowledge of the Applicant’s offending – reviewable decision affirmed

[Helali and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 1334 (27 April 2022); A Maryniak QC, Member

CITIZENSHIP – refusal of application for citizenship by conferral – whether each Applicant has satisfied identity requirement under s. 24(3) of Australian Citizenship Act 2007 – identity requirements not satisfied – decisions under review affirmed

Inoo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2022] AATA 1240 (17 May 2022); D O'Donovan, Senior Member

Extension of time application – extension of time refused – where undisputed facts – applicant applying for citizenship on basis of being stateless – requirements under Citizenship Act not satisfied – Applicant not eligible under Citizenship Act – Tribunal does not have discretion to waive mandatory criteria – Tribunal does not have discretion to grant applicant citizenship – not reasonable to extend time

Panuve and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2022] AATA 1321 (20 May 2022); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – whether the applicant is not of good character – serious offending – whether sufficient time has elapsed since last offending – whether applicant has demonstrated remorse and understanding of offending – whether applicant has demonstrated enduring moral qualities – decision under review set aside

Pikora and Minister for Immigration, Migrant Services and Multicultural Affairs (Citizenship)

[2022] AATA 1351 (26 May 2022); M J McGrowdie, Senior Member

CITIZENSHIP – application by applicant to reinstate Citizenship – applicant attests that she ceased to be a citizen to avoid suffering significant hardship – access to superannuation funds available to the applicant upon giving up citizenship – applicant owed money to ill father in the UK who was in financial need – loans from father repaid by applicant from applicant's superannuation – delegate's refusal based on limited information from applicant – reviewable decision set aside and remit

Razae and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2022] AATA 1336 (25 May 2022); Dr S Fenwick, Senior Member

CITIZENSHIP – application for citizenship by conferral – identity – inconsistencies in documentation provided – taskera issued in absentia by Afghanistan authorities – limited details of life story – decision set aside and remitted

TMGL and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Citizenship) [2022] AATA 1335 (24 May 2022); J W Constance, Deputy President

CITIZENSHIP – application for review of decision to revoke Australian citizenship – where Applicant convicted of child abuse offences under Crimes Act 1900 (NSW) – whether contrary to the public interest for the Applicant to remain an Australian citizen – whether discretion to revoke citizenship should be exercised – decision under review affirmed

Compensation

[Bartlett and John Holland Pty Ltd](#) (Compensation) [2022] AATA 1329 (19 May 2022); A Durkin, Member

COMPENSATION – claim for chronic sinusitis – proper classification of condition as “headache” or “migrainous headache” – liability for s 19 benefits under the SRC Act – does the applicant have a relevant incapacity pursuant to s 19 of the SRC Act – whether the applicant had properly made a claim under s 54 of the SRC Act – preferable medical evidence – decision set aside and remitted

[Messer and Australian Postal Corporation](#) (Compensation) [2022] AATA 1322 (23 May 2022); J Sosso, Deputy President

COMPENSATION – Chronic Fatigue Syndrome – Applicant diagnosed during adolescence – whether Applicant wilfully made false representation on her compensation claim form – whether Applicant suffered an injury or aggravation of a pre-existing ailment – whether employment contributed to a significant degree, the onset or aggravation of the ailment – whether Respondent liable to pay compensation – decision under review affirmed

[SDCS and COMCARE](#) (Compensation) [2022] AATA 1327 (20 May 2022); Senior Member Katter

COMPENSATION – in respect of an injury suffered by an employee if the injury results in incapacity for work, or impairment – disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment – sections 5A and 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth)

[Vescio and Telstra Corporation Limited](#) (Compensation) [2022] AATA 1353 (26 May 2022); The Hon. D Cowdroy AO QC, Deputy President

COMPENSATION – asbestos-related pleural diseases – multiple comorbidities – whether deceased's death caused by asbestos-related pleural diseases or other comorbidities – whether asbestos-related pleural diseases can be considered an injury under s 5A(a) or s 5A(b) – whether Applicant entitled to compensation under ss 17 and 18 of the Safety Rehabilitation and Compensation Act 1988 (Cth) – decision set aside and substituted

Customs

[Clover Pipelines Pty Ltd and Comptroller-General of Customs](#) [2022] AATA 1332 (24 May 2022); A Poljak, Senior Member

CUSTOMS – Tariff Concession Order (TCO) – whether the subject goods meet the terms of the relevant TCOs – relevant law and material considered – decision under review affirmed

Defence

[Gamble and Secretary, Department of Defence](#) [2022] AATA 1271 (19 May 2022); Dr M Evans-Bonner, Senior Member

DEFENCE – Defence Home Ownership Assistance Scheme – Applicant’s subsidy payments ceased due to subsidy loan account being paid into a credit balance – whether there was a subsidy ceasing event – lack of discretion in s 27(4) of the Defence Home Ownership Assistance Scheme Act 2008 (Cth) which uses the word “must” – departmental “Policy View” states a discretion can be exercised in cases of “genuine error” – Policy View inconsistent with legislation – Reviewable Decision affirmed

Education and Research

[McMillan and Secretary, Department of Education](#) [2022] AATA 1317 (23 May 2022); D O'Donovan, Senior Member

Dismissal under section 42B(1)(b) – whether the application has no reasonable prospects of success – questions of fact to be determined – gaps in the available evidence – whether the applicant should be given an opportunity to lead evidence for substantive matter – where the applicant claims Careers Australia misinterpreted cost of course – where the applicant claims Careers Australia engaged in other forms of pressure to keep her in the course – where the applicant required significant assistance to complete units – where the applicant sought to have debts from enrolment re-credited under section 46AA – Tribunal not satisfied applicant has no reasonable prospects of success

Migration

[Hettiarachchi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 1354 (24 May 2022); The Hon. D Cowdroy AO QC, Deputy President

MIGRATION – Visa renewal refused – whether the Applicant fails to pass the character test – whether the discretion to refuse to grant the Applicant a Skilled Regional visa should be exercised – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision affirmed

[Muhumud and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 1365 (23 May 2022); D J Morris, Senior Member

MIGRATION – applicant is citizen of Somalia – visa cancelled under s 501(3A) – is substantial criminal record not in dispute – is there ‘another reason’ to revoke mandatory cancellation - ministerial direction No. 90 – primary considerations – protection of the Australian community from criminal or other serious conduct – significant offending over long period – whether conduct constitutes family violence – best interests of minor children in Australia – expectations of Australian community – international non-refoulement obligations – extent of impediments if removed – impact on victims – links to the Australian community – decision under review is affirmed

Nkani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1239 (10 May 2022); C Puplick AM, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – previous cancellations considered – no issue of cancellation referring to previous convictions – Ministerial Direction 90 – protection of the Australian community – family violence – best interests of minor children – expectations of the Australian community – non-refoulement obligations claimed – fear of witchcraft in country of return – impediments to removal – impact on victims – strength, nature and duration of ties to Australia – decision affirmed

Piec and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1238 (27 April 2022); The Hon. D Cowdroy AO QC, 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. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – best interests of minor child – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

QKDV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1324 (19 May 2022); S Evans, Member

MIGRATION – sections 501 and 501CA of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – primary and other considerations considered – Applicant’s criminal history and background considered – decision under review affirmed

Robinson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1270 (5 May 2022); A George, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – domestic violence – decision under review affirmed

STZS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1255 (16 May 2022); D J Morris, Senior Member

MIGRATION – remittal by Federal Court – applicant held class XB subclass 200 (refugee) visa – visa cancelled owing to substantial criminal record – delegate of Minister decided not to revoke cancellation – ministerial direction – Direction No. 90 – primary considerations: protection of Australian community from criminal or other serious conduct – juvenile offences where no conviction recorded are an irrelevant consideration – whether conduct constituted family violence – the best interests of minor children in Australia – expectations of Australian community – other considerations: international non-refoulement obligations – extent of impediments if removed – chronic psychiatric condition diagnosed – links to the Australian community – prospects of prolonged detention – decision under review set aside and new decision substituted

PRACTICE AND PROCEDURE – Guideline on persons giving expert or opinion evidence – Tribunal not bound by rules of evidence – whether evidence of an expert medical witness proffering an opinion outside specific speciality of medical expertise that a person may benefit from further medical assessment should be given no weight – witness expressly states this view not being given in capacity as expert witness – in this case evidence does not carry no weight – Tribunal may have regard to material that would not be admissible in a court – expert medical witness’s qualifications make him competent to express a general view

Vovk and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1328 (19 May 2022); D J Morris, Senior Member

MIGRATION – cancellation of a visa – Tribunal finds applicant is citizen of Russian Federation – applicant held class BN subclass 136 skilled independent (migrant) visa – visa cancelled by Minister’s delegate under s 501(2) of Migration Act – applicant sought review – ministerial Direction No. 90 – primary considerations – protection of the Australian community – whether conduct constitutes family violence – conduct almost exclusively in this category – expectations of the Australian community – other considerations – international non-refoulement obligations – claims about possible conscription if repatriated – extent of impediments if removed – impact on victims – length of time since last offending – links to the Australian community – decision under review to cancel visa set aside

PRACTICE AND PROCEDURE – expert witnesses – both have examined applicant at different times – no objection from parties for evidence to be given concurrently – Tribunal gives leave for them to give concurrent evidence

Whiu and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1337 (24 May 2022); C Puplick AM, 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 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – impediments to removal – links to the Australian community – decision set aside and substituted

XGGB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1364 (6 May 2022); W Frost, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 202 Global Special Humanitarian visa – where Applicant does not pass character test – whether “another reason” to revoke visa cancellation – Protection of the Australian community - Family violence – Best interests of minor children – Expectations of the Australian Community — Criminal record – Ministerial Direction No 90 – Whether Australia owes international non-refoulment obligations – Real chance of persecution – Extent of impediments if removed – Decision under review affirmed

ZRTY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 1330 (27 April 2022); B W Rayment OAM QC, Deputy President

MIGRATION – mandatory visa cancellation due to criminal record – refusal to revoke the mandatory cancellation of a Class WC Subclass 030 Bridging C Visa – applicant does not pass the character test – whether there is another reason to revoke the visa cancellation – returning the applicant to his home country would expose him to great risk – matter remitted to the respondent for further consideration

2001061 (Migration) [2022] AATA 962 (9 March 2022); B Darcy, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 835 (Remaining Relative) – no near relatives other than specified citizens or permanent residents usually resident in Australia – second applicant’s siblings permanently estranged and whereabouts unknown – compassionate circumstances – Australian citizen mother’s age and mental health – contributions to community and character references – members of family unit – referred for ministerial consideration – decision under review affirmed

Karnaljeet Singh (Migration) [2022] AATA 932 (14 April 2022); M Sheargold, Member

MIGRATION – cancellation – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – ceased employment for more than 60 days – circumstances beyond applicant’s control – directed to work from home then stop because of COVID-19 restrictions – travelled to home country to marry – nomination withdrawn and nominator’s sponsorship cancellation and bar and winding up in insolvency – discretion to cancel visa – no approach to department – unpaid wages and superannuation – financial and emotional hardship – new employer’s position nomination for different subclass visa in progress – decision under review set aside

OTAKE (Migration) [2022] AATA 1026 (4 April 2022); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – applicant convicted of an offence – conviction without recording the conviction – decision under review set aside

[Menina](#) (Migration) [2022] AATA 1031 (30 March 2022); T Quinn, Member

MIGRATION – Student (Temporary) (Class TU) visas – Subclass 500 (Student) – member of the family unit – subsequent entrant – secondary applicant joined the family prior to the visa grant – not included in visa application – migration agent’s oversight – common law principles of agency – decision under review affirmed

[Patel](#) (Migration) [2022] AATA 918 (21 April 2022); N Findson, Member

MIGRATION – Employer Nomination (Permanent) visa – Subclass 186 (Employer Nomination Scheme) – bogus document or false or misleading information given in visa application – previous employment and skills assessment – site visits showed other businesses operating at premises – leasing, subleasing and signage arrangements – comprehensive and verifiable documentary evidence and consistent and credible oral evidence supporting existence of company and applicant’s employment – skills shortages – members of family unit – decision under review remitted

National Security

[Fewster and Director-General, National Archives of Australia](#) [2022] AATA 1331 (24 May 2022); J W Constance, Deputy President

ARCHIVES – exempt records – history of the Australian Secret Intelligence Service – information or matter the disclosure of which could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth – public interest certificate issued – decision under review affirmed

Practice and Procedure

[Cat Media Pty Limited, Carotino \(Australia\) Pty Limited, Pharm-a-Care Laboratories Pty Ltd and Minister for Health and Aged Care](#) [2022] AATA 1254 (13 May 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – request for stay order – request for non-publication order – decisions under review to cancel listing on Australian Register of Therapeutic Goods – factors to be considered in deciding whether to grant a stay – prospects of success – securing an effective review – interests to be considered – interest of the parties – general public’s interest – stay refused – non-publication order refused – existing non-publication order maintained

[Constantin and Commissioner of Police \(NSW\)](#) [2022] AATA 1333 (20 May 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – refusal of mutual recognition for certain terms of security clearance – 28-day period has elapsed – where extent of delay reasonably explained – where there are reasonable prospects of success – extension of time granted

[Cosgrove and Secretary, Department of Education, Skills and Employment](#) [2022] AATA 1195 (16 May 2022); D Mitchell, Member

PRACTICE AND PROCEDURE – role of the Tribunal – application for dismissal pursuant to section 42B(1)(b) the Administrative Appeals Tribunal Act 1975 (Cth) – re-credit of VET FEE-HELP debt as a result of inappropriate actions of a VET Provider or its agent – whether Tribunal is satisfied the application has no reasonable prospect of success – application dismissed

[DZNB and National Disability Insurance Agency](#) [2022] AATA 1326 (20 May 2022); S Webb, Member

PRACTICE AND PROCEDURE – jurisdiction – review of internal review decision to approve a statement of participant supports – serial participant plans – remittal of decision under review for reconsideration – participant plan issued – reconsideration decision not expressed in accordance with legislation – elements of administrative decision – reconsideration decision to vary decision under review – plan document gives effect to reconsideration decision under existing plan – jurisdiction to review decision as varied

[GBNR and National Disability Insurance Agency](#) [2022] AATA 1323 (20 May 2022); S Webb, Member

PRACTICE AND PROCEDURE – jurisdiction – review of internal review decision to affirm approval of a statement of participant supports - remittal of decision under review for reconsideration – scope of reconsideration decision – reconsideration decision varies decision under review – temporal considerations – participant plan document issued – plan document gives effect to reconsideration decision under existing plan – jurisdiction to review internal review decision as varied by reconsideration decision

[McKenzie; Australian Electoral Commission and](#) (Compensation) [2022] AATA 1359 (25 May 2022); S Webb, Member

PRACTICE AND PROCEDURE – application for dismissal – accepted claim for compensation – application for review of decision affecting compensation entitlement – decision-maker relied on expert reports obtained by employer – employee compelled to attend examination by experts – power to compel limited by scope and purposes of legislation – meaning of improper purpose – solicitation and disclosure of personal information – requirement for consent or legal authorisation – improper purpose not made out – no abuse of process – dismissal application refused

Professions and Trades

[Jin and Migration Agents Registration Authority](#) [2022] AATA 1251 (27 April 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – registration of migration agent – whether the applicant is a fit and proper person for the purpose of section 290(1) of the Migration Act 1958 (Cth) – whether the applicant is a person of integrity for the purpose of s 290(1) of the Act – issuance of natural justice letter – whether investigation or inquiry – decision set aside and remitted

Refugee

[1705788](#) (Refugee) [2022] AATA 1243 (4 March 2022); S Clarey, Member

REFUGEE – protection visa – Ukraine – nationality – race – Ukrainian – political opinion – support for the Ukrainian government in Donetsk – forced acceptance of Donetsk National Republic – harm from pro-Russian separatists – military conflict – fear of killing – employment – internal relocation – decision under review remitted

[1708959](#) (Refugee) [2022] AATA 1242 (7 March 2022); J.L Redfern PSM, Deputy President

PRACTICE AND PROCEDURE – Protection (Class XA) (Subclass 866) visa – Malaysia – re-opening and reconsideration of a decision made by the Tribunal – Tribunal found that it did not have jurisdiction as applicant did not apply for review within the prescribed time – notification of refusal decision under review found to be defective – applicant renotified – second application for review lodged outside of the prescribed period – whether the Tribunal has the power to revoke an earlier decision – whether the Tribunal should exercise the power to reconsider its earlier decision – ‘no jurisdiction’ finding in relation to second application – earlier decision revoked and substituted with a decision that the Tribunal has jurisdiction to conduct a review – principles in relation to revocation and reconsideration

[1715817](#) (Refugee) [2022] AATA 965 (24 March 2022); S Roushan, Senior Member

REFUGEE – protection visa – Morocco – member of a particular social group – unmarried mother – two children with different fathers – first partner died and second relationship ceased – fear of harm from conservative family and clan members and men in community – credibility – previous travel to other countries without applying for protection there, and regular returns – vague and exaggerated claims and evidence – core claims accepted – risk of threats, abuse, societal marginalisation and prosecution – rights of the child – child with neurodevelopmental condition – decision under review remitted

[1829436](#) (Refugee) [2022] AATA 981 (10 February 2022); D Dragovic, Deputy President

REFUGEE – protection visa – Pakistan – religion – Hindu – forcible conversions – abductions – particular social group – scheduled caste – Hindus living in Karachi – official and societal discrimination – internal relocation – Umerkot – complementary protection – reasonableness of relocation – decision under review remitted

[1829622](#) (Refugee) [2022] AATA 944 (7 April 2022); R Da Costa, Member

REFUGEE – protection visa – Ghana – fear of harm from government agents for taking part in government-organised visa fraud – threats by political party thugs to friends who have returned or been deported – credibility – no recent contact with friends – country information – decision under review affirmed

[2104299](#) (Refugee) [2022] AATA 983 (17 February 2022); J Silva, Member

REFUGEE – protection visa – Burma – Myanmar – stateless – Federal Circuit Court remittal – race – Rohingya – religion – Muslim – particular social group – stateless individuals from Myanmar – claims of father’s political dissidence and Rohingya advocacy – credibility issues – Myanmar passport – legal departure from Myanmar – met the formal requirements for full Myanmar citizenship as Kaman – low risk of being targeted by Buddhists or others – father’s voluntary return to Myanmar – February 2021 military coup – significant political and human rights deterioration – long-term resident abroad – lack of current documents – decision under review remitted

[2114224](#) (Refugee) [2022] AATA 1311 (21 March 2022); A Younes, Deputy President

REFUGEE – cancellation – protection visa – Sri Lanka – criminal conviction and community correction order – discretion to cancel visa – guilty plea and participation in rehabilitation courses – trial for further charges pending – work and financial support for estranged wife and children living in crisis accommodation – hardship if visa cancelled and harm if returned to home county – application for Safe Haven Enterprise Visa in progress – possibility of indefinite immigration detention – mental health – legal consequences of cancellation – non-refoulement – member of family unit – consequential cancellation of child’s visa and no jurisdiction to review – child now holds bridging visa as dependant on mother’s protection application – rights of the child and family unity – decision under review affirmed

Social Services

[Blazeski and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1237 (17 May 2022); D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including cardiomyopathy and chronic lower back pain – whether fully diagnosed, treated and stabilised – number of points to be assigned under Tables – decision under review affirmed

[Poyton and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1320 (23 May 2022); A McLean Williams, Member

SOCIAL SECURITY – Newstart allowance – overpayment – debt due to the Commonwealth – where conceded debt attributable solely to administrative error and recovery of debt waived – previous Tribunal decision set aside – meaning of “setting aside” of a decision – question as to whether the setting aside of a decision extends to include the elimination of prior facts used in the formulation of the decision set aside – question as to whether a subsequent decision maker can reconsider the same set of prior facts – Tribunal answer in the affirmative – Decision under review affirmed

[QFKN and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1352 (31 March 2022); M J McGrowdie, Senior Member

SOCIAL SECURITY – Disability Support Pension – reduce repayment of non-entitled payments – whether a compensation preclusion period applies – whether special circumstances allow a reduction of compensation preclusion period – medical negligence – compensation recovery – whether “special circumstances” exists – decision under review set aside and remitted

Taxation

[Guttikonda and Sheth and Commissioner of Taxation](#) (Taxation) [2022] AATA 1325 (20 May 2022); I R Molloy, Deputy President

TAXATION – underpayment of award wages and entitlements – deeds of acknowledgement and assignment – assignment by taxpayers of rights in consideration of payments equating to unpaid wages, superannuation and interest – whether payments (excluding superannuation) assessable taxable income – whether confined to terms of the deeds - reviewable decisions affirmed

Veterans' Affairs

[Nawrocki and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 1343 (26 May 2022); M J McGrowdie, Senior Member

Veterans Affairs – Application for pension at the special rate – Applicant receiving pension at general rate – whether veteran’s incapacity from war caused injury or disease which alone renders the veteran incapable of continuing remunerative work and results in the veteran suffering a loss of salary or wages, so as to entitle the veteran to the Special Rate – decision under review set aside and substituted

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Mursal and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1164
QXNS and Minister for Immigration and Border Protection & Administrative Appeals Tribunal	[2022] AATA 696

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Berryman v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 421	[2022] FCA 599
DBWG v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4800	[2022] FCA 570
FSKY v Minister for Immigration, Citizenship, Migrant Services, and Multicultural Affairs	[2021] AATA 2037	[2022] FCA 541
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