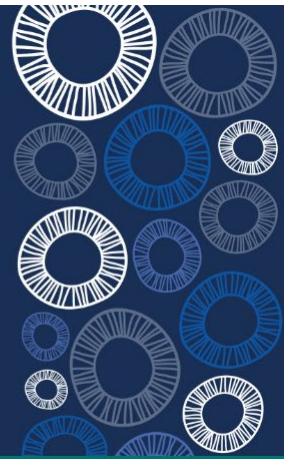




Administrative
Appeals Tribunal

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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Contents

AAT Recent Decisions	3
Child Support	3
Compensation	5
Migration	5
National Disability Insurance Scheme	9
Practice and Procedure	10
Professions and Trades	11
Refugee	11
Social Security	13
Taxation	13
Veterans' Affairs	14
Appeals	15
Appeals lodged	15
Appeals finalised	15

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

[Cauley and Lovell](#) (Child support) [2023] AATA 4700 (21 November 2023); K Dordevic, Senior Member

CHILD SUPPORT – departure determination – income and financial resources of the liable parent – a ground for departure established – decision under review set aside and substituted

[Dowding and Dowding](#) (Child support) [2024] AATA 484 (8 February 2024); R Ellis, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – ground for departure established – hardship – decision under review set aside and substituted

[Mother and Child Support Registrar](#) (Child support second review) [2024] AATA 1149 (17 May 2024); L Benjamin, Member

CHILD SUPPORT – Review of decision of Social Services and Child Support Division – whether existing percentage of care determination should be revoked – what percentage of care determination should be in place – where Tribunal considered differing calculations of Mother and Father – where Father did not establish special circumstances to lodge application to General Division of Tribunal – decision set aside and substituted

[Mortimer and Beringer](#) (Child support) [2024] AATA 479 (23 January 2024); C Breheny, Member

CHILD SUPPORT – non-agency payment – refusal to credit – whether payment mistakenly made by liable parent to carer entitled to receive should be credited – no mutual intention – decision under review affirmed

[NWYD and Child Support Registrar](#) (Child support second review) [2024] AATA 1264 (24 May 2024); A Poljak, Senior Member

CHILD SUPPORT – Percentage of care – Care period – What were the parents' percentages of care for the children during an appropriate period – Available evidence considered – Decision under review affirmed

[Sargood and Sargood](#) (Child support) [2024] AATA 485 (31 January 2024); K Dordevic, Senior Member

CHILD SUPPORT – non-agency payments – whether payments made by liable parent to third parties from joint account of both parents should be credited – no mutual intention – where liable parent did not have regular care of the child – where property settlement between parents yet to finalise V refusal to credit non-agency payment – decision under review affirmed

[Summerhays and Mollett](#) (Child support) [2024] AATA 488 (5 February 2024); I Sheck, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the pattern of care – care arrangement – not satisfied parent who has reduced care of the child is taking reasonable action to ensure that the care arrangement is complied with – no interim care – decision under review affirmed

Citizenship

[Butt and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1263 (27 May 2024); S Evans, Member

CITIZENSHIP – Application for citizenship by conferral – delegate not satisfied Applicant of ‘good character’ at time of application – ISSUE: whether Applicant meets requirements of s 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – prior criminal convictions – Driving and Domestic Violence related offences – failure to declare offending on incoming passenger card – Consideration of CPI 15 – Applicant’s enduring/lasting moral qualities – significant contribution to Australian community – person of good character at this time – reviewable decision set aside

[Carbogno Barnabè and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1146 (17 May 2024); S Evans, Member

CITIZENSHIP – Applicant renounced Australian citizenship - Refused resumption of citizenship – Other eligibility requirement not satisfied: s29(2)(a) of Australian Citizenship Act 2007 (Cth) – Issue for Determination – Whether reason to renounce citizenship to ‘avoid suffering significant hardship or detriment’ – decision under review is set aside

[Kalali and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1209 (27 May 2024); D Cosgrave, Member

CITIZENSHIP – refusal of application for citizenship – citizenship test – citizenship by conferral – Citizenship Procedural Instructions (CPI 2) – permanent or enduring physical or mental incapacity – claim for exemption based on mental incapacity – whether applicant suffers from a permanent or enduring mental incapacity – medical evidence considered – decision under review affirmed

[Najad and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1299 (31 May 2024); D J Morris, Senior Member

CITIZENSHIP – applicant is a Faili Kurd born in Iraq – applicant was granted a protection visa – applicant applied for Australian citizenship by conferral – irregularities in information provided by applicant – delegate of Minister not satisfied of applicant’s identity – delegate additionally not satisfied applicant was of good character – consideration of legislative provisions – evidence of applicant in Australia – tribunal satisfied as to applicant’s identity – tribunal’s assessment of good character must be contemporary – tribunal satisfied applicant of good character – decision under review set aside and new decision substituted remitting the matter with directions to the Respondent

Compensation

[Abley and Comcare](#) (Compensation) [2024] AATA 1204 (23 May 2024); L M Gallagher, Member

WORKERS' COMPENSATION – Whether liability should be accepted under s 14 of the Safety, Rehabilitation & Compensation Act 1988 (Cth) for a claim of “fibromyalgia” – whether the Applicant suffered from an “ailment” – disease – whether the ailment was contributed to, to a significant degree by the Applicant’s employment with Services Australia – whether the Tribunal can be satisfied on the balance of probabilities – whether the Applicant was already suffering from symptoms of fibromyalgia prior to suffering an accepted right shoulder condition – competing expert evidence – Reviewable Decision affirmed

[KGGY and Comcare](#) (Compensation) [2024] AATA 1236 (27 May 2024); R Cameron, Senior Member

SUMMONS TO PRODUCE DOCUMENTS – the documents enumerated or described in the summons are irrelevant – summons documents subject to a legitimate claim of legal professional privilege – legitimate forensic purpose or shed light on the questions in dispute – waiver of legal professional privilege – objection by the Fair Work Ombudsman – reasonable administrative action taken in a reasonable manner in respect of employment – directs that the summons lodged be set aside

[KZBX and Comcare](#) (Compensation) [2024] AATA 1267 (22 May 2024); R West, Member

WORKER COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – claim for fracture left radius (wrist), fracture left patella, fractured ribs, head injury, seizures, neuropathic pain, neurological paralysis and loss of sense of smell and taste – employee working from home during COVID lockdown – injured while walking outside home listening to L&D podcast – further claim for aggravation of major depressive disorder with anxious distress and post traumatic stress disorder – refusal of both claims under s 14 – injuries not arising out of or in the course of employment – decisions set aside and matters remitted

Migration

[2005165](#) (Migration) [2023] AATA 4737 (27 November 2023); D Petrovich, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – relationship ceased – genuine relationship prior to marriage breakdown – family violence claim – evidence tested before a court – Family Violence Final Intervention Order – decision under review remitted

[2309535](#) (Migration) [2024] AATA 544 (15 January 2024); G Bartley, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – Federal Circuit and Family Court remittal – care cannot reasonably be provided by specified relatives in Australia – medical reports – impairment rating – physical and mental health conditions needing assistance – substantial evidence, statutory declarations and supporting statements – specified relatives’ health, work and family caring responsibilities – conflict within family – assistance from service providers – approved for higher level home care package – religious requirements for food – applicant’s long-term and ongoing care – sincere evidence – decision under review remitted

[2201197](#) (Migration) [2024] AATA 672 (5 March 2024); M Martellotta, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – visa applicant currently refugee in third country – validly married in fourth country – limited financial and social aspects of relationship and nature of household while living in different countries – nature of commitment – regular communication and financial support – family, social and church recognition – consistent evidence and supporting statements – member of family unit young adult daughter of review applicant – forced national service – step-relationship between visa applicants – decision under review remitted

[2118425](#) (Migration) [2024] AATA 547 (21 January 2024); W Pennell, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – subclass 155 (Five Year Resident Return) – repeated false and misleading information about identity – inconclusive authenticity of Tazkira – Hazara ethnicity – Shi’a Muslim – failing to declare his full name within the applications to the Department – impact on mental health – decision under review affirmed

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

(Migration) [2024] AATA 1154 (22 May 2024); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether ‘another reason’ for revocation of cancellation decision – Direction 99 – conviction of a serious offence involving dangerous operation of a motor vehicle causing death and grievous bodily harm – applicant determined to drive in Australia irrespective of limitations imposed upon him by Australian laws – applicant drove unlicensed again after he was charged with causing death by dangerous driving – breach of bail conditions – applicant sought a licence by deceiving authorities – best interests of minor children count substantially in applicant’s favour – low risk of reoffending but seriousness of potential harm high – Australian community should be protected from the risk of serious future harm – decision under review affirmed

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

(Migration) [2024] AATA 1288 (23 May 2024); A Poljak, Senior Member

MIGRATION – mandatory cancellation of Bridging A (Class WA) (Subclass 010) 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 set aside and substituted

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

AATA 1266 (27 May 2024); R Reitano, Member

MIGRATION – visa cancellation – protection of the community – serious criminal offending – risk of re-offending – rehabilitation relevant even if not ‘tested in the community’ – expectations of the Australian community – nature duration and ties to community – long period in Australia – close ties to Australia – legal consequence of decision – weight to be given to continued detention whilst awaiting deportation-impediments if removed – weight or respective considerations when compared to one another – satisfaction about other reason – decision to refuse set aside and substituted

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

(Migration) [2024] AATA 1210 (24 May 2024); Hon J Rau SC, Senior Member

MIGRATION – refusal to grant a Visitor visa (Class FA) under section 501(1) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa under section 501(1) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside and substituted with a decision that the visa not be refused under s 501(1) of the Act

Hadchity (Migration) [2024] AATA 667 (21 March 2024); Tania Flood, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – participation in the review applicant’s wedding – financial resources – stable full-time employment – emotional support – family commitments in home country – offer to provide a security bond – decision under review remitted

Huang (Migration) [2024] AATA 658 (15 March 2024); A Grant, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – lengthy stay in Australia – multiple previous temporary visas – compliant visa history – marriage to an Australian citizen – impact of the COVID19 pandemic – tourism plans in Eastern states – family commitments in China – visa as requested would have expired already – decision under review affirmed

KAUR (Migration) [2024] AATA 501 (12 March 2024); R Skaros, Senior Member

MIGRATION – Skilled Work Regional (Provisional) (Class PS) visa – Subclass 491 (Skilled Work Regional (Provisional)) – state/territory nominated (regional) stream – finance manager – false or misleading information and bogus documents – employment and tasks of positions – verification checks – claimed employment some distance away while completing professional year and internship – undetailed and inconsistent evidence about tasks – references state higher tasks – no PAYG summaries provided or income declared – small businesses, COVID restrictions, change of premises and work from home – other occupations stated on incoming passenger cards – insufficient evidence to conclude documents bogus – discretion to waive criterion – compassionate or compelling circumstances – length of residence, study and work – member of family unit husband – no submissions about circumstances – baby born shortly before hearing not citizen or permanent resident – decision under review affirmed

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

(Migration) [2024] AATA 1291 (30 May 2024); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – whether there is ‘another reason’ to revoke mandatory cancellation decision under s 501CA(4) of the Migration Act 1958 – significant impediments and serious risk of harm if removed to Iraq – the primary considerations of the protection and expectations of the Australian community are outweighed by the countervailing considerations – decision under review is set aside

[**NTJM and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2024]
AATA 1150 (21 May 2024); D J Morris, Senior Member

MIGRATION – the applicant is a citizen of the Republic of Fiji – applicant held spouse visa – visa cancelled under Migration Act because of substantial criminal record – applicant does not dispute he does not satisfy character test in Act – discretion to nonetheless find another reason to revoke cancellation of visa – applicant made representations to minister’s delegate – delegate affirmed cancellation decision – applicant sought review by Tribunal – ministerial direction – primary considerations – protection of the Australian community – serious sexual offending against children – other violent offending – whether conduct involved family violence – family violence offending – ties to Australia – best interests of minor children in Australia – expectations of the Australian community – other considerations – discretion not enlivened – decision under review is affirmed

[**PHGY and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2024]
AATA 1301 (28 May 2024); R Reitano, Member

MIGRATION – visa cancellation – protection of the community – very serious criminal offending – risk of reoffending – expectations of the Australian community – best interests of minor children – nature duration and ties to community – legal consequence of decision – international non-refoulement obligations – impediments if removed to Iraq – decision to refuse set aside and substituted

[**QLPC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**](#) (Migration) [2024] AATA 1151 (16 May 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) where Applicant does not pass the character test– Applicant committed a sexually based offence involving a child – accessing child abuse material using a carriage service – 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

[**RDQK and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2024]
AATA 1152 (14 May 2024); W Frost, Member

MIGRATION – decision of the delegate to refuse to grant the applicant a visa pursuant to subsection 501(1) of the Migration Act 1958 – whether the applicant passes the character test – where the applicant has a substantial criminal record pursuant to subsection 501(7) of the Migration Act 1958 – applicant does not pass the character test – whether the discretion to refuse to grant the applicant a visa should be exercised – application of Direction No 99 – best interests of minor children in Australia – decision set aside and substituted

[**Singh and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration) [2024]
AATA 1237 (28 May 2024); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of visa – national of India – Skilled Independent (Subclass 885) visa – failure to pass character test – single conviction for violent offending – Applicant on parole – whether another reason mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – ties to Australia and best interests of minor children considered – decision set aside and remitted

[YPWC and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1153 (21 May 2024); A E Burke AO, Member

MIGRATION – applicant is a citizen of Vietnam – applicant currently without a valid visa - visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – expectations of the Australian community – legal consequences of decision – where applicant has been refused a protection visa – extent of impediments to removal – reviewable decision affirmed

National Disability Insurance Scheme

[Guy and National Disability Insurance Agency](#) [2024] AATA 1212 (27 May 2024); P Hunter, Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – chronic pain – whether there is substantially reduced capacity – assistive technology – access granted – decision set aside and substituted

[Jones and National Disability Insurance Agency](#) [2024] AATA 1304 (23 May 2024); J Toohey, Member

National Disability Insurance Scheme – Access – Early intervention requirements under section 25 – Becoming a participant rules – Rule 6.4 – Known, available and appropriate treatments – Psychosocial disability – Complex PTSD – Support to access clinical treatment – Whether more appropriately provided through the health system

[Quitlong and National Disability Insurance Agency](#) [2024] AATA 1208 (24 May 2024); The Honourable P Goward AO, Senior Member

NDIA – Reinstatement of substantive application – Failure to appear – substantive application relates to Access – application for reinstatement out of time – no evidence provided of errors or special circumstances – Tribunal refuses to reinstate application pursuant to subsection 42A(9) Administrative Appeals Tribunal Act 1975

[VKFW and National Disability Insurance Agency](#) [2024] AATA 1260 (27 May 2024); A Younes, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – Attention Deficit Hyperactivity Disorder – dyslexia – Irlen syndrome – depression – anxiety – post-traumatic stress disorder – whether the impairments are, or likely to be, permanent – whether the impairments result in substantially reduced functional capacity – whether the Applicant is likely to require support under the scheme for the Applicant’s lifetime – early intervention requirements – decision under review affirmed

[YQKZ and National Disability Insurance Agency](#) [2024] AATA 1302 (29 May 2024); A Maryniak KC, Member

PRACTICE AND PROCEDURE – Jurisdiction – Tribunal does not have jurisdiction – Application dismissed

Practice and Procedure

[Darmanin and National Disability Insurance Agency](#) [2024] AATA 1202 (17 May 2024); J Toohey, Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – reimbursement – supports purchased prior to reviewable decision – supports purchased while further information being exchanged – home modifications – tune review and participant service guarantee – jurisdiction not limited by reimbursement issue

[DRXK and National Disability Insurance Agency](#) [2024] AATA 1269 (27 May 2024); L Proske, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – objection to a decision to give leave to a party to inspect documents produced under summons – whether documents are of apparent relevance – leave given to inspect documents produced under summons

[Hanna and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1192 (6 March 2024); A Poljak, Senior Member

PRACTICE AND PROCEDURE – Extension of time – Application for review of decision filed out of time – Disability support pension (rent assistance) debt – 5 years and 15 days out of time – Length of delay – Whether the applicant has an acceptable explanation for the delay – Prospects of success – Prejudice – alternative avenues of relief – Whether reasonable in all the circumstances to grant the extension of time – Extension of time refused

[Jones and National Disability Insurance Agency](#) [2024] AATA 1142 (14 May 2024); M Mischin, Deputy President

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – interlocutory application – summons to produce – objection to request by Applicant to issue summons to produce documents directed to Respondent's lawyers – objection to request by Applicant to issue summonses to produce documents directed to medical, hospital and allied health service providers

[Moreton Resources Ltd and Commissioner of Taxation](#) (Taxation) [2024] AATA 1157 (16 April 2024); F D O'Loughlin KC, Deputy President

PRACTICE AND PROCEDURE – Whether s 14ZYA(2) notice can be suspended and reactivated, whether document is a s 14ZYA(2) notice – whether document is an objection decision – whether objection decision has been made – whether Tribunal has jurisdiction to review

[Whiteman and Minister for Foreign Affairs](#) [2024] AATA 1176 (23 May 2024); D J Morris, Senior Member

PASSPORTS – applicant held Australian travel document – passport – passport cancelled owing to debt – applicant had avenue to have cancellation decision reviewed by Minister – no review by Minister – Tribunal does not have jurisdiction unless Minister has reviewed decision – application therefore dismissed

PRACTICE AND PROCEDURE – no review of initial decision by Minister – Tribunal's powers limited to review of decisions by Minister under Act – statutory timeframe for review by Minister has expired

[Yeap and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1155 (21 May 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE- section 501(1) refusal of Return (Residence) (Class BB Subclass 155) visa – where the visa applicant is offshore- where the review application is lodged onshore by another person – does the Tribunal have jurisdiction – consideration and application of the Migration Act 1958 (Cth) – Tribunal finding that it does not have jurisdiction – application dismissed

[ZYWY and National Disability Insurance Agency](#) [2024] AATA 1147 (30 April 2024); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – definition of reasonable and necessary – applicant has multiple psychological and physical impairments – one support in dispute – whether to fund the provision and installation of large signage at the entrance of the applicant’s regional property – whether the support is likely to be effective and beneficial – not possible to predict the effect of the proposed signage – effectiveness and benefits of the requested supports unknown and speculative – resolution of dispute a significant factor in reducing the applicant’s anxiety – decision under review affirmed

Professions and Trades

[Constantin and Commissioner of Police](#) (NSW) [2024] AATA 1294 (29 May 2024); Emeritus Professor P A Fairall, Senior Member

MUTUAL RECOGNITION – application of Mutual Recognition Act 1992 (Cth) – licence revocation under paragraph 19(2)(e) – meaning of suspension and cancellation of licence – application of mutual recognition principles – substantial equivalence of occupations – automatic deemed registration – suspension of licence not a ground to refuse application under paragraph 19(2)(e) – NSW subclass 2A security consultant licence not substantially equivalent to section 6A Qld security adviser licence – NSW subclass 1D licence is substantially equivalent to Qld security officer (dog patrol) licence – decision under review set aside and substituted

[GSXZ and Tax Practitioners Board](#) [2024] AATA 1303 (30 May 2024); R Reitano, Member

TAX AGENT REGISTRATION – termination of registration as a tax agent – preclusion from registration for 12 months – failure to act honestly and with integrity – failure to comply with taxation laws – failure to respond to requests and directions of Tax Practitioners Board – fit and proper person to be a registered taxation agent – decision varied by consent as to date of effect of termination but otherwise affirmed

Refugee

[1908197](#) (Refugee) [2023] AATA 4844 (15 December 2023); B Darcy, Member

REFUGEE – protection visa – Iran – Faili Kurd – discrimination due to parents’ birth in Iraq – arbitrarily questioned and detained – accused of being a political dissident – apostasy claim – conversion to Christianity – Salvation Army denomination – decision under review remitted

[1721602](#) (Refugee) [2023] AATA 4857 (18 December 2023); P Vlahos, Member

REFUGEE – protection visa – Cambodia – particular social group – single/separated women in Cambodia – single woman at risk of sex trafficking – debt of parents to money lenders – applicant used to repay debt – separation from spouse – single mother – children with health issues – status of women in Cambodia – vulnerable persons – decision under review remitted

[2319377](#) (Refugee) [2024] AATA 1280 (14 February 2024); K Chapple, Member

REFUGEE – protection visa – Samoa – original claim on economic grounds – late claim as member of particular social group – homosexual woman – role in village as oldest daughter of chief and through occupation – recent relationship in Australia – friend assisted with application, applicant hesitant to reveal sexuality and no adverse inference drawn – limited or undetailed country information – no recognition of LGBTQI+ individuals or prohibition of discrimination – traditional and conservative society with complex cultural code – applicant’s personal circumstances take her outside general situation of limited or no discrimination or harm – real chance of discrimination – decision under review remitted

[1910465](#) (Refugee) [2024] AATA 1128 (28 February 2024); A Goodier, Member

REFUGEE – protection visa – Cameroon – political opinion – English-speaking Western Provinces – Social Democratic Front supporter – particular social group – Anglophone – failed asylum seeker – armed conflict – state protection – decision under review remitted

[1813324](#) (Refugee) [2024] AATA 1126 (1 March 2024); J Ermert, Member

REFUGEE – protection visa – Indonesia – ethnicity, religion and political opinion – Chinese Christian and member of group supporting re-election of Chinese politician – targeted by radical Islamic groups – attacked and motorcycle destroyed – application completed with assistance of third person, and political and religious claims discontinued at hearing – fear of harm from Indonesian workers at factory where mother responsible for finances and payroll, which went bankrupt – mother detained but found not responsible – identification of attackers speculative, no further harm and passage of time – anonymous allegation of many similar claims cannot be verified – country information – decision under review affirmed

[2011557](#) (Refugee) [2024] AATA 1235 (1 March 2024); F Robertson, Member

REFUGEE – protection visa – Vietnam – political opinion – opposition to the government – social media postings – association with Viet Tan – fear of detention – fear of death penalty – applicant convicted of a serious offence in Australia – period of unlawful residence – delay in applying for protection – disclosure by the Australian government – double jeopardy – sentenced person – decision under review affirmed

Social Security

[Ahamed and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1148 (8 May 2024); D J Morris, Senior Member

SOCIAL SERVICES – pensions, benefits and allowances – applicant in receipt of disability support pension (DSP) – applicant travelled overseas – allowable portability period exceeded – DSP suspended – applicant requested review of suspension – authorised review officer affirmed suspension – applicant requested review by Tribunal – DSP then cancelled – first review by Tribunal affirmed suspension – applicant requested second review – vague and unspecific medical evidence – other medical evidence after portability period expired – evidence of applicant’s travel intentions and travel – first review decision is affirmed – oral decision – written reasons provided

[Goodyear and Secretary, Department of Education](#) (Social services second review) [2024] AATA 1171 (9 May 2024); P Ranson, Member

Child Care Subsidy – entitlement to child care subsidy – whether applicant made a valid application – where applicant failed to lodge income tax return during relevant tax year – requirements under Secretary’s Rules not met – date of effect of decision – decision under review set aside and substituted

[Singh and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1265 (2 May 2024); A Maryniak KC, Member

SOCIAL SECURITY – Crisis Payment – Extreme Circumstances – Forced departure from home – cumulative factors – Social Security Act 1991 s 1061JH – whether applicant moved to a new home – reviewable decision affirmed

Taxation

[Mitri and Commissioner of Taxation](#) (Taxation) [2024] AATA 1268 (28 May 2024); B J McCabe, Deputy President and R J Olding, Senior Member

TAXATION – INCOME TAX – decisions giving effect to tribunal’s conclusions in earlier reasons

TAXATION – ADMINISTRATIVE PENALTIES – whether applicants discharged burden of proving assessments of administrative penalties are excessive – whether shortfalls due to intentional disregard of the law or recklessness – whether taxpayer exercised reasonable care – whether remission appropriate – decisions set aside – decisions partly allowing objections substituted

TAXATION – SHORTFALL INTEREST CHARGE – whether further remission appropriate – decisions affirmed

[Waters and Commissioner of Taxation](#) (Taxation) [2024] AATA 1211 (27 May 2024); B J McCabe, Deputy President

TAXATION – onus case – whether the applicants have satisfied the burden of proof under s 14ZZK(b) of the Taxation Administration Act 1953 (Cth) – whether the evidence could establish taxpayers’ true taxable income – whether it is necessary and appropriate to remit penalties and shortfall interest charge – decisions affirmed

[WCVB and Commissioner of Taxation](#) (Taxation) [2024] AATA 1259 (28 May 2024); B J McCabe, Deputy President

TAXATION – assessable income – whether sale proceeds from contract purportedly not involving applicant assessable – whether proceeds from sale of development application documents ordinary income – whether income derived pursuant to s 6-5(4) – deductions – nexus – whether interest on loan deductible – whether construction costs incurred – penalties – whether onus satisfied – decision under review varied

Veterans' Affairs

[Garland and Repatriation Commission](#) (Veterans' entitlements) [2024] AATA 1234 (20 May 2024); Senior Member George

VETERANS' – conditions – the kind of death of the Veteran – Australian Army – whether the Veterans' death was war caused – metastatic prostate cancer – ischaemic heart disease – 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
Nunez and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 809
WQKK and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 634
YNPX and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 627

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Clifford v Tax Practitioners Board (No 2)	[2023] AATA 2068	[2024] FCA 557
Kabamba v Administrative Appeals Tribunal	[2024] AATA 89	[2024] FCA 514
Korat v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1725	[2024] FCAFC 59 [2023] FCA 1333
Minister for Immigration, Citizenship and Multicultural Affairs v Pulini	[2023] AATA 59	[2024] FCA 541



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