



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 12/2022

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

Contents

AAT Recent Decisions	3
Child Support.....	3
Citizenship.....	4
Compensation	6
Freedom of Information	6
Intellectual Property	7
Migration.....	7
National Disability Insurance Scheme.....	10
Practice and Procedure.....	11
Refugee.....	12
Social Services.....	13
Taxation.....	15
Appeals	16
Appeals lodged.....	16
Appeals finalised	16

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

[RSFS and Child Support Registrar](#) (Child support second review) [2022] AATA 1434 (1 June 2022); P Ranson, Member

CHILD SUPPORT – objection to care percentage change – care disputed – adult siblings – actual care of the children – domestic violence orders – decision affirmed

[VDBC and Child Support Registrar](#) (Child support second review) [2022] AATA 1376 (31 May 2022); J C Kelly, Senior Member

CHILD SUPPORT – percentage of care – objection to interim care determination – where court orders constituted a care arrangement – where actual care differed from care arrangement – whether reasonable action was taken to comply with care arrangement – decision under review set aside and substituted

[Corbin and Brayton](#) (Child support) [2022] AATA 955 (8 March 2022); J D'Arcy, Member

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond the child's eighteenth birthday – application until last day of secondary school should be accepted – decision under review set aside and substituted

[Doran and Windle](#) (Child support) [2022] AATA 1166 (10 March 2022); S Letch, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent - benefits derived from business – cost of child care – medical costs – decision under review set aside and substituted

[O'Hara and O'Hara](#) (Child support) [2022] AATA 733 (16 March 2022); F Hewson, Member

CHILD SUPPORT – dismissal of application for review – departure from the administrative assessment – whether determination should be backdated – cannot be backdated for more than 18 months - application for review dismissed

[Stansfield and Child Support Registrar](#) (Child support) [2022] AATA 1169 (10 March 2022); D Cox, 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 – decision under review varied

[Tadros and Morden](#) (Child support) [2022] AATA 641 (7 March 2022); K Dordevic, 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 – decision under review affirmed

Citizenship

[Abdulsalam and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 1371 (27 May 2022); Brigadier A G Warner, AM LVO (Retd), Member

CITIZENSHIP – citizenship by conferral – absence from Australia – whether the discretions in section 22 apply – whether the Applicant meets the residence requirements – section 22A – whether the Applicant was engaging in activities that are of benefit to Australia – section 22B – whether the Applicant was engaging in a particular kind of work requiring regular travel outside of Australia – whether the Act provides for waiver in compassionate circumstances – decision under review affirmed

[Fabila and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 1368 (27 May 2022); J Sosso, Deputy President

CITIZENSHIP – Australian citizenship – Applicant seeks citizenship by descent – Applicant is citizen of Papua New Guinea – constitutional history of Papua New Guinea – claim that parent was Australian citizen by virtue of being born in Territory of Papua – Papua New Guinea independence – cessation of Australian citizenship – delegate refuses application on basis not satisfied a parent was Australian citizen at time of Applicant's birth – whether any of the exceptions in s 65 of the Papua New Guinea Constitution applied – whether Applicant's great grandfather obtained and retained Filipino citizenship – decision under review affirmed

[Hudswell and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) 1528 [2022] (8 June 2022); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal to grant Australian citizenship – whether applicant likely to reside in Australia or maintain a close and continuing association with Australia – prohibition on approving Australian citizenship where person not present in Australia – decision under review affirmed

Nungdoithai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 1534 (8 June 2022); Dr S Fenwick, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – first applicant citizen of Myanmar – second applicant born in Malaysia – limited documentation linking first applicant to country of origin – consideration of best interests of minor child – decisions set aside and remitted

Rabbani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 1370 (30 May 2022); A Poljak, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – where applicant was convicted for the offence of committing an act of indecency with or towards a person of the age of 16 years or above - whether the applicant is of good character for the purposes of conferral of Australian citizenship – relevant law and policy considered – relevant material considered – decision under review affirmed

Saadie and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 1469 (3 June 2022); Dr P McDermott RFD, Deputy President

CITIZENSHIP – Where applicant’s citizenship application refused on character grounds – where applicant has repeatedly committed domestic violence offences – where applicant lacks insight into offending – where applicant’s evidence inconsistent – decision under review affirmed

Safar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 1372 (31 May 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – whether the Tribunal is satisfied of the Applicant’s good character – Australian Citizenship Act 2007 (Cth) – violent offences – Applicant disputes convictions – medical conditions – Tribunal not satisfied Applicant is of good character – decision affirmed

Smith and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 1374 (30 May 2022); S Boyle, Deputy President

CITIZENSHIP – s 16(2)(c) of the Australian Citizenship Act – refusal to approve the applicant’s application for Australian citizenship by descent – extensive and serious offending history – Tribunal not satisfied that the applicant is a person of good character – reviewable decision affirmed

Compensation

[Kenda and Comcare](#) (Compensation) [2022] AATA 1452 (2 June 2022); Dr S Fenwick, Senior Member

COMPENSATION – carpal tunnel syndrome right, lateral epicondylitis right, sprain of shoulder and upper arm (subdeltoid bursitis) right – claims of cervical spondylosis with foraminal stenosis and severe headaches, aggravation of temporomandibular joint disorder and complex regional pain syndrome – claims for medical procedures and treatment – claim for permanent impairment right shoulder – decisions under review affirmed

[Nguyen and Linfox Australia Pty Ltd](#) (Compensation) [2022] AATA 1449 (2 June 2022); A Maryniak QC, Member

COMPENSATION – entitlement to compensation – review of decision affirming a primary determination denying the Applicant compensation under s 14 of the Safety, Rehabilitation and Compensation Act 1988 – whether Applicant suffered an injury or ailment arising out of or in the course of his employment – whether Applicant has suffered impairment – whether Applicant has ongoing incapacity to work – Decision Under Review set aside and substituted in favour of the Applicant

Freedom of Information

[Australian Broadcasting Corporation and Secretary, Department of Industry, Science, Energy and Resources](#) (Freedom of information) [2022] AATA 1451 (7 March 2022); The Hon. D Cowdroy AO QC, Deputy President

FREEDOM OF INFORMATION – OAIC decided not to review (FOI Act s 54W) – documents conditionally exempt in part or in full as ‘deliberative material’ – document exempt as cabinet document – whether parliamentary privilege applies to documents tendered by the applicant - whether disclosure of the conditionally exempt material is in the public interest – 11 reviewable decisions affirmed – one reviewable decision varied

[Lim and Secretary, Department of Home Affairs](#) (Freedom of information) [2022] AATA 1526 (1 June 2022); C Puplick AM, Senior Member

FREEDOM OF INFORMATION – OAIC declined to undertake review – FOI request pertains to material protected by Migration Act – no intention under FOI Act to undermine other privacy protections of other statutes – whether there is an unreasonable disclosure of personal information – no public interest for disclosure – public interest against disclosure – decision affirmed

[Shord and Commissioner of Taxation](#) (Freedom of information) [2022] AATA 1536 (9 June 2022); Dr M Evans-Bonner, Senior Member

FREEDOM OF INFORMATION – Australian Information Commissioner decided not to review under s 54W(b) of the Freedom of Information Act 1982 (Cth) (FOI Act) – whether documents subject to legal professional privilege under s 42 of the FOI Act – Applicant seeking access to correspondence concerning prior tribunal and court proceedings with the Commissioner that were settled – Applicant seeking access to email communications – email communications between in-house government lawyers – whether internal communications between officers and lawyers of the Australian Tax Office (ATO) attracted legal professional privilege – whether privilege was waived by email communications being copied into a number of persons at the ATO – whether email communications with legal research carried out by a graduate under the supervision of an ATO lawyer are subject to privilege – Tribunal finds that the disputed documents are subject to legal professional privilege and are therefore exempt – Reviewable Decision affirmed

[Wilson and Australian Information Commissioner](#) (Freedom of information) [2022] AATA 1468 (6 May 2022); Deputy President Britten-Jones

FREEDOM OF INFORMATION – request for confidentiality order over supplementary Tribunal documents – claim disclosure of documents would have a substantial adverse effect on the proper efficient conduct of the operations of an agency – claim disclosure of documents would prejudice personal privacy – whether documents replicate or reveal exempt information – consideration of procedural fairness – confidentiality order granted

Intellectual Property

[Advanta Seeds Pty Ltd and Commissioner of Patents](#) [2022] AATA 1366 (26 May 2022); I R Molloy, Deputy President

Intellectual Property – Patents – failure of applicant to pay continuation fee on or before due date – application for extension – extension granted – form of order – costs of hearing before the Commissioner of Patents – jurisdiction of Tribunal to order such costs – exercise of discretion – parties to bear their own costs

Migration

[Calabro and Migration Agents Registration Authority](#) (Migration) [2022] AATA 1378 (27 May 2022); S Boyle, Deputy President

MIGRATION – review of decision of Migration Agents Registration Authority – cancellation of applicant's registration as a migration agent under s 303(1)(a) of the act – multiple alleged breaches of code of conduct – advice related to Regional Sponsored Migration Scheme – 457 visas – whether applicant is a person of integrity or otherwise not a fit and proper person to give immigration assistance – decision under review set aside and substituted with a decision that the applicant's registration as a migration agent be suspended under s 303(1)(b) of the Act for a period of two years

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

(Migration) [2022] AATA 1470 (29 April 2022); Dr N A Manetta, Senior Member

MIGRATION – applicant’s partner visa application refused under s 501(1) – conviction of drug trafficking offences – pending charges – applicant a citizen of China – Direction 90 – appropriate case to make assumption that applicant owed non-refoulement obligations – prospect of indefinite detention if decision under review affirmed – full Federal Court decision in WKMZ followed – decision under review set aside

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

(Migration) [2022] AATA 1502 (7 June 2022); B J Illingworth, 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 – serious criminal record – whether “another reason” to revoke visa cancellation – Ministerial Direction 90 – Decision under review is set aside

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

(Migration) [2022] AATA 1436 (11 May 2022); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 202 Global Special Humanitarian visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – kidnapping where victim suffers grievous bodily harm – receiving country South Sudan – decision under review affirmed

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

(Migration) [2022] AATA 1531 (8 June 2022); Deputy President Boyle

MIGRATION – Migration Act s 501CA(4) – decision of delegate of Minister not to revoke mandatory cancellation of visa – applicant fails character test – whether there is “another reason” to revoke the mandatory cancellation – Direction 90 applied – applicant a citizen of New Zealand who arrived in Australia in 2012 – applicant convicted of dangerous driving occasioning death – drug and alcohol related offending – extensive criminal and traffic record – there is not another reason to revoke the mandatory cancellation – reviewable decision affirmed

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

(Migration) [2022] AATA 1435 (31 May 2022); R Bellamy, Senior Member

MIGRATION – refusal of visa application – Skilled Regional (Class VB) visa - whether Applicant fails character test under s 501(6)(d) – whether more than minimal or remote risk of reoffending – domestic violence – decision set aside and substituted

MWNX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2022] AATA 1450 (1 June 2022); Dr L Kirk, Senior Member

MIGRATION – mandatory cancellation of visa – Class XE Subclass 790 Safe Haven Enterprise visa – where visa was cancelled under s 501(CA) because applicant did not pass character test – substantial criminal record - Ministerial Direction No. 90 – primary considerations – other considerations – decision set aside and substituted

Spano and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2022] AATA 1537 (8 June 2022); W Frost, Member

MIGRATION – decision of delegate of Minister to refuse a partner visa under section 501(1) of the Migration Act 1958 – Mr P found to fail the character test – Direction No 90 – primary and other considerations – protection of the Australian community – expectations of Australian community – bogus documentation on entry to Australia – credibility and fabricated evidence – best interests of minor children – links to Australian community – decision under review affirmed

Van Maanen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2022] AATA 1538 (9 June 2022); R Bellamy, 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 – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review affirmed

YFYZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs
(Migration) [2022] AATA 1381 (27 April 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of safe haven enterprise visa – applicant guilty of participation in cultivation and packaging of cannabis – non-refoulement obligations owed to applicant – applicant may not be returned to home country – prospect of indefinite detention if decision affirmed – full Federal Court decision in WKMZ considered - decision set aside and cancellation decision revoked

2118733 (Migration) [2022] AATA 1256 (7 April 2022); K Raif, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect information in the visa application – Pakistan citizenship – bogus death certificates – Orphan Relative applications – family composition – Hazara – non-refoulement obligations – financial hardship – contribution to the community – best interests of the children – ground for cancellation not made out – decision under review set aside

[2203700](#) (Migration) [2022] AATA 1267 (7 April 2022); J Lambie, Senior Member

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – applicant charged with an offence – Unauthorised Maritime Arrival – charges withdrawn or dismissed – criminal charges after cancellation notification – best interests of any children – emotional hardship – stateless – decision under review affirmed

[Feehely](#) (Migration) [2022] AATA 1142 (20 April 2022); M Sheargold, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – criminal convictions, community corrections order and behavioural change program – discretion to cancel visa – financial and personal hardship – toxic relationship, actions by both applicant and partner and circumstances of offences – relationship ceased – genuine remorse and low risk of reoffending – skills shortage in work sector and previous job still available if visa reinstated – character references – decision under review set aside

[Pudasaini](#) (Migration) [2022] AATA 1233 (12 April 2022); B Darcy, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – applicant convicted of an offence – reckless driving – defective procedure in cancelling the visa – limited academic progress – impact of the COVID-19 pandemic – decision under review set aside

[Tran](#) (Migration) [2022] AATA 1286 (18 April 2022); S Conwell, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – sponsor’s fifth marriage – joint travel – money transfers to assist the applicant’s business – limited evidence of pooling financial resources – sponsor’s temporary household registration in Vietnam – limited evidence of shared household – untranslated evidence of communication – decision under review affirmed

National Disability Insurance Scheme

[Jack and National Disability Insurance Agency](#) [2022] AATA 1525 (8 June 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria met – whether disability requirements met – permanency of impairments – whether impairments resulted in substantially reduced functional capacity in one or more of the prescribed activities – whether early intervention requirements met – Decision Under Review affirmed – access not granted

[Short and National Disability Insurance Agency](#) [2022] AATA 1437 (25 May 2022); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – access to the scheme – multiple impairments – whether impairments are permanent – whether impairments result in substantially reduced functional capacity – decision under review affirmed

Practice and Procedure

[Andrews and National Disability Insurance Agency](#) [2022] AATA 1532 (9 June 2022); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – application for stay of proceedings pending applicant’s attendance at independent assessments – considerations relevant to determining application for stay – application granted

[Cleary and Comcare](#) (Compensation) [2022] AATA 1373 (3 May 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – workers compensation application – originally dismissed for applicant failure to proceed with the application within a reasonable time – request for extension of time – where request for extension of time is effectively request for reinstatement – application for reinstatement refused – application for extension of time refused

[DSL B and Comcare](#) (Compensation) [2022] AATA 1369 (27 May 2022); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – objection to summons material – whether Tribunal has jurisdiction – where jurisdiction has been determined by a previous Tribunal member – where the objection to summons has been determined by a previous Tribunal member – Tribunal does not have power to review Tribunal decision – directions made - objection dismissed

[Johns and National Disability Insurance Agency](#) [2022] AATA 1518 (7 June 2022); B J Illingworth, Senior Member

PRACTICE AND PROCEDURE – Application for Stay – Consideration of principles – whether there is merit in the substantive application – purpose of application misconceived – no utility in application – application dismissed

[Kuchlmayr and Australian Capital Territory](#) (Compensation) [2022] AATA 1527 (8 June 2022); S Webb, Member

PRACTICE AND PROCEDURE – jurisdiction – reconsideration decision to refuse claim for compensation affirmed by consent decision – request for further review of consent decision refused – request for further reconsideration of reconsideration decision by own motion – decision to decline invitation to reconsider a reconsideration decision by own motion not a reviewable decision – no jurisdiction – application dismissed

[Negi and National Disability Insurance Agency](#) [2022] AATA 1453 (2 June 2022); K Buxton, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme Act 2013 (Cth) – evidence gathering powers during internal review process – promote administrative efficiency – not remitted for reconsideration

Refugee

[1613280](#) (Refugee) [2022] AATA 1120 (4 March 2022); S Burford, Senior Member

REFUGEE – protection visa – Ethiopia – race – Amhara – political opinion – Blue Party – National Movement of Amhara – academic actions against the government – advocacy for Amhara causes in Australia – religion – Ethiopian Orthodox Church – member of the Ethiopian diaspora – detention – fear of torture – communal violence – attacks on churches – initial return to Ethiopia – ethnically based political opinions – state protection – decision under review remitted

[1711738](#) (Refugee) [2022] AATA 1245 (24 February 2022); P Vlahos, Member

REFUGEE – protection visa – South Africa – member of particular social groups – women, single women, widows and victims of sexual assault and domestic violence – assaulted by sister’s husband at young age – arranged marriage and various forms of abuse and threats by husband and his family – mental health and suicidal thoughts – assessment, treatment and support – husband returned to home country and later died – little contact with adult daughter and siblings – country information – divorced women at greater risk of social stigma, discrimination and gender-based violence – ineffective protection measures and under-resourced services – applicant’s personal vulnerabilities – decision under review remitted

[1716205](#) (Refugee) [2022] AATA 1338 (22 March 2022); J Henderson, Member

REFUGEE – protection visa – Nepal – particular social group – survivors of domestic violence and sexual assault – single women – religion – Christian convert – conversion to Christianity – traditional Hindu background – parental response to conversion – mental health – right to enter and reside in India – Treaty of Peace and Friendship between India and Nepal 1950 – violence against women in India – decision under review remitted

[1726182](#) (Refugee) [2022] AATA 1246 (3 March 2022); B Darcy, Member

REFUGEE – protection visa – Sudan – particular social group – journalist – mixed marriage – imputed political opinion – anti-Sharia law opinion – opposition to corruption – threatening messages – arrests – fear of sexual violence – fear of killing – decision under review remitted

[1815583](#) (Refugee) [2022] AATA 1347 (24 March 2022); N Burns, Member

REFUGEE – protection visa – Egypt – Federal Court remittal – religion – particular social group – Coptic Christian woman – attacks by Muslim extremists – employment – encouraging conversions to Christianity – physical and sexual assault – death threats – anti-Christian violence – gender-based violence – fragile mental and physical health – state protection – decision under review remitted

[1908595](#) (Refugee) [2022] AATA 1494 (15 March 2022); S Roushan, Senior Member

REFUGEE – protection visa – Afghanistan – race – Hazara – religion – Shi'a – particular social group – returnee from the West – fear of killing – fear of kidnapping – Taliban takeover of the country – mass-casualty terrorist attacks – prospective security situation – decision under review remitted

[2016302](#) (Refugee) [2022] AATA 1263 (30 March 2022); J Pennell, Senior Member

REFUGEE – protection visa – Chile – fear of harm from drug cartel – coerced into participating in drug importation – cooperated with police to provide information against co-accused and associates – reduced sentence – abused and threatened in prison – immigration detention – concession that claim does not meet refugee criteria – complementary protection – circumstances of offending and extent of cooperation with police – presence of foreign cartels and increase in drug-related crime – government and police initiatives, media attention and public perception – protection to remove real risk of significant harm not available – decision under review remitted

Social Services

[Charnley and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1530 (8 June 2022); D Mitchell, Member

SOCIAL SECURITY – Family Tax Benefit – overpayment – administrative error – where no sole administrative error – where no special circumstances – decision under review affirmed

[El Sulaiman and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1533 (6 June 2022); A Poljak, Senior Member

SOCIAL SECURITY LAW – Family Tax Benefit – Child Care Subsidy – Parenting Payment (single) – debt raised of \$107,173.03 – whether the Applicant was a ‘member of a couple’ within section 4(2) of the Act – whether the Applicant was living separately and apart on permanent or indefinite basis – whether there is a debt due and payable – whether part or all of the debt can be waived or written off – where the Applicant was a member of couple – debts due and payable – nothing to indicate that all or any of the debt can be waived or written off – decision under review affirmed

[Higgins and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1535 (8 June 2022); W Frost, Member

SOCIAL SECURITY – Family Tax Benefit – establishing a pattern of care – percentage of care – determination of the extent of actual care – where both parents claimed 100% care in the relevant period – relevant factors – desire for a flexible approach – limited and conflicting evidence – decision set aside

[MQDF and Secretary, Department of Social Service](#) (Social services second review) [2022] AATA 1497 (27 May 2022); A E Burke AO, Member

SOCIAL SECURITY – parenting payment – parents separated – equal care of child – which parent principal carer – which parent in greater need of favourable determination – factors for consideration – mandatory factors – discretionary factors – parents’ employment prospects – father in greater need of favourable determination – father the principal carer – decision under review set aside

[Nagy and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1501 (15 March 2022); A Maryniak QC, Member

SOCIAL SECURITY – Suspension of Disability Support Pension – Centrelink – limited portability period – whether Applicant entitled to extended portability provisions under s 1217 of the Social Security Act 1991 – meaning of the terms ‘medical treatment’ and ‘eligible medical treatment’ – whether Applicant’s temporary absence from Australia was for the purpose of seeking medical treatment not available in Australia – decision under review affirmed

[Newson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1529 (3 June 2022); C Puplick AM, Senior Member

SOCIAL SECURITY – whether applicant qualifies for disability support pension – whether conditions fully diagnosed, treated and stabilised during the qualification period – whether impairments were of 20 points or more under s 94(1)(b) – decision affirmed

[Vermeulen and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 1367 (26 May 2022); Dr C Huntly, Member

SOCIAL SECURITY – disability support pension – whether applicant’s conditions

are fully diagnosed, fully treated and fully stabilised – application of impairment tables– bipolar disorder – acquired brain injury – mental health condition – sleep apnoea – spinal disorder – whether applicant has continuing inability to work – decision under review set aside and substituted

Taxation

[Dua and Commissioner of Taxation](#) (Taxation) [2022] AATA 1520 (3 June 2022); Dr L Kirk, Senior Member

TAXATION – application for review of an objection decision – application for release from taxation liability – eligible and non-eligible taxation liabilities – whether taxpayer would suffer serious hardship if he were required to satisfy his taxation liabilities – meaning of phrase “serious hardship” – income/outgoing test – assets/liabilities test – other relevant factors in deciding whether to exercise discretion to grant release from taxation liabilities – no serious financial hardship found – other relevant factors weigh against exercising discretion – reviewable decision affirmed

[Mustapha and Commissioner of Taxation](#) (Taxation) [2022] AATA 1519 (7 June 2022); I R Molloy, Deputy President

TAXATION – Income Tax – objection to default assessment – applicant bears onus of proving taxable income – whether amended assessments excessive or unreasonable – ATM withdrawals – sole director and shareholder of company – decision 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
Advanta Seeds Pty Ltd and Commissioner of Patents	[2022] AATA 1157
El Masri and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1165
Holloway and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 833
JFPT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1080
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs and ZRTY	[2022] AATA 1330
Morgan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 189
VCFR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 621

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Civil Aviation Safety Authority v Australian and International Pilots Association	[2020] AATA 3444	[2022] FCA 655
Franklin v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 77	[2022] FCA 643
Kumar v Secretary, Department of Social Services	[2021] AATA 1823	[2022] FCAFC 95 [2021] FCA 1662
Mamatta v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1	[2022] FCA 637

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