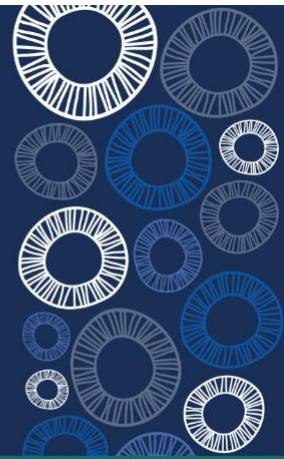




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 12/2024

17 June 2024

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

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

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Recent developments

Administrative Appeals Tribunal - upcoming changes to application fees

On 1 July 2024, most application fees at the Administrative Appeals Tribunal will increase.

These changes have been published in the [Government Notices Gazette](#). Please visit our [website](#) for more information.

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.

Archives

[Saleam and Director-General, National Archives of Australia](#) [2024] AATA 1390 (17 May 2024); B W Rayment OAM KC, Deputy President

SECURITY – National Archives of Australia – decision relating to release of an ASIO record – whether records exempt under s 33 Archives Act – whether discretion should be exercised to allow release of part of the records – decisions under review affirmed

Child Support

[Barnett and Hodson](#) (Child support) [2024] AATA 486 (14 February 2024); K Dordevic, Senior Member

CHILD SUPPORT – registration details – application for change to collection of the maintenance liability from private collection to collection by Child Support – unpaid child support liability constitutes arrears for collection – decision under review affirmed

[Herdman and Catleugh](#) (Child support) [2024] AATA 781 (6 February 2024); J Bakas, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – decision under review affirmed

[Raycroft and Child Support Registrar](#) (Child support) [2024] AATA 790 (8 February 2024); S De Bono, Senior Member

CHILD SUPPORT – refusal to grant an extension of time to object – reasonable explanation for the delay in lodging the objection late – decision under review set aside and substituted

[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 – refusal to credit non-agency payment – decision under review affirmed

[Stebbins and Stebbins](#) (Child support) [2024] AATA 786 (1 February 2024); S Letch, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the parents – costs of the child's orthodontic treatment – school fees of the child – ground for departure established – decision to depart – decision under review set aside and substituted

Citizenship

[Sharma and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1388 (5 June 2024); J C Kelly, Senior Member

CITIZENSHIP - application for citizenship by conferral – citizenship application refused – whether the applicant is a person of good character – domestic violence – seriousness of offence – whether sufficient time has elapsed since Applicant’s offending – reviewable decision affirmed

Compensation

[Arroll and Comcare](#) (Compensation) [2024] AATA 1589 (13 June 2024); D Mitchell, Member

COMPENSATION – claim for compensation – Applicant suffered from a shoulder condition – whether the Applicant’s ailment or aggravation of the ailment, was contributed to, to a significant degree, by his employment – where Respondent determined no liability for compensation pursuant to section 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – decision under review affirmed

[Jarrett and Comcare](#) (Compensation) [2024] AATA 1494 (6 June 2024); D Mitchell, Member

COMPENSATION – accepted injury – incapacity payments – normal weekly earnings – overtime – relevant period – what period prior to the date of injury should be relied on as the relevant period – decision under review set aside and substituted

[NJCX and Comcare](#) (Compensation) [2024] AATA 1560 (7 June 2024); S Webb, Member

WORKERS COMPENSATION – compensation claim – employment by licensee in senior management position – probationary period – history of psychiatric disorders – depression and anxiety – ‘ailment’ – multifactorial stressors – allegations of workplace bullying, harassment and unfair treatment – work stress – interpersonal tensions – performance issues – summary termination of employment – ‘disease’ threshold – meaning of ‘significant degree’ – allegation of contemporaneous symptoms not independently corroborated – termination of employment contributed to ailment to a significant degree – ‘disease’ resulted from reasonable administrative action undertaken in a reasonable manner in respect of the employee’s employment – wilful and false representation – exclusion from ‘injury’ applies – decision affirmed

JURISDICTION – scope of compensation claim – construction of claim – conjunctive description of condition under claim partially obscured – claim to be construed broadly on basis of accompanying documents – second condition under claim capable of determination by Comcare – power of decision maker to determine liability for all claimed conditions able to be exercised by reconsideration decision maker – Tribunal has jurisdiction

Education and Research

[Vandenberk and Secretary, Department of Education](#) [2024] AATA 1668 (14 June 2024); A E Burke AO, Member

EDUCATION – HECS-HELP – debt remission – whether special circumstances apply – where all 3 criteria must be met – whether circumstances were abnormal, uncommon or unusual and beyond applicant’s control – whether full impact of circumstances was on or after census date – whether circumstances made it impracticable for applicant to complete the requirements for the unit – Tribunal not satisfied that special circumstances apply – decision affirmed

Migration

[BGVN and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1337 (1 May 2024); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – cancellation of visa under subsection 501(2) – Direction No.99 – long term residence since infancy – protection of Australian community – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if removed – very serious offending – assessment of risk of recidivism – decision under review set aside

[Buntin and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1534 (1 May 2024); R Bellamy, Senior Member

MIGRATION – revocation of mandatory cancellation of a Class BS Subclass 801 Partner (Permanent) visa – where Applicant does not pass the character test – where there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – serious domestic violence offences – serious health condition – best interests of minor children – decision under review set-aside

[Chongo](#) (Migration) [2024] AATA 707 (28 March 2024); P Maishman, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – post-study work stream – Australian study requirement – qualification completed within 6 months before application made – regular units completed, results received and university's first letter gave expected completion date before application made – second letter gave date after application made – delay in completing practicum – claimed work experience in home country given no weight – decision under review affirmed

[Edmonds and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1389 (5 June 2024); T Tavoularis, Senior Member

MIGRATION – remittal - non-revocation of mandatory cancellation of a visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – where criminal offending includes fraudulent conduct to mislead court(s)- where the Applicant's evidence found to unreliable – where expert witness' risk assessment affected by Applicant's unreliable evidence- where factors against revocation outweigh factors in favour of revocation- Tribunal finding there is no other reason to revoke the mandatory cancellation decision- decision under review affirmed

[Farrugia and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1345 (3 June 2024); Professor A O'Connell, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Malta – Class BF Transitional (Permanent) visa – substantial criminal record – failure to pass character test – whether another reason to revoke visa cancellation – Ministerial Direction No. 99 applied – decision set aside and substituted

[Hall Infante and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1485 (6 June 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class AS Subclass 801 Spouse visa under section 501(3A) - where Applicant does not pass the character test– Applicant has substantial criminal record – Applicant's visa had been cancelled previously – Applicant disregarded warnings from the

Department – Applicant understands that if engaged in further criminal or other serious conduct, this may again result in his visa being cancelled on character grounds – Applicant has committed robbery – Applicant has committed acts of family violence – resulting in family violence restraining orders – Applicant has been a serial traffic offender – dangerous driving – property damage – driving without a license – Applicant has not been a primary caregiver of his son since birth – Applicant’s son is in care of the Department of Communities (WA) – Applicant has been in Australia since 5 years old – Applicant’s immediate family are Australian citizens – Applicant no longer speaks Spanish – Applicant has no practical or social connection to Chile – Applicant suffers from mental health and substance abuse issues – 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

[Kapi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1664 (30 May 2024); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Child (Class AH) (Subclass 101) visa - PNG citizen - where the Applicant does not pass the character test - where Applicant has a substantial criminal record - where Applicant convicted of offence of rape - where Tribunal considered evidence with respect to recidivistic risk - whether there is “another reason” why the decision to cancel the Applicant’s visa should be revoked – consideration of Ministerial Direction No. 99 - decision under review set aside and substituted

[Latif](#) (Migration) [2024] AATA 689 (26 March 2024); M Sheargold, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 (Business Innovation and Investment (Provisional)) – business innovation extension stream – need to reside in Australia to operate main business – wife’s new business stream under existing company structure established during and after COVID pandemic – studies and long-term lease of premises – husband continuing original business and supporting wife’s business – ownership interest – single corporate entity – business actively operating – low turnover while training staff and growing client base – repetitive, continuous and permanent activities – genuine realistic commitment – decision under review remitted

[LLQQ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1666 (10 June 2024); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a bridging visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – frequent offending including serious family violence – decision under review affirmed

[Maurangi and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2024] AATA 1373 (3 June 2024); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – persistent polysubstance abuse – extensive criminal history – substantial criminal record – mild intellectual disability – Applicant fails character test – non-revocation decision – affirmed by previously constituted Tribunal in 2022 – appeal to Federal Court of Australia – application remitted to Tribunal – whether another reason to revoke cancellation decision – Ministerial Direction No. 99 applied – reviewable decision affirmed

[Mautofu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1553 (7 June 2024); S Evans, Member

MIGRATION – Applicant citizen of Tonga - visa mandatorily cancelled pursuant to section 501(3A) of the Migration Act 1958 (Cth) – substantial criminal record – Negligent driving (occasioning death) – History of related driving offences - review of decision to refuse to revoke mandatory cancellation under section 501CA(4) - another reason decision should be revoked - decision under review set aside

[Momeni](#) (Migration) [2024] AATA 705 (27 March 2024); M Brophy, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – regular compliant international travel – property ownership in home country – immediate family in Iran – father’s declining health – offer of a security bond – decision under review remitted

[Rewha and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1425 (4 June 2024); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a 52 year old citizen of New Zealand – extent of impediments if returned to New Zealand – Non-Revocation Decision is affirmed

[Saeed](#) (Migration) [2024] AATA 683 (23 January 2024); J Owen, Deputy President

MIGRATION – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – alternative requirements – substantial ties criterion – personal ties to Australia – strong relationship with sister, nephews and nieces – no dependency – ‘to the benefit of Australia’ – business and employment ties – design engineer – potential future business venture – compelling and compassionate reasons for departure from Australia – decision under review affirmed

[SFPH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 1342 (16 May 2024); B W Rayment OAM KC, Deputy President

MIGRATION – Direction 99 - refusal to revoke mandatory cancellation – applicant from Afghanistan – victim of violence and trauma in home country – sex-based offences – nature and seriousness of offending – risk to Australian community – strength nature and ties to Australia – expectations of the community – other considerations – decision under review set aside and substituted

[Stoneley and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1591 (4 June 2024); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 99 – Applicant convicted of Aggravated armed robbery and Aggravated armed burglary and commit offences – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a New Zealand citizen who settled in Australia aged 17 – Non-Revocation Decision is affirmed

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

(Migration) [2024] AATA 1341 (3 June 2024); R Cameron, Senior Member

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 – crimes of a violence nature – crimes against women and children - family violence – best interests of minor children – decision affirmed

Tran (Migration) [2024] AATA 728 (27 March 2024); N Dougall, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – genuine and continuing relationship – review applicant’s regular travel to Vietnam – joint international travel – plans for joint household – shared social activities – evidence of extensive communication – decision under review remitted

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

AATA 1475 (6 June 2024); A Nikolic AM CSC, Senior Member

MIGRATION – mandatory visa cancellation – Child (Class AH) (Subclass 101) Visa – citizen of Somalia – extensive criminal history – crimes of violence – polysubstance drug addiction – multiple sentences of imprisonment – formal warning regarding consequences of further offending – substantial criminal record – failure to pass good character test – non refolement claims – Applicant eligible to apply for Protection Visa – impact of High Court decision in NZYQ – whether another reason to revoke the mandatory cancellation – Ministerial Direction no. 99 applied – decision affirmed

VASQUEZ VASQUEZ (Migration) [2024] AATA 770 (3 April 2024); K McNamara, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Australian study requirement – relevant study completed within 6 months before visa application – course completed after visa application – qualifications in public health and health management – referral for Ministerial Intervention – employment offer for research project promoting obstetrics and childcare in Indigenous Australians – decision under review affirmed

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

AATA 1665 (7 June 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class WC Subclass 030 Bridging C visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – Applicant possesses prescribed equipment — Applicant engages in cultivating large commercial quantity of controlled plant – Applicant’s Bridging visa expired but he did not leave the country – Applicant has lived in Australia unlawfully – Applicant has obtained work in breach of his Bridging Visa condition – Applicant was working illegally in Australia – Applicant failed to declare his income – Applicant’s immediate family members are Australian citizen and permanent resident – Applicant has a biological son and a step son who are Australian citizens born here – 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

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

AATA 1484 (18 January 2024); L Benjamin, Member

MIGRATION – Mandatory visa cancellation – South Sudanese citizen - Class XB Subclass 202 Global Special Humanitarian visa – section 501CA of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – where offending encompasses violent crimes and

includes convictions for assault offences - whether “another reason” exists for Tribunal to revoke mandatory cancellation of visa under section 501CA of the Migration Act 1958 (Cth) – Ministerial Direction No. 99 applied – Respondent’s delegate’s decision affirmed

[XVNO and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1559 (12 June 2024); R Reitano, Member

MIGRATION — visa cancellation – protection of the community – very serious criminal offending – likely harm of re-offending - risk of re-offending -- expectations of the Australian community — nature, duration and ties to community – best interests of children -- impediments if removed – impact on mother who was a victim of offending - weight of considerations when compared to one another -- satisfaction about other reason – best interests of children is other reason - decision to refuse to revoke cancellation set aside and substituted

National Disability Insurance Scheme

[EXBL and National Disability Insurance Agency](#) [2024] AATA 1543 (7 June 2024); R Cameron, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – participant supports – reasonable and necessary supports which will be funded – funding for carers and supports for high complex needs – request for parents to receive funding as parents – risk of carer burnout - value for money assessment – value relative to both the benefits achieved and the cost of alternative support – decision varied

[Pajo and National Disability Insurance Agency](#) [2024] AATA 1340 (31 May 2024); D O'Donovan, Senior Member

National Disability Insurance Scheme – Access – Inflammatory Condition – Substantially reduced functional capacity to undertake mobility – Assistive Technology – Fatigue – Applicant meets disability requirements – decision under review set aside

[Settle and National Disability Insurance Agency](#) [2024] AATA 1343 (3 June 2024); S Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – request for access – chronic fatigue syndrome - fibromyalgia – irritable bowel syndrome – chemical sensitivity - whether the effects of an impairment are permanent - whether there are known, available and appropriate treatments likely to remedy an impairment – available treatment - whether further investigations are required to determine permanency of impairments – degree of severity and permanency of impairments – decision under review affirmed

Passports

[WHRD and Minister for Foreign Affairs](#) [2024] AATA 1556 (11 June 2024); R Reitano, Member

PASSPORT – child – person with parental responsibility not consenting – child’s psychological welfare adversely affected – child's welfare (physical or psychological) would be adversely affected if the child were not able to travel internationally – whether adverse affect required to be significant - relevance of policy – relevance of declaration that matter more appropriate for court – statement from medical practitioner – exercise of discretion – time, cost and delay – whether reasons for not consenting relevant – decision under review set aside

Practice and Procedure

[Adams and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1339 (3 June 2024); D Mitchell, Member

PRACTICE AND PROCEDURE – JURISDICTION of the Tribunal – whether the General Division has jurisdiction to review a decision made by the Social Services and Child Support Division to dismiss an application for no jurisdiction pursuant to section 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth) – whether the Tribunal has jurisdiction to review the assessment of a Job Capacity Assessor – no reviewable decision – no jurisdiction – application dismissed

[Coral Coast Distributors \(CAIRNS\) Pty Ltd and Australian Securities & Investments Commission](#) [2024] AATA 1585 (12 June 2024); D K Grigg, Senior Member

PRACTICE AND PROCEDURE – STAY APPLICATION - STOP ORDER – Stop order under s 994J(2) of the Corporations Act - whether stay necessary to secure effectiveness of hearing and determination of the application for review – prospects of success – prejudice to parties - public interest – whether the review application would be rendered nugatory - applicant prevented by ASIC from providing customers at its retail stores a payment facility using a credit facility provided by Services Australia known as Centrepay – relevance of impact on third parties - stay order not granted

[JFMF and Child Support Registrar](#) (Social services second review) [2024] AATA 1371 (3 June 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – Social Services – application for extension of time - whether the length of delay was justified - whether there was a reasonable explanation for the delay - whether the substantive application for review has merits - whether granting of extension of time would prejudice the Respondent or the general public - whether there are alternative avenues of relief for the Applicant should the extension of time not be granted –extension of time request granted

[Liu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1550 (27 May 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – where the applicant applied for citizenship by conferral – where the application was rejected – where the applicant advised of right of review to tribunal – where the applicant did not act – applicant found to have rested on her rights – where the tribunal considers application not meritless – open to applicant to make fresh citizenship application – where no special circumstances were advanced that prevented the applicant lodging application – where tribunal not satisfied extension of time reasonable in all the circumstances – extension of time refused

CITIZENSHIP – Australian citizenship by conferral – where delegate not satisfied applicant likely to reside, or continue to reside, in Australia or maintain close and continuing association with Australia – contentions of applicant – where tribunal considers applicant has arguable case – whether a person is resident not sufficient to found a conclusion that this criterion in Act is not satisfied – where applicant failed to respond to Department’s request for additional information – where delegate proceeded to reject application – conduct by Department administratively fair

[Mathews and Migration Agents Registration Authority](#) [2024] AATA 1554 (12 June 2024); Dr N A Manetta, Senior Member

MIGRATION AGENTS – registration – interlocutory application for stay of decision to suspend registration – applicant’s registration automatically continued – respondent made a decision to suspend applicant’s registration during extended period – scheme of Act indicates Tribunal not

intended to stay the operation of suspension during a period of extended registration – Federal Court authority of Gruszka referred to – application for stay refused

[NSDW and National Disability Insurance Agency](#) [2024] AATA 1432 (6 June 2024); A Younes, Deputy President

Practice and Procedure — dismissal of application for review — whether Tribunal satisfied that it is appropriate to dismiss the application — proper notice — Applicant failed within a reasonable time to progress with his application — procedural fairness — application dismissed under s 42A(5) and in 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[SYRL and Australian Securities & Investments Commission](#) [2024] AATA 1370 (3 June 2024); B J McCabe, Deputy President and D Benk, Senior Member

PRACTICE AND PROCEDURE – STAY APPLICATION – application for an interim stay order – objectives of the regulators in making a decision – protection – objective of transparency – conditional interim stay application granted

[Wills and Comcare](#) (Compensation) [2024] AATA 1480 (2 May 2024); D O'Donovan, Senior Member

Workers compensation – jurisdiction of the Tribunal when reviewing decisions under section 14 of the SRC Act – reviewable decision remitted under section 42D – favourable decision on section 14 liability made on remittal – liability accepted but only for a closed period – validity of a closed period acceptance decision – jurisdiction of Tribunal to review a decision under section 14 of the SRC concerning the period in which compensation is payable – no such jurisdiction – application dismissed as lacking in substance

[XTrade.AU Pty Ltd 2and Australian Securities & Investments Commission](#) [2024] AATA 1372 (4 June 2024); B J McCabe, Deputy President and D Benk, Senior Member

PRACTICE AND PROCEDURE – STAY APPLICATION – application for an interim stay order – objectives of the regulators in making a decision – protection – objective of transparency – interim stay dissolved granted - reviewable decision takes effect

Refugee

[1903406](#) (Refugee) [2024] AATA 1549 (1 March 2024); S Zelinka, Member

REFUGEE – protection visa – Fiji – race – indigenous Fijian – political opinions – opposition to the Bainimarama Government – advocating for indigenous rights – fear of political violence – psychological harm – change of government – loss of traditional land – economic conditions – employment – decision under review affirmed

[1919869](#) (Refugee) [2024] AATA 613 (8 January 2024); S Baker, Member

REFUGEE – protection visa – Cameroon – political opinion – Anglophone Cameroonian activist – member of organisation – arrested, tortured and blacklisted – brother killed and mother-in-law's house burned down – wife and children registered with UNHCR in third country – attendance at protests in Australia – mental health – documentary evidence and supporting statements – country information – no right to enter and reside in third country – decision made without hearing necessary – decision under review remitted

[1930315](#) (Refugee) [2024] AATA 1314 (16 January 2024); N Lamont, Member

REFUGEE – protection visa – New Zealand – particular social group – applicant’s mother is a single mother – abused woman – applicant is child with disability – no male protection – ex-husband’s family’s political and police connections – unable to relocate in India – member of same family unit – Australian citizenship granted to second and third applicant children – decision under review remitted

[2005899](#) (Refugee) [2024] AATA 1144 (8 January 2024); R Gagliardi, Member

REFUGEE – protection visa – Nepal – imputed political opinion – pro-monarchist – anti-Maoist – particular social group – businessmen threatened and targeted at the point of death for payment of extorted money – perceived landed monarchist – right to enter and reside in a third country – Indo-Nepal Treaty of Peace and Friendship – Nepali migrant workers in low level jobs – exploitative and inhuman conditions – decision under review remitted

[2308774](#) (Refugee) [2024] AATA 1170 (6 March 2024); S Muling, Member

REFUGEE – protection visa – Fiji – particular social group – LGBTI individual – terminating employment obligations in Australia – workplace harassment – physical assault – fear of detention – decision under review remitted

[2317639](#) (Refugee) [2024] AATA 614 (9 January 2024); M Oakman, Member

REFUGEE – protection visa – The Philippines – witness to killing of chief of police – fear of harm from chief’s family, who claim applicant’s father responsible for failing to protect him – worked in third countries, then threatened after returning – physical health and medication – inconsistent claims and evidence – passage of time – no approach to family or threats or harm to wife and children – long period as unlawful non-citizen and delay in applying for protection – country information – general economic conditions – decision under review affirmed

[2318515](#) (Refugee) [2024] AATA 621 (12 January 2024); K Chapple, Member

REFUGEE – protection visa – Vanuatu – natural disasters and environmental challenges, resources and infrastructure – safety and quality of life – delay in applying for protection while working – application prepared by niece – country information – high exposure and low coping capacity – natural disasters not persecution as defined – International Covenant on Civil and Political Rights signed and ratified but not adopted into Australian law – UN Human Rights Committee decision not binding on tribunal – decision under review affirmed

Social Security

[Butler and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1387 (4 June 2024); Dr L Kirk, Senior Member

SOCIAL SECURITY – application of ordinary income test, partner’s income, proceeds from sale of assets, investment returns, personal loans – failure to disclosed change in circumstances – combined assets – overpayment of entitlements – multiple debts due to commonwealth – “Special circumstances,” “severe financial hardship”, “capacity to pay”, “administrative error”, “good faith”- no reason to waive debt – applicant actions/inaction the cause of debt, personal responsibility – turning ‘a blind eye’ to what was apparent – variation of interest charge – Decision Affirmed

[DSDJ and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1532 (10 June 2024); B Pola, Senior Member

SOCIAL SECURITY - decisions with respect to Disability Support Pension eligibility - where applicant benefits cancelled due to failure to respond to information request – where domestic violence issues not sole reason for failure to respond - whether applicant was eligible for rent assistance - consideration of when applicant ceased to be member of couple - decision one affirmed - decisions two and three set aside and remitted

[Garvey; Secretary, Department of Social Services and](#) (Social services second review) [2024] AATA 1667 (14 June 2024); Brigadier A G Warner, AM LVO (Retd), Member

SOCIAL SECURITY – Aged Pension – Secretary, Department of Social Services seeks review of a decision of the Tribunal at first review – whether the Respondents were overpaid Age Pension – whether Centrelink decision to cancel Age Pension was correct - if so whether overpayment a debt to the Commonwealth – if so whether all or part of the debt should be recovered – whether discretion to write off or waive debt enlivened - decision under review set aside and remitted to Centrelink with directions

[Iqbal and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1338 (30 May 2024); L M Gallagher, Member

SOCIAL SECURITY – disability support pension – whether Applicant’s claimed conditions were fully diagnosed, fully treated and fully stabilised – where Applicant claims to suffer from hepatitis B, lumbar spondylolisthesis, Meniere’s disease, eye floaters, hearing loss and gastroesophageal reflux disease – whether Applicant’s impairments attracted an impairment rating of 20 points under the Social Security (Tables for the assessment of Work-related Impairment for Disability Support Pension) Determination 2011 – decision under review affirmed

[Tayba and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1590 (13 June 2024); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension (DSP) application – whether the applicant qualified for DSP during the relevant qualification period – whether the applicant has a continuing inability to work – whether the applicant has a physical, mental or psychiatric impairment – mental health condition – spinal condition – bilateral sensorineural hearing loss – diabetes – tinnitus – vertigo – hypertension – shoulder and upper arm condition – knee pain – respiratory disorder – whether the applicant’s disabilities may be assigned a relevant impairment rating – whether the applicant has a severe impairment – reviewable decision affirmed

Taxation

[BQKD and Commissioner of Taxation](#) (Taxation) [2024] AATA 1542 (10 May 2024); B J McCabe, Deputy President

TAXATION – appeal from objection decision under s 136(1) of the Fringe Benefits Tax Assessment Act 1986 (Cth) – where Commissioner alleged that benefits were provided for the purpose of an employment arrangement – where applicant claimed it was not in an employment relationship with its directors – held: applicant was not in an employment relationship with the three directors, and that – in any event – the benefits were not available to those individuals in connection with their employment in the relevant sense – objection decision set aside

[Doery and Commissioner of Taxation](#) (Taxation) [2024] AATA 1493 (7 June 2024); D Benk, 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 – serious financial hardship found – other relevant factors weigh against exercising discretion – reviewable decision affirmed

[Moloney and Commissioner of Taxation](#) (Taxation) [2024] AATA 1483 (7 June 2024); I R Molloy, Deputy President

TAXATION – INCOME TAX – objections to amended income tax assessments – capital gains tax – whether small business concessions apply – whether the market value substitution rule applies – parties dealing at arm’s length – whether maximum net asset value test satisfied – decisions under review set aside – decision allowing objections 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
BPBR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2024] AATA 1002
Brar and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2024] AATA 1154
Deng and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 738
GPRN and Minister for Immigration, Citizenship, and Multicultural Affairs	[2024] AATA 1099
Montsho and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 1053
NXLT and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 925
Singh and Commonwealth Ombudsman	[2024] AATA 969

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Heffernan v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 416	[2024] FCA 626
Minister for Immigration, Citizenship and Multicultural Affairs v Su	[2023] AATA 3919	[2024] FCAFC 68
Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 4237	[2024] FCA 595
Nkani v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 1239	[2024] FCAFC 70 [2023] FCA 1410
Snow v Secretary, Department of Social Security	[2022] AATA 366	[2024] FCA 608
Titoa v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2329	[2024] FCA 605

Wang v Commissioner of Taxation	[2023] AATA 2962	[2024] FCA 585
Warren v Chief Executive Officer, Services Australia	[2022] AATA 4191	[2024] FCAFC 73
Warwick v National Disability Insurance Agency	[2023] AATA 3093	[2024] FCA 616



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