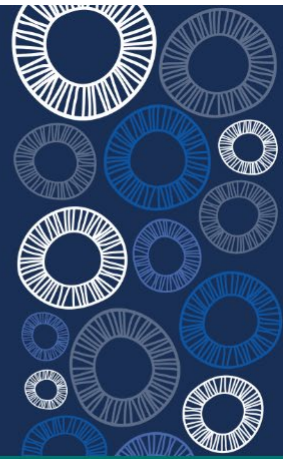




Administrative
Appeals Tribunal

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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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

[Short and Nance](#) (Child support) [2023] AATA 1189 (11 April 2023); S Letch, 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 – decisions under review affirmed

[Barrow and Child Support Registrar](#) (Child support) [2023] AATA 1179 (11 April 2023); P Jensen, Member

CHILD SUPPORT – refusal to grant an extension of time to object – non-existent application – decision under review set aside and substituted

[Sykes and Laslett](#) (Child support) [2023] AATA 1645 (12 April 2023); M Martellotta, Member

CHILD SUPPORT – registration details – application for collection of the maintenance liability – whether the application for collection and arrears should be accepted – the application for collection and arrears should be accepted – decision under review affirmed

[Rendell and Gedye](#) (Child support) [2023] AATA 1662 (21 April 2023); H Moreland, Member

CHILD SUPPORT – departure determination – earning capacity of the carer entitled to receive – a ground for departure established – decision to depart – decision under review set aside and substituted

[Talents and Engleman](#) (Child support) [2023] AATA 1648 (30 May 2023); P Jensen, Member

CHILD SUPPORT – child support agreement – whether the agreement meets the requirements of a limited child support agreement – decision under review set aside and substituted

Citizenship

[Chaaban and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1773 (22 June 2023); S Evans, Member

CITIZENSHIP – Application for Australian citizenship by conferral – Refusal of citizenship application – Whether Applicant has satisfied section 21(2)(h) – Good character requirement – Citizenship Policy – Meaning of 'good character' – Enduring moral qualities – Common assault – Alleged domestic violence – No pattern of behaviour established – Decision under review set aside and remitted

[El Salloum and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1812 (27 June 2023); The Hon. J Pascoe AC CVO, Deputy President

CITIZENSHIP – whether the good character requirement under paragraph 21(3)(f) of the Australian Citizenship Act 2007 (Cth) is satisfied – relevant law and policy considered – applicant’s background and criminal history considered – character references considered – decision under review affirmed

[LTDS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1758 (21 June 2023); A E Burke, AO Member

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

[Qurbani and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 1698 (16 June 2023); A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – Afghan national – whether satisfied of identity of applicant – whether documentation was sufficient – whether made genuine attempt to verify documentation – consideration of DFAT Country Information Report – whether satisfied of life story – whether the application for citizenship should be approved – life story remained consistent – Tribunal satisfied of identity – decision under review set aside and remitted

[Ramos Hernandez and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1850 (28 June 2023); T Tavoularis, Senior Member

CITIZENSHIP– decision to revoke Australian citizenship – public interest test – convictions for maintaining unlawful relationship of a sexual nature with a child – whether the Applicant would have been granted Australian citizenship had his offending been known at the time of his Australian citizenship application assessment- whether the Applicant has established himself as a person of good character- whether it would be contrary to public interest for the Applicant to hold Australian citizenship - decision under review affirmed

[Shrestha and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 1847 (26 May 2023); Mr S Evans, Member

CITIZENSHIP — Application for Australian citizenship by conferral — Refusal of citizenship application — Whether Applicant has satisfied section 21(2)(h) — Good character requirement — Citizenship Policy — Meaning of ‘good character’ — Enduring moral qualities — Common assault — Alleged domestic violence — No pattern of behaviour established — Decision under review set aside and remitted.

Compensation

[Bomford and Australian Postal Corporation](#) (Compensation) [2023] AATA 1901 (23 March 2023); A G Melick, AO SC, Deputy President

Compensation – workplace injury – whether the Australian Postal Corporation had a present liability to pay compensation – accepted compensation claim for the right knee – whether the left knee was injured at the same time as the right knee – decision under review is set aside

[Fisher and Comcare](#) (Compensation) [2023] AATA 1883 (29 June 2023); A G Melick AO SC, Deputy President

Workers' Compensation (Cth) — Injury — Disease — Whether injury arose out of or during the course of employment — Whether injury arising out of or during the course of employment aggravated an underlying condition — inconsistent evidence — pre-existing condition — decisions under review affirmed

[Stewart and Comcare](#) (Compensation) [2023] AATA 1904 (30 June 2023); J Sosso, Deputy President

COMPENSATION – workplace injury – journey claim – lumbar and cervical spine injuries – aggravation of underlying degenerative spinal condition – liability accepted – whether liability for condition has ceased – whether ongoing entitlement to claim medical expenses – decisions under review affirmed

Education and Research

[Azaria Family Day Care Pty Ltd and Secretary, Department of Education](#) [2023] AATA 1858 (28 June 2023); The Hon. M Groom, Senior Member

Child Care Services — Application for Review of Decision — Family Assistance — Registered Carers — Day Care — Child Care Subsidy – decision under review set aside

[HHJK and Secretary, Department of Education](#) [2023] AATA 1775 (22 June 2023); A George, Senior Member

HIGHER EDUCATION SUPPORT – HECS-HELP – application for debt remission – Attention-deficit/hyperactivity disorder – whether requirement that remission application be made before end of application period can be waived – insufficient evidence – decision under review affirmed

Migration

[BYMD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1774 (22 June 2023); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of visa – national of Ethiopia – Class BA Subclass 200 Refugee visa – failure to pass character test – sexual offences – diverse other offending – whether another reason cancellation should be revoked – minor child overseas – mental health condition – HIV positive status – decision affirmed

[FJXD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1721 (20 June 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant committed serious offences including people smuggling for which he received a seven year prison sentence – whether there is 'another reason' to revoke the mandatory cancellation decision – the primary considerations of the expectations and protection of the Australian community outweigh the countervailing considerations – decision affirmed

JTSG and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 1842 (23 June 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – refusal to grant a protection visa – Applicant has been convicted by a final judgment of a particularly serious crime – offences included kidnapping, extortion and assault occasioning bodily harm – numerous incidents in prison and immigration detention – whether Applicant is a danger to the Australian community – factors from WKCG and Minister for Immigration and Citizenship (2009) 110 ALD 434 considered including extent of the criminal history, seriousness and nature of the crimes, mitigating or aggravating circumstances, risk of reoffending and recidivism and the likelihood of reoffending – Applicant found to be a danger to the community – Reviewable Decision affirmed

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

1725 (Migration) [2023] AATA (20 June 2023); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – family violence committed by the non-citizen – expectations of the Australian community – impediments to removal – decision affirmed

LMYC and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023] AATA

1807 (26 May 2023); Dr N A Manetta, Senior Member

MIGRATION – refusal of Bridging E (Class WE) visa – s 501(1) Migration Act 1958 – applicant does not satisfy the character test – substantial criminal record – whether to exercise statutory discretion to refuse visa – Direction 99 – trend of increasing seriousness – dishonesty and theft offences – single instance of family violence – offending related to drug dependence – serious consequences to the Australian community if applicant reoffends – applicant now drug-free – risk of reoffending low – expectations of the Australian community count substantially against the applicant – length of time in community under a bridging visa under the control of the responsible Minister – ties to the Australian community – applicant has Australian partner and child – their interests weigh in favour of applicant – current evidence suggests applicant has genuine Christian beliefs – prospect of continuing indefinite detention – applicant has requested Ministerial intervention – decision under review set aside

McCombie and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 1884 (29 June 2023); T Tavoularis, 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. 99 – decision under review set aside and substituted

Mejov and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2023] AATA

1851 (28 June 2023); A Nikolic AM CSC, Senior Member

MIGRATION – Visa cancellation on character grounds – citizen of Russia – Ex-Citizen Visa – whether Applicant does not pass the character test – Applicant has substantial criminal record – persistent offending between 1998 and 2020 – whether there is another reason to revoke the mandatory cancellation decision pursuant to s 501CA(4)(b)(ii) of the Act – consideration of Ministerial Direction No. 99 – reviewable decision is affirmed

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1819 (26 June 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – one offence involving money laundering – Applicant is a 43 year old citizen of Vietnam who arrived in Australia as a 36 year old adult – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to Vietnam – Reviewable Decision set aside and substituted

[RLXN and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1905 (30 June 2023); D J Morris, Senior Member

MIGRATION – applicant is a citizen of the Lebanese Republic – applicant held partner visa – substantial criminal record – applicant serving sentence of full-time imprisonment – visa cancelled mandatorily – applicant made representations – delegate of minister refused to revoke mandatory cancellation – applicant sought review by Tribunal – Tribunal affirmed decision not to revoke – applicant sought judicial review – parties accepted decision affected by jurisdictional error – consent order – matter remitted to Tribunal – new ministerial direction – primary considerations – offending serious – whether family violence – family violence found despite no convictions – other considerations – decision under review set aside and new decision substituted

[RVKP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1761 (21 June 2023); K Raif, Senior Member

MIGRATION – refusal to grant a visa – failure to pass the character test – Ministerial Direction No. 99 – nature and seriousness of offending conduct – sexual based offence involving a child – meaning of a ‘child’ in the Migration Act – victim 17-years old – protection of the Australian community – strength, nature, and duration of ties to Australia – impediments to removal – other considerations – applicant subject of a protection finding – indefinite detention – decision set aside and substituted

[RXSH and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1912 (31 May 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958 (Cth), subsection 501CA(4) – Direction No. 99 – fraud offences – domestic violence offences – protection of the Australian community – strength, nature and duration of ties to Australia – expectations of the Australian community – impact on victims – where applicant made claims engaging non-refoulement obligations – where no protection finding made – decision set aside

[Singh and Minister for Immigration, Citizenship and Multicultural Affairs](#) [2023] AATA 1852 (27 June 2023); J Owen, Deputy President

MIGRATION — application for Bridging E (Class WE) visa — visa refusal — Applicant does not pass the character test – whether the discretion to refuse to grant the Bridging visa should be exercised — Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 99 – best interests of the child – decision under review affirmed

[SSVJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]

AATA 1720 (19 May 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958 (Cth), subsection 501CA(4) – Direction No. 99 – sexual offences – country of return – non-refoulement – South Sudan or Sudan – protection of the Australian community – strength, nature and duration of ties to Australia – expectations of the Australian community – impact on victims – decision set aside

[Thompson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]

AATA 1880 (29 June 2023); Mrs J C Kelly, Senior Member

MIGRATION – mandatory cancellation of visa under s 501CA(4) because applicant did not pass the character test – violent sexual offences – whether there is another reason why the cancellation decision should be revoked – Ministerial direction no.99 – protection of the Australian community – strength, nature, duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – daughter and father in Liberia – reviewable decision set aside

[Toroa and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]

AATA 1717 (20 June 2023); L M Gallagher, 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 – Applicant is a 43 year old man who arrived in Australia as a 10 year old – extent of impediments if returned to New Zealand – Non-Revocation Decision is set aside and substituted

[YFMG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]

AATA 1699 (19 June 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – refusal to grant a protection visa – Applicant has been convicted by a final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – seriousness and nature of the crimes committed – offences including assault occasioning actual bodily harm committed against the Applicant's mother and former wife – length of sentences imposed – whether any mitigating or aggravating circumstances – Applicant has significant mental health issues – extent of the criminal history – nature of the prior crimes – risk of reoffending and recidivism and the likelihood of relapsing into crime – the criminal record as a whole – prospects of rehabilitation – Applicant found to be a danger to the community – Reviewable Decision affirmed

[Nguyen](#) (Migration) [2023] AATA 1218 (17 April 2023); P Papadopoulos, Member

MIGRATION – Visitor (Class FA) visa – subclass 600 (Visa) – Tourist stream – applicant did not hold a substantive visa at the time of application – considerable efforts were made to maintain the applicant's lawful visa status – applicant clearly misunderstood the possible consequences of withdrawing the first visitor visa application – not a factor beyond the applicant's control – failed to satisfy criterion 3004 – decision under review affirmed

[1824867](#) (Migration) [2023] AATA 1111 (21 April 2023); J Clarke, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – parties have pooled their financial resources and shared day-to-day financial responsibilities during the relationship – applicant did not meet criterion 3001 in Schedule 3 – compelling reasons for not applying the Schedule 3 criteria – the parties were validly married – applicant and sponsor have a child together – marriage certificate and the birth certificate provided – applicant was not the holder of a substantive visa at the time of application – there is an Australian-citizen child of the relationship – decision under review remitted

[KIM](#) (Migration) [2023] AATA 1168 (28 April 2023); N Schmitz, Member

MIGRATION – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – Federal Circuit and Family Court remittal – visa extension application – 3 months of specified work in regional area while holding first visa – mining support services – processing rock samples for testing – broad term in legislative instrument cannot be narrowed down by reference to ANZSCO – colleagues performing same work granted visas – decision made without hearing necessary – decision under review remitted

[Raja](#) (Migration) [2023] AATA 1221 (2 May 2023); G Cullen, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – Federal Circuit Court remittal – enrolment in a registered course cancelled – fraudulent academic transcripts – confirming the dismissal of the review application – non-commencement of studies – decision under review affirmed

[Li](#) (Migration) [2023] AATA 1167 (4 May 2023); R Skaros, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect information in a previous visa application – bogus documents – genuine and ongoing de facto relationship – altered bank and utility accounts – allegations against a migration agent – frequent residential movements – impact on the applicant’s businesses – best interest of the Australian citizen daughter – decision under review affirmed

National Disability Insurance Scheme

[Baranowski and National Disability Insurance Agency](#) [2023] AATA 1701 (19 June 2023); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – complex post traumatic stress disorder – borderline personality disorder – depression and anxiety – permanence conceded – substantially reduced functional capacity – episodic or fluctuating impairment – decision remitted

[Mowjood and National Disability Insurance Agency](#) [2023] AATA 1759 (21 June 2023); The Hon. M Groom, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether applicant meets disability requirement – rheumatoid arthritis – chronic pain – whether impairment is likely to be permanent – whether impairment substantially reduces functional capacity – whether applicant likely to require support under NDIS for a lifetime – decision under review affirmed

[Puster and National Disability Insurance Agency](#) [2023] AATA 1760 (21 June 2023); The Hon. M Groom, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Access to scheme - Decision that access criteria not met - Disability requirements – Early intervention requirements – Substantially reduced functional capacity – Mobility – Self Care – Decision under review affirmed

[VFXD and National Disability Insurance Agency](#) [2023] AATA 1723 (16 June 2023); D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – chronic pain syndrome – post-traumatic stress disorder – secondary adrenaline insufficiency – are the Applicant’s impairments permanent – decision under review affirmed

Practice and Procedure

[Beard and Secretary, Department of Education](#) [2023] AATA 1722 (20 June 2023); D Mitchell, Member

PRACTICE AND PROCEDURE – jurisdiction of the Tribunal – higher education – application for re-credit of FEE-HELP debt – where reconsideration request made outside of prescribed time frame – where university decided not to allow longer time for making of reconsideration request – whether decision confirmed, varied or set aside – university did not confirm, vary or set aside decision – Tribunal does not have jurisdiction in respect of application for review of decision – application dismissed

[Bonimpa and Minister for Immigration, Citizenship and Multicultural Affairs](#) [2023] AATA 1755 (21 June 2023); S Webb, Member

PRACTICE AND PROCEDURE – application for extension of time in which to make an application for review – factors relevant to exercise of discretion – no notice of prescribed period – length of delay – explanation for delay – prejudice – merit – alternative remedy – exercise of discretion reasonable in the circumstances – extension of time granted

[Cavanagh and Commissioner of Taxation](#) (Taxation) [2023] AATA 1700 (16 June 2023); B J McCabe, Deputy President

SMALL BUSINESS TAXATION DIVISION – TAXATION AND COMMERCIAL DIVISION – allocation of matters – president’s direction – Tribunal’s objective – procedural matters – onus of proof

[DeWitt and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1696 (13 June 2023); D J Morris, Senior Member

SOCIAL SECURITY – pensions, benefits and entitlements – disability support pension – whether being paid at single or partnered rate – effect of a Tribunal decision – applicant was a joined party to a previous decision by consent – applicant claimed his rate of DSP payment changed as a result of a previous Tribunal decision relating to his partner – no evidence of change in payment rate of applicant’s DSP – no decision by authorised review officer before Tribunal – no First Review decision – power of Tribunal constrained by statute – Tribunal does not have jurisdiction – application dismissed for want of jurisdiction – there is no reviewable decision – request for referral by Tribunal to Federal Court – no identifiable question of law arising in proceeding – oral decision – written reasons provided

[Keys and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 1796 (23 June 2023); D Mitchell, Member

VETERANS' AFFAIRS – application for increase in rate of pension – Special Rate pension – preliminary issue – whether section 24(2A) of the Veterans' Entitlements Act 1986 (Cth) applies – was the Veteran 65 on the date the claim or application was received – to which claim or application does the reviewable decision relate – section 24(2A) applies

[Kollias and National Disability Insurance Agency \(No 2\)](#) [2023] AATA 1702 (13 June 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME DIVISION – Request made to the Tribunal by the Applicant to exercise its discretion under subsection 40A(1)(b) of the Administrative Appeals Tribunal Act 1975 (Cth) to issue summonses to the Respondent's two expert witnesses to produce documents to the Tribunal – whether the Applicant's request for the production of documents is for the purpose of a proceeding before the Tribunal – whether the request lacks a legitimate forensic purpose and whether the request is relevant to the substantive issues the Tribunal is yet to determine – whether the Tribunal should exercise the discretion in subsection 40A(2) of the AAT Act to refuse the Applicant's request – request to issue summons refused

[Laverick and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1719 (20 June 2023); D J Morris, Senior Member

SOCIAL SECURITY – pensions, entitlements and benefits – where the applicant was the beneficiary of a trust – where authorised review officer decided applicant's asset attribution percentage in a specified period was 100 per cent – where applicant incurred debt for payment of Newstart allowance – where First Review set aside decision and directed that it be reconsidered with an asset attribution percentage in a specified period of 50 per cent – where debt had wholly been repaid – refund therefore due – where applicant sought Second Review – where application lodged outside prescribed time

PRACTICE AND PROCEDURE – where the First Review set aside decision with direction – where consequence of direction was that debt was recalculated – where debt had been fully repaid – where refund therefore due to applicant – where respondent allotted a sum of money to recover other debts – where respondent submitted he had complied with the First Review's decision – applicant entitled to fruits of decision – respondent has obligation to implement all the consequences of a decision

PRACTICE AND PROCEDURE – where Applicant sought extension of time – principles relating to extension of time – where Applicant did not have satisfactory explanation for delay – failure of Respondent to implement First Review decision would be prima facie grounds for time to be extended – Tribunal adjourned matter to allow Respondent to implement decision and provide proof to Tribunal – extension of time refused

Refugee

[2119781](#) (Refugee) [2023] AATA 1070 (24 January 2023); K Chapple, Member

REFUGEE – protection visa – Vietnam – religion – conversion to Christianity in Australia – child of army officer and communist party member – traditional, strict, non-religious upbringing – bullied and assaulted – profile because of father's position and unlawful departure – activities in Australia not for purpose of strengthening claim – credible evidence – country information – decision under review remitted

[1800964](#) (Refugee) [2023] AATA 1100 (6 February 2023); P Haag, Member

REFUGEE – Protection visa – Pakistan – political profile – fears harm as an informant against the Tehreek-e-Taliban Pakistan – prominent family association with the ANP – race – an ethnic Pashtun – membership of a particular social group – persons with a mental health condition – conflicting evidence – applicant does not have a well-founded fear of persecution – credibility concerns – decision under review affirmed

[1724102](#) (Refugee) [2023] AATA 1127 (7 February 2023); L Hardy, Member

REFUGEE – protection visa – Colombia – fear of harm from guerrilla group – approached to store items belonging to group in workplace – later threat to kidnap and recruit son – changes of residence and son’s withdrawal from study – credibility – inconsistent, contradictory and implausible claims and evidence – claimed changes of residence not listed in application, and continuing work – statement to local prosecutor on day of departure – country information – group disarmed and reorganised as political party – small remnants still active in rural and remote areas – government’s commitment to implementing peace accords – decision under review affirmed

[1825914](#) (Refugee) [2023] AATA 1198 (2 March 2023); M Sripathy, Member

REFUGEE – Protection visa – Bangladesh – political opinion – supporter of the Bangladesh National Party – fears harm from members of the opposing political party, Awami League – low level BNP supporter – murder charge – applicant has no ongoing BNP profile – no outstanding cases or charges against him – a failed asylum seeker returnee – applicant had provided conflicting, inconsistent and contradictory information over time – credibility concerns – decision under review affirmed

[1902802](#) (Refugee) [2023] AATA 1224 (3 March 2023); A Duffield, Senior Member

REFUGEE – protection visa – Ghana – member of particular social group – homosexual man – relationship with high-profile man – severely beaten and injured – credibility – inconsistent and implausible claims and evidence – limited account of sexuality and experiences, knowledge of claimed partner and evidence of relationship – conviction and imprisonment in third country – no application for protection there, early release and return to home country – claimed beating happened while applicant in prison – arrival in Australia on false passport in another name, and conviction not declared – delay in applying for protection – authenticity of supporting news reports – country information – decision under review affirmed

[1713767](#) (Refugee) [2023] AATA 1290 (18 March 2023); C Cody, Member

REFUGEE – protection visa – Pakistan – particular social group – women – unmarried mothers – love marriage without family consent – honour killing – forced pregnancy termination – refusal of arranged marriage – gender-based violence – state protection – decision under review remitted

[2217099](#) (Refugee) [2023] AATA 1476 (23 March 2023); B Darcy, Member

REFUGEE – protection visa – Uzbekistan – race – Armenian – religion – Christian – particular social group – relapsing drug users – evangelising – compulsory registration for drug rehabilitation treatment – fear of detention – extensive criminal history – forced labour – discriminatorily enforced laws – significant harm – decision under review remitted

Social Security

[Godfrey and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1817 (27 June 2023); D Mitchell, Member

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

PRACTICE AND PROCEDURE – reviewable decision superseded – Tribunal undertakes a de novo review – application dismissed by consent

[Parton and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1903 (30 June 2023); P Ranson, Member

Social welfare and service — Age pension — Reduction of age pension — Proceeds from sale of home assess as an asset — 24-month assets exemption — Security of tenure — Delays beyond control in renovating other residence — Decision under review affirmed

[Radmanovic and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1780 (23 June 2023); A Nikolic AM CSC, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant's medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – decision under review affirmed

[Salisbury and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1814 (27 June 2023); K Millar, Senior Member

SOCIAL SECURITY – cancellation of carer payment – whether eligible to receive carer payment – meaning of “constant care” - whether constant care was provided – decision under review is affirmed

[Spear and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1882 (29 June 2023); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Ters and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1881 (29 June 2023); Mr S Evans, Member

SOCIAL SECURITY — Disability Support Pension — Claim for disability support pension rejected — Whether applicant's conditions were fully diagnosed, fully treated, and fully stabilised during the qualification period — Whether applicant's conditions attracted an impairment rating of at least 20 points — Decision affirmed

[Unver and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1716 (20 June 2023); Dr L Bygrave, Member

SOCIAL SECURITY – age pension – whether Applicants are members of a couple for the purpose of calculating their rate of age pension – whether Applicants are members of an illness separated couple – whether there is a special reason not to treat Applicants as members of a couple – decision under review affirmed

[ZFDQ and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1816 (27 June 2023); Dr L Bygrave, Member

SOCIAL SECURITY – family tax benefit (FTB) – where there is an existing care arrangement – where there is a departure from the existing care arrangement – whether the party with the reduced care took reasonable steps to ensure compliance with existing care arrangement for FTB entitlement purposes – decision under review set aside and substituted

Taxation

[Aston and Commissioner of Taxation](#) (Taxation) [2023] AATA 1848 (28 June 2023); D Mitchell, Member

TAXATION – superannuation – excess contribution tax – whether concessional contribution can be disregarded or allocated to another financial year – whether special circumstances – decision under review affirmed

[Chobani Pty Ltd and Commissioner of Taxation](#) (Taxation) [2023] AATA 1664 (16 June 2023); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – whether supply of Chobani Flip Strawberry Shortcake flavoured yoghurt is GST-free – where flavoured yoghurt sold with blend of dry ingredients – where dry ingredients comprise cookie pieces and chocolate chips – where dry ingredients intended to be “flipped” into flavoured yoghurt by consumer - whether product is a combination of one or more foods at least one of which is biscuit goods or confectionary or food of such a kind – meaning of “food that is a combination” – approach to characterisation of supply – relevant considerations – relevance of intended or assumed actions of consumer – meaning of consists principally of biscuits – meaning of confectionary – whether chocolate chips are confectionary – decision affirmed

TAXATION – PRACTICE AND PROCEDURE – where proceedings said to be a “test case” – where parties in dispute regarding applicability of public ruling – where no reliance on ruling in relation to decision before the tribunal – whether tribunal should express view on applicability of ruling to avoid multiplicity of proceedings – no view expressed

[Container Homes Designer Domain Pty Ltd and Commissioner of Taxation](#) (Taxation) [2023] AATA 1815 (27 June 2023); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – whether payment upon entry into contract a deposit – whether applicant acting as agent for customer – held applicant not acting as agent but payment not a deposit – decision set aside

[DiStefano and Commissioner of Taxation](#) (Taxation) [2023] AATA 1697 (16 June 2023); B J McCabe, Deputy President and L Benjamin, Member

Relevant income producing activity – Loss or outgoing – Tax deductions – Subjective intention – Rental property – decision under review set aside

[Geelong Turf Company Pty Ltd and Commissioner of Taxation](#) (Taxation) [2023] AATA 1718 (20 June 2023); G Lazanas, Senior Member

SUPERANNUATION GUARANTEE CHARGE – Part 7 penalties assessments – one-off amnesty period – whether further remission of Part 7 penalties allowed where statute imposes maximum allowable remission – whether Tribunal satisfied exceptional circumstances existed preventing the taxpayer from disclosing superannuation guarantee shortfall during amnesty period – objection decision varied

Veterans' Affairs

[New and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 1665 (16 June 2023); Dr L Kirk, Senior Member

VETERANS' ENTITLEMENTS – Disability pension – application for special rate of pension – veteran served in multiple operations – accepted service-caused conditions of thoracic spondylosis, cervical spondylosis, tinnitus, sensorineural hearing loss, osteoarthritis of the left and right knees, adjustment disorder, lumbar spondylosis – depressive disorder and post-traumatic stress disorder not accepted conditions – whether applicant is 'totally and permanently incapacitated' – whether applicant is incapacitated for service caused conditions 'alone' – whether ameliorating provision in s 24(2)(b) applies – whether applicant has been genuinely seeking remunerative work – where applicant has accepted conditions under other schemes – 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
Abuuh and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1091
HDYP and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1269
RCLN and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 1335
Tabuarua and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1383
WSNY and Child Support Registrar	[2023] AATA 1261
WVJB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2023] AATA 1388

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Beckett v Tax Practitioners Board	[2021] AATA 1234	[2023] FCAFC 100 [2022] FCA 930
Inspector-General in Bankruptcy v Rutherford (Bankrupt)	[2022] AATA 403	[2023] FCAFC 99 [2022] FCA 1469
Jabari v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1492	[2022] FCA 388 [2023] FCAFC 98
Pihama v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4383	[2023] FCA 678
Ryan v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 4204	[2023] FCA 701
T.D.S. Biz Pty Ltd v Commissioner of Taxation	[2022] AATA 3543	[2023] FCA 710

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 25 July 2023:

Paget disease of bone (Balance of Probabilities) – No. 63 of 2023

<https://www.legislation.gov.au/Details/F2023L00894>

Paget disease of bone (Reasonable Hypothesis) – No. 62 of 2023

<https://www.legislation.gov.au/Details/F2023L00892>

Cervical intervertebral disc prolapse (Balance of Probabilities) – No. 67 of 2023

<https://www.legislation.gov.au/Details/F2023L00933>

cervical intervertebral disc prolapse (Reasonable Hypothesis) – No. 66 of 2023

<https://www.legislation.gov.au/Details/F2023L00915>

Pulmonary barotrauma (Balance of Probabilities) – No. 65 of 2023

<https://www.legislation.gov.au/Details/F2023L00914>

Pulmonary barotrauma (Reasonable Hypothesis) – No. 64 of 2023

<https://www.legislation.gov.au/Details/F2023L00913>

Thoracolumbar intervertebral disc prolapse (Balance of Probabilities) – No. 69 of 2023

<https://www.legislation.gov.au/Details/F2023L00922>

Thoracolumbar intervertebral disc prolapse (Reasonable Hypothesis) – No. 68 of 2023

<https://www.legislation.gov.au/Details/F2023L00917>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on **25 July 2023**:

Paget's disease of bone – No. 50 of 2015

<https://www.legislation.gov.au/Details/F2015L00256>

Paget's disease of bone – No. 49 of 2015

<https://www.legislation.gov.au/Details/F2015L00255>

Intervertebral disc prolapse (Balance of Probabilities) – No. 44 of 2016

<https://www.legislation.gov.au/Details/F2016L00564>

Intervertebral disc prolapse (Reasonable Hypothesis) – No. 43 of 2016

<https://www.legislation.gov.au/Details/F2016L00563>

Pulmonary barotrauma – No. 16 of 2015

<https://www.legislation.gov.au/Details/F2014L01839>

Pulmonary barotrauma – No. 15 of 2015

<https://www.legislation.gov.au/Details/F2014L01836>



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