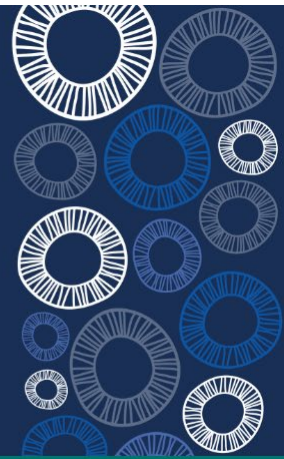




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 13/2024**

**1 July 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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Bankruptcy.....	3
Child Support .....	3
Citizenship .....	4
Compensation.....	4
Constitutional Law .....	5
Corporations.....	5
Migration .....	6
National Disability Insurance Scheme .....	8
Practice and Procedure.....	9
Refugee .....	10
Professions and Trades .....	12
Social Security .....	13
Taxation .....	14
Trade .....	15
Veterans' Affairs .....	15
<b>Appeals .....</b>	<b>16</b>
Appeals lodged .....	16
Appeals finalised .....	16
<b>Statements of Principles .....</b>	<b>18</b>
Notification of Investigations relating to existing Statements of Principles.....	18
Notification of Investigations (where there is no existing Statement of Principles).....	20
New Statements of Principles .....	21
Statements of Principles to be revoked .....	22

# AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by the Migration & Refugee Division. Only AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

## Bankruptcy

[Diamond and Inspector-General in Bankruptcy](#) [2024] AATA 2135 (28 June 2024); Professor A O'Connell, Senior Member

BANKRUPTCY – Objection to discharge – where bankruptcy trustee filed a notice to objection to the Applicant's discharge from bankruptcy – decision under review affirmed on Grounds 2 and 3 – Special Grounds – decision under review set aside on non-special grounds – failure of trustee in bankruptcy to specify reasons

[Kay and Inspector-General in Bankruptcy](#) [2024] AATA 2064 (26 June 2024); R Reitano, Member

BANKRUPTCY – National Personal Insolvency Index – correction – inaccurate or misleading – sending by ordinary post – filing – no evidence of receiving – date of discharge from bankruptcy – unsatisfactory evidence - decision affirmed

## Child Support

[Abbott and Abbott](#) (Child support) [2024] AATA 1181 (28 March 2024); R Prasad, Member

CHILD SUPPORT – non-agency payment – car lease payments – no mutual intention – decision under review affirmed

[Brennan and Long](#) (Child support) [2024] AATA 1187 (27 March 2024); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – adjusted taxable incomes for past periods – notices of assessment from the Australian Taxation Office (ATO) – erroneous figure applied – application for review set aside and substituted

[Charman and Devall](#) (Child support) [2024] AATA 2015 (25 March 2024); S Irvine, Member

CHILD SUPPORT – departure determination – ground for departure – out of ordinary, necessary expenses – income, property and financial resources – an adjusted taxable income – recent increases in the cost of living – application for review set aside and substituted

[Gough and Gough](#) (Child support) [2024] AATA 1183 (2 April 2024); K Dordevic, Senior Member

CHILD SUPPORT – dismissal of application for review – departure from the administrative assessment – unused earning capacity – no reasonable prospect of success – application for review dismissed

[Kovachevich and Child Support Registrar](#) (Child support) [2024] AATA 1184 (28 March 2024); S De Bono, Senior Member

CHILD SUPPORT – application for extension of time – explanation for the delay – moving house and working through the Christmas period – extra care of the children – little merit in the application – extension of time refused

## Citizenship

[Bonimpa and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1824 (19 June 2024); W Frost, Member

CITIZENSHIP – must be positively satisfied of applicant’s identity – evidence-based approach to establishing identity – ‘pillars of identity’ – inconsistent details – lack of biometric data – inconsistent documentation – inconsistent life story – orphan visa – decision affirmed

[KXZC and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 1820 (18 June 2024); B W Rayment OAM KC, Deputy President

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship – whether decision-maker can be satisfied of the identity of the person – stateless Rohingya – decision under review set aside and remitted

[Tahri and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2024] AATA 2130 (28 June 2024); A Younes, Deputy President

CITIZENSHIP – Application for conferral of Australian citizenship – permanent resident – general residence requirements – special residence requirements – overseas absences – engage in activities that are of benefit to Australia – Whether sections 22A or 22B of the Australian Citizenship Act 2007 (Cth) are satisfied – Decision under review affirmed

## Compensation

[Berkes and Comcare](#) (Compensation) [2024] AATA 2075 (26 June 2024); B W Rayment OAM KC, Deputy President

COMPENSATION – whether the Applicant is entitled to compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – claim for compensation for chronic pain syndrome – whether condition was caused by or contributed to, to a significant degree, by prior injuries (s. 5B test) – decision under review affirmed

COMPENSATION – whether the Applicant is entitled to compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – claim for compensation for a pain management program – whether s. 5B test is satisfied – decision under review affirmed

COMPENSATION – whether the Applicant is entitled to compensation under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – claim for compensation for aggravation of major depressive disorder – whether s. 5B test is satisfied – decision under review affirmed

[Huynh and Comcare](#) (Compensation) [2024] AATA 1821 (20 June 2024); Dr S Fenwick, Senior Member

COMPENSATION – accepted claim for mental health condition – denial of ongoing liability for massage therapy – nature and origins of muscle tension considered – whether treatment reasonable in the circumstances – Comcare clinical framework considered – decision set aside and remitted

[SRGF and Comcare](#) (Compensation) [2024] AATA 1818 (31 May 2024); D O'Donovan, Senior Member

Workers compensation – claim for anxiety, depression agoraphobia – stress induced psychological symptoms mistaken for neurological symptoms – ethical dilemmas at work contributing to psychological issues – unreasonable contact outside of work hours – stress from supervisory responsibilities – no medical report supporting relationship with work until several years after resignation – validity of data analysis provided without expert support – constitutional condition where work just the setting – deemed work contribution under section 7 – meaning of the phrase 'in the place where the employee ordinarily employed' - decision affirmed

## Constitutional Law

[DHCD and Electoral Commissioner \(Cth\)](#) [2024] AATA 1802 (18 June 2024); I Hanger, Deputy President

ELECTORAL – Australian Electoral Commission – Enrolment on Commonwealth Electoral Roll – enrolment decision – enrolment using data obtained from other agencies – address change – address no longer occupied – application for review of enrolment decision – decision under review set aside

## Corporations

[Betalli and Australian Securities and Investment Commission](#) [2024] AATA 2085 (27 June 2024); R Reitano, Member

CORPORATIONS LAW – banning order – obligation to act in best interest of client – obligation to give financial advice – likelihood of future contraventions – competence and training – specific deterrence – general deterrence – need for public trust and confidence in financial advisors – Regulatory Guideline 98 - applicant prohibited from providing financial services for twelve months – decision varied

[Karamian and Australian Securities and Investments Commission](#) [2024] AATA 2006 (25 June 2024); The Hon Justice E Kyrou, President

CORPORATIONS LAW – banning order – financial services adviser – falsification of exam result – misleading colleagues, clients and ASIC – providing personal advice to retail clients when not authorised to do so for nearly nine months – deliberate dishonesty.

CORPORATIONS LAW – banning order – applicant had lengthy prior good record – misconduct affected by mental illness but nonetheless deliberate and motivated predominantly by self-interest – no financial loss to clients – extensive favourable character evidence – remorse and contrition – low risk of similar dishonest conduct in future – lack of insight into nature and gravity of misconduct at time of hearing.

CORPORATIONS LAW – power to make banning order enlivened by findings that there is reason to believe that applicant not a fit and proper person and not adequately trained and not competent – concessions of breaches of financial services laws – order banning applicant from providing financial services and acting as an officer or controller of a financial services business for seven years.

CORPORATIONS LAW – principles relating to making of banning order and its scope and duration – meaning of ‘reason to believe’, ‘fit and proper person’, ‘adequately trained’ and ‘competent’ – weight to be given to character evidence.

PRACTICE AND PROCEDURE – government policies – when should Tribunal apply government policies – whether Tribunal required to apply ASIC’s Regulatory Guide 98.

COMPARABLE CASES – extent to which prior cases with some similar features can assist Tribunal in making correct or preferable decision.

[O’Dwyer and Secretary, Department of Employment](#) [2024] AATA 1825 (18 June 2024); B W Rayment OAM KC, Deputy President

FAIR ENTITLEMENTS GUARANTEE – whether applicant entitled to a FEG advance – whether applicant an excluded employee – whether company is the true employer of the applicant – whether applicant a relative of an employee/director – Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd applied – decision under review set aside and remitted

## Migration

[Brown and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1823 (27 February 2024); L Benjamin, Member

MIGRATION – Mandatory visa cancellation – New Zealand citizen – Class TY Subclass 444 Special Category (Temporary) visa – section 501CA of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – where offending includes violent, weapons-based and property-based 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

[Cruckshank and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2024] AATA 1782 (7 June 2024); Dr N A Manetta, Senior Member

MIGRATION – discretionary cancellation of visa under Migration Act 1958 – whether applicant fails ‘character test’ – if so, whether discretion to cancel visa should be exercised – Direction 99 – conviction of a serious offence involving family violence – multiple AVO breaches – real risk of reoffending – applicant’s lengthy residence in Australia and interests of children weigh substantially in his favour – applicant fails character test – preferable decision on balance is to exercise discretion to cancel visa – decision under review affirmed

[Dang and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2131 (28 June 2024); Dr S Fenwick, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Vietnam – Class BS Subclass 100 Partner (Permanent) visa – single instance of offending – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 110 applied – decision affirmed

[Faanoi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2071 (20 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 the Applicant has been in Australia since he was two – where the Applicant is yet to undertake rehabilitation – 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

[GNZW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1801 (13 June 2024); D J Morris, Senior Member

MIGRATION – applicant is stateless – previously held citizenship of Iraq – applicant held refugee visa – visa cancelled owing to offending – applicant applied for protection visa – protection visa refused – Tribunal affirmed refusal of protection visa – Federal Circuit Court remitted matter to Tribunal – applicant found to be owed protection – protection visa refused on basis of being danger to community – criminal history – health conditions – applicant released from detention in wake of High Court decision – whether applicant has breached curfew conditions – time in the community with no offending – decision under review set aside and matter remitted with direction

[Keivanpour](#) (Migration) [2024] AATA 932 (3 April 2024); R Anderson, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 Business Innovation and Investment (Provisional) – Business Innovation stream – business innovation and investment points test – financial asset qualifications – revised Statement of Assets and Liabilities – properties purchased for redevelopment – net business assets – decision under review remitted

[Langer](#) (Migration) [2024] AATA 864 (18 April 2024); J Owen, Deputy President

MIGRATION – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – former Australian permanent resident – New Zealand citizen arrived on Special Category visa – not permanent visa – previous visit for holiday as exempt non-citizen under Trans-Tasman travel arrangement – legal uncertainty about residency status – legislation did not define ‘exempt non-citizen’ – departmental policy – residence requires more than temporary visit – decision under review affirmed

[Marson \(Hanley\) and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2114 (27 May 2024); D. Cosgrave, Member

MIGRATION – mandatory visa cancellation – failure to pass character test – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – Class BS Subclass 801 Partner visa – United Kingdom (UK) Citizen – Tribunal finding risk of reoffending unacceptable – where Applicant has limited ties in Australia – Tribunal finding factors in favour of revocation outweighed by those against revocation – Tribunal finding there is not another reason to revoke the mandatory cancellation decision – decision under review affirmed

[Shan](#) (Migration) [2024] AATA 863 (11 April 2024); K Raif, Senior Member

MIGRATION – Parent (Migrant) (Class AX) visa – Subclass 103 (Parent) – parents of a settled Australian citizen – balance of family test – settled or usually resident in Australia – support to family in China – time of application criterion – decision under review remitted

[Singh](#) (Migration) [2024] AATA 842 (9 April 2024); M Bourke, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – sponsored family stream – family visit – genuine temporary entrant and compliance with conditions – no previous visa or travel to Australia, compliant travel to other countries – married with young child, house, business and community role – other brother’s application for student visa after arriving on visitor visa, and joined by wife and child – similarity to brother’s circumstances – offer of security bond – decision under review affirmed

[Singh](#) (Migration) [2024] AATA 862 (10 April 2024); K Raif, Senior Member

MIGRATION – Other Family (Migrant) (Class BO) visa – Subclass 116 (Carer) – member of the family unit – dependent child – wholly or substantially reliant – visa applicant turned 26 after initial assessment – brief employment during studies – mental health family support – decision under review remitted

[Vu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 1783 (5 June 2024); W Frost, Member

MIGRATION – cancellation of Applicant’s Class BS Subclass 801 Partner visa – mandatory cancellation of visa under s501(3A) Migration Act – whether Applicant passes the character test – substantial criminal record – consideration of Ministerial Direction 99 – whether ‘another reason’ why decision should be revoked under s501CA(4) – decision under review affirmed

## **National Disability Insurance Scheme**

[Sharma and National Disability Insurance Agency](#) [2024] AATA 1974 (24 June 2024); D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – chronic post-traumatic stress disorder – chronic major depression – somatic symptom disorder with predominant pain – whether the impairments are, or likely to be, permanent – whether the impairments result in substantially reduced functional capacity – early intervention requirements – decision under review affirmed

[Shaw and National Disability Insurance Agency](#) [2024] AATA 2133 (28 June 2024); S Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – application for access – complex regional pain syndrome – whether applicant meets disability requirements – whether applicant meets early intervention requirements – disability supports required – whether likely to require support under National Disability Insurance Scheme for applicant’s lifetime – whether supports more appropriately funded through another service system – decision under review affirmed



## Practice and Procedure

[Berthelsen and Secretary, Department of Social Services](#) [2024] AATA 1975 (24 June 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – application for review of decision made by Social Services and Child Support Division (SSCSD) of this Tribunal (‘Tier 2 review’) – where Applicant has repeatedly been non-compliant with Tribunal’s Directions-where Applicant intended to discontinue and withdraw his application – where Applicant was put on notice that failure to withdraw within the stipulated time would lead to a dismissal – Applicant failed to withdraw his application within the stipulated time – application for review dismissed

[Express Vehicles Compliance Pty Ltd and Secretary, Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#) [2024] AATA 2083 (26 June 2024); R Reitano, Member

PRACTICE AND PROCEDURE – STAY APPLICATION – entry of vehicles on to Register of Approved Vehicles – approval of Model Reports – suspension of approval of Model Reports – Australia Design Rule – United Nations Regulations – prospects of success not good – risks to public safety – financial loss – reputational loss

[Hoolachan and National Disability Insurance Agency](#) [2024] AATA 1794 (18 June 2024); L Proske, Member

PRACTICE AND PROCEDURE – jurisdiction – National Disability Insurance Scheme – whether internal review conducted by National Disability Insurance Agency – whether Tribunal has jurisdiction to review a decision that has not been internally reviewed – application dismissed pursuant to s 42A(4) of the AAT Act

[Johns and Telstra Corporation Limited](#) (Compensation) [2024] AATA 2084 (21 June 2024); J C Kelly, Senior Member

PRACTICE AND PROCEDURE – jurisdiction question – workers compensation claim – application for review by the Tribunal – whether decisions are reviewable – Tribunal has no jurisdiction to review the decisions

[McHaffie and Secretary, Department of Social Services](#) [2024] AATA 2134 (28 June 2024); K Millar, Senior Member

PRACTICE AND PROCEDURE – social security – reinstatement – whether applications dismissed in error – where settlement agreements were signed – entering an agreement because of the person’s current financial and personal circumstances does not constitute error – application for reinstatement dismissed

[Murry and Comcare](#) (Compensation) [2024] AATA 2010 (25 June 2024); L Benjamin, Member

PRACTICES AND PROCEDURES – Applicant’s failure to proceed with application for review of a decision made by Comcare

[NWXW, by his mother and National Disability Insurance Agency](#) [2024] AATA 1898 (21 June 2024); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – application for review lodged by participant under the National Disability Insurance Scheme (NDIS) – No actual or deemed decision had been made by the Respondent of the National Disability Insurance Agency under s 100 of National Disability Insurance Scheme Act 2013 (Cth) – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[SYLT and Secretary, Department of Social Services](#) [2024] AATA 1977 (24 June 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – application for review of decision made by Social Services and Child Support Division (SSCSD) of this Tribunal ('Tier 2 review') – where the Applicant contends incorrect information applied by the Respondent's Department in raising Centrelink debts – where the Applicant contends the law was not applied correctly by SSCSD – where the Respondent and the SSCSD decisions are in favour of the Applicant – where Tier 2 review unlikely to yield any different or more favourable outcome for the Applicant – where issues contended by the Applicant in Tier 2 review unable to be reviewed by this Tribunal - application for review dismissed

## Refugee

[1810016](#) (Refugee) [2024] AATA 1798 (22 March 2024); J Henderson, Member

REFUGEE – protection visa – Iraq – ethnicity, religion and members of particular social group – Kurdish, Sunni Muslim, separated woman – kidnapped, tortured and raped – assaults and threats of 'honour killing' by family members – police inaction – new claim of emotional, physical and financial abuse by husband (now separated) – daughters' claims of fear of harm from genital mutilation – children's Westernised lifestyles and attitudes – credibility – language and cultural barriers, severe untreated PTSD, unreliable memory and fear of authority figures – genuine attempts, no intentional misleading and no adverse inference drawn – members of family unit sons – country information – fathers automatically awarded guardianship of children – decision under review remitted

[1903822](#) (Refugee) [2024] AATA 1226 (9 January 2024); M Simmons, Member

REFUGEE – protection visa – Fiji – actual and imputed political opinion – anti-army – anti-government – Social Democratic Liberal Party (SODELPA) supporter – implicated in relative's business dealings – threats of harm by creditors of relative – vague and inconsistent evidence – credibility issues – decision under review affirmed

[1910107](#) (Refugee) [2024] AATA 1141 (4 January 2024); D Dragovic, Deputy President

REFUGEE – protection visa – Iraq – religion – Kurdish Christian – alcohol shop owner – threats of harm by Muslims and internal security service – Asayish – particular social group – Western oriented Christian women – Christian enclave – prevalence of sexual harassment – inconsistent evidence – credibility issues – decision under review affirmed

[1915900](#) (Refugee) [2024] AATA 2060 (1 March 2024); A Duffield, Senior Member

REFUGEE – protection visa – Pakistan – previous application refused and Federal Court appeal withdrawn – religion – Shi’a Muslim cleric, poet and event organiser – fear of harm by Sunni extremists – threatened and attacked – in-person and online activities – travel to third country on home country passports not re-availment of state protection – extensive documentation, supporting statements and submissions – few verifiable activities and very small online profile – many people with higher profiles still living in home country – attacks, if they happened, not targeted but random – country information – serious physical health condition and extensive treatment – wife injured and not working – oldest child now permanent resident and married to Australian citizen, second child’s relationship with citizen and youngest child’s congenital disability – remote prospects of finding accommodation and employment – referred for ministerial intervention – decision under review affirmed

[1928271](#) (Refugee) [2024] AATA 1779 (18 March 2024); D Dragovic, Deputy President

REFUGEE – protection visa – Saudi Arabia – political opinion, religion and sexuality – social media activity – threats from possibly fake account holders – release of confidential information about anonymous users – no harm, unhindered departure and no approach to family since – personal threat from journalist while in Australia – evolving evidence of same-sex activity in third country and Australia – shame and uncertainty about legality – no adverse inference drawn – fear of harm from authorities, tribe and family members – country information – prevalence and social tolerance of same-sex activity in private despite illegality – extent of authorities’ surveillance of political dissenters – occasional imprisonment of even low-profile people – right to enter and reside in third country requires national identity card, which has expired – expired passport can only be renewed in Saudi Arabia – decision under review remitted

[2015651](#) (Refugee) [2024] AATA 1020 (16 January 2024); R Gagliardi, Member

REFUGEE – protection visa – Indonesia – child born out of wedlock – particular social group – Indonesian unwed mothers from a noble, Muslim family – honour killing – single women – economic independence – single mothers – societal discrimination – unique and exceptional circumstances – best interest of biological child – Ministerial Intervention requested – decision under review affirmed

[2017919](#) (Refugee) [2023] AATA 4747 (19 December 2023); J Marquard, Member

REFUGEE – protection visa – Iran – arrival by sea – temporary safe haven visa granted and thought to trigger bar against certain further visa applications – application for temporary protection visa considered to be invalid – current application for safe haven enterprise visa refused – Full Federal Court determination that maritime arrivals not ‘unauthorised maritime arrivals’ or ‘fast track applicants’ as defined – first application valid, so second application not valid and no jurisdiction to review – consent to decision without hearing – decision under review set aside

[2101519](#) (Refugee) [2024] AATA 988 (29 January 2024); J Marquard, Member

REFUGEE – protection visa – Ethiopia – Federal Circuit Court remittal – race – Tigrayan ethnicity – ethnic cleansing – peace agreement – ongoing targeting – political opinion – supporter of Tigray People’s Democratic Party (TPDM) – returnee asylum seeker who has participated in political activities in Australia – systematic and discriminatory conduct – internal relocation – state protection – decision under review remitted

[2206578](#) (Refugee) [2024] AATA 919 (29 January 2024); K Vernon, Senior Member

REFUGEE – protection visa – India – Federal Circuit and Family Court remittal – fear of harm from members of extended family because of land dispute – uncle shot and killed – collusion by police, charges dropped or reduced, and appeals in progress – continuing threats by both family groups – not involved in dispute or witness to killing – fear of harm as witness to assault in Australia – assaulted, kidnapped and threatened – reported to police, resulting in perpetrators being arrested and detained as unlawful non-citizens – delay in applying – applied after change of subject area, student visa cancellation, tribunal review and court appeal – vague claims and inconsistent evidence, authenticity of documents provided and no additional documentary or witness evidence – claimed fear on first ground not for refugee criterion reason – claimed fear on second ground not well-founded – decision under review affirmed

[2302428](#) (Refugee) [2024] AATA 1364 (2 April 2024); M O'Loughlin, Member

REFUGEE – protection visa – Malaysia – Federal Circuit Court remittal – membership of particular social group – single mother who has suffered family violence – fear of harm from former fiancé and his family – denial of paternity, rejection of child and threats – abused and beaten, and found after relocating – disapproval and no support from own family – inaction by police – real chance of persecution does not relate to all areas – complementary protection – country information – relocation unreasonable and difficulties for women subjected to violence – domestic violence perceived as private family matter – member of family unit child – decision under review remitted

## Professions and Trades

[Kearney and Migration Agents Registration Authority](#) [2024] AATA 1899 (21 June 2024); D J Morris, Senior Member

REGULATORY – registration of migration agents – registration cancelled – breaches of prescribed Code of Conduct – complaint made – further complaints made – authority cancels registration of agent – agent seeks review by tribunal – relevant Code is the Code that was in force at the time of the impugned conduct – has there been a breach of the Code – applicant admits certain breaches – is the applicant a person of integrity or otherwise a fit and proper person to give migration advice – powers available to caution an agent or suspend or cancel agent's registration – what is appropriate sanction – many breaches over extended period of time – syntax of the relevant section of the Act – Tribunal makes finding that applicant is not a fit and proper person to give migration advice – cancellation is appropriate sanction – cancellation period to commence at time of original decision to cancel – decision under review is affirmed

PRACTICE AND PROCEDURE – applicant as a migration agent was dealing with a person who is currently subject to Court proceedings – Tribunal's function is of an administrative character – undesirable for reasons relating to an administrative decision to potentially affect curial proceedings – order made prohibiting publication of a person's name

## Social Security

[Bartlett and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1897 (21 June 2024); L M Gallagher, Member

SOCIAL SECURITY – age pension – where Applicant was in receipt of age pension – where age pension entitlements suspended and debt raised against Applicant – whether for the purpose of subsection 29(1) of the Social Security (Administration) Act 1999 (Cth) the Applicant was an Australian resident at the time of his claim – alternatively whether the Applicant had ceased to be an Australian resident prior to arriving back in Australia or left Australia within two years of being granted age pension – Whether the Applicant has incurred a debt to the Commonwealth – whether debt can be written off or waived – decision under review set aside and substituted

[Boa Morte and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1939 (21 June 2024); S Evans, Member

SOCIAL SECURITY – austudy payment – whether austudy payment correctly cancelled – ‘allowable study time’ – consideration of withdrawal from units and failed units of study – Principles of administration Social Security (Administration) Act 1999 – reviewable decision is set aside and remitted with directions

[Gallo and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2007(25 June 2024); Dr S Fenwick, Senior Member

SOCIAL SECURITY – disability support pension – traumatic brain injury – mental health conditions – whether impairment attracts rating of 20 points or more under impairment tables – applicant does not meet qualifying criteria – decision under review affirmed

[Li and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1938 (21 June 2024); D J Morris, Senior Member

SOCIAL SERVICES – pensions, benefits and allowances – lump sum preclusion period – parenting payment (single) debt – income support bonus payment debt – decision by agency of the Respondent’s Department that applicant subject to a lump sum preclusion period because of a lump sum compensation payment – also that applicant had parenting payment (single) debt – applicant sought internal review – authorised review officer affirmed decision and also decided applicant had income support bonus payment debt – applicant sought internal review of second decision – second decision affirmed – applicant sought review by Tribunal – parenting payment (single) debt and income support bonus payment debts repaid – Social Services and Child Support Division of Tribunal decided that part of compensation payment to be treated as not having been made – is applicant subject to lump sum preclusion period – does applicant owe recoverable amount to Commonwealth – are there special circumstances which mean all or part of compensation payment may be treated as not having been made – payments to two legal firms – first payment to legal firm should be regarded as never having been made to the applicant because of the operation of State law – second payment to legal firm should be regarded as never having been made to the applicant because of protracted legal proceedings not initiated by the applicant and not beneficial to her – decision under review set aside and new decision substituted with a direction

[Msallam and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2082 (27 June 2024); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – portability period of 28 days – period of absence from Australia – whether an extension of the portability period in certain circumstances could be permitted due to applicant’s circumstances – reviewable decision affirmed

[Peters and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 1822 (20 June 2024); J C Kelly, Senior Member

SOCIAL SECURITY – carer payment debt – carer allowance debt – constant care – change of circumstances in employment – notional entitlement – compensable work injury – compensation charge debts – newstart allowance/jobseeker payment – coronavirus supplement – whether there are special circumstances – whether the debts should be waived or written-off – reviewable decision affirmed

[Rofouzos and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2081 (27 June 2024); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension cancelled – compensable workplace injury – compensation charge debts – compensation preclusion period – whether there are special circumstances – whether the compensation charge debts can be written-off or waived – reviewable decision affirmed

## **Taxation**

[BQKD and Commissioner of Taxation](#) (Taxation) [2024] AATA 1796 (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

[Ecosse Group Holdings Pty Ltd and Commissioner of Taxation](#) (Taxation) [2024] AATA 2073 (26 June 2024); R Reitano, Member

TAXATION – Goods and Services Tax – input tax credit – creditable acquisition – acquisition – supply – consideration – demand for payment – tax invoice – period to which input tax credit to be attributed – penalties – remission of penalties – recklessness – decision affirmed

[Youssef Said Abdelbari](#) (Taxation) [2024] AATA 1978 (24 June 2024); G Lazanas, Senior Member

TAXATION – whether four transfers of money from overseas to applicant are assessable income – where three transfers made by a company that applicant was previously a partner of – where three transfers described as payment of salary – where one transfer made by applicant’s son and described as family support – where applicant signed special power of attorney appointing son as attorney in relation to company – whether four transfers of money are from applicant’s son pursuant to a loan agreement – whether loan exists – periodicity of payments – burden of proof – failure to adduce reliable evidence – objection decision affirmed

[ZWBX and Commissioner of Taxation](#) (Taxation) [2024] AATA 2065 (18 June 2024); D Mitchell, Member

TAXATION – early stage investor tax offset – early stage innovation company – are the company or the group activities taken into consideration for the purposes of the innovation test outlined in section 360-40(1)(e) of the Income Tax Assessment Act 1997 (Cth) – question of statutory interpretation – decision under review affirmed

## **Trade**

[Nomad Tackle PTY LTD and Australian Trade and Investment Commission \(AUSTRADE\)](#) [2024] AATA 2072 (14 June 2024); A McLean Williams, Member

FOREIGN AFFAIRS AND TRADE – Export Market Development Grants Act 1997 (Cth) – export market development grants – trade and commerce – expenditure on marketing – application for payment of export market development grant – Australian owned company – fishing lures – claim for marketing expenses – wholly owned United States subsidiary – whether US based subsidiary is an ‘entity’ – whether expenses had either ‘been paid’ or ‘entitled to be paid’

## **Veterans’ Affairs**

[The Estate of the Late Coralin McGrath and Repatriation Commission](#) (Veterans’ entitlements) [2024] AATA 2070 (24 June 2024); A George, Senior Member

VETERANS – the kind of death of the Veteran – Royal Australian Air Force – whether the Veterans’ death was war caused – multiple myeloma – renal failure – ischaemic heart disease – whether Applicant entitled to a War Widows’ Pension – decision under review is 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
<b>Abley and Comcare</b>	<a href="#">[2024] AATA 1204</a>
<b>BJKY and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 1000</a>
<b>FFTS and Child Support Registrar</b>	<a href="#">[2024] AATA 338</a>
<b>Jones and National Disability Insurance Agency</b>	<a href="#">[2024] AATA 1304</a>
<b>HKRC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2024] AATA 1119</a>
<b>NTJM and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 1150</a>
<b>VCBV and Australian Postal Corporation</b>	<a href="#">[2024] AATA 1023</a>
<b>WCVB and Commissioner of Taxation</b>	<a href="#">[2024] AATA 1259</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Belmont v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 1285</a>	<a href="#">[2024] FCA 667</a>
<b>Commissioner of Taxation v Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust</b>	<a href="#">[2023] AATA 3005</a>	<a href="#">[2024] FCAFC 80</a>
<b>HDTY v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 1436</a>	<a href="#">[2024] FCA 633</a>
<b>Nolutshungu v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 265</a>	<a href="#">[2024] FCA 684</a>
<b>Shapkin v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 2823</a>	<a href="#">[2024] FCA 681</a>



---

<b>Smith v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3570</a>	<a href="#">[2024] FCA 652</a>
--	----------------------------------	--------------------------------

---

<b>TPTN v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 262</a>	<a href="#">[2024] FCAFC 82</a> <a href="#">[2022] FCA 788</a>
---	---------------------------------	---

---



# 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.

## Notification of Investigations relating to existing Statements of Principles

The AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

**Multiple Conditions – Instruments Sunsetting on 1 October 2026 -**  
<https://www.legislation.gov.au/C2024G00379/latest/text>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

**Antiphospholipid syndrome (Balance of Probabilities) – No. 70 of 2016**  
<https://www.legislation.gov.au/F2016L01352/asmade/text>

**Antiphospholipid syndrome (Reasonable Hypothesis) – No. 69 of 2016**  
<https://www.legislation.gov.au/F2016L01348/asmade/text>

**Barrett's oesophagus (Balance of Probabilities) – No. 68 of 2016**  
<https://www.legislation.gov.au/F2016L01137/asmade/text>

**Barrett's oesophagus (Reasonable Hypothesis) – No. 67 of 2016**  
<https://www.legislation.gov.au/F2016L01135/asmade/text>

**Benign neoplasm of the eye and adnexa (Balance of Probabilities) – No. 42 of 2016**  
<https://www.legislation.gov.au/F2016L00569/latest/text>

**Benign neoplasm of the eye and adnexa (Reasonable Hypothesis) – No. 41 of 2016**  
<https://www.legislation.gov.au/F2016L00565/latest/text>

**Cholelithiasis (Balance of Probabilities) – No. 52 of 2016**  
<https://www.legislation.gov.au/F2016L00558/asmade/text>

**Cholelithiasis (Reasonable Hypothesis) – No. 51 of 2016**  
<https://www.legislation.gov.au/F2016L00557/asmade/text>

**Clonorchiasis (Balance of Probabilities) – No. 48 of 2016**  
<https://www.legislation.gov.au/F2016L00562/asmade/text>

**Clonorchiasis (Reasonable Hypothesis) – No. 47 of 2016**  
<https://www.legislation.gov.au/F2016L00561/asmade/text>

**Cut, stab, abrasion and laceration (Balance of Probabilities) – No. 54 of 2016**  
<https://www.legislation.gov.au/F2016L00571/latest/text>

**Cut, stab, abrasion and laceration (Reasonable Hypothesis) – No. 53 of 2016**  
<https://www.legislation.gov.au/F2016L00567/latest/text>

**Ganglion (Balance of Probabilities) – No. 72 of 2016**  
<https://www.legislation.gov.au/F2016L01353/asmade/text>

**Ganglion (Reasonable Hypothesis) – No. 71 of 2016**  
<https://www.legislation.gov.au/F2016L01356/latest/text>

**Incisional hernia (Balance of Probabilities) – No. 74 of 2016**  
<https://www.legislation.gov.au/F2016L01349/asmade/text>

**Incisional hernia (Reasonable Hypothesis) – No. 73 of 2016**  
<https://www.legislation.gov.au/F2016L01350/asmade/text>

**Malignant neoplasm of the urethra (Balance of Probabilities) – No. 50 of 2016**  
<https://www.legislation.gov.au/F2016L00581/asmade/text>

**Malignant neoplasm of the urethra (Reasonable Hypothesis) – No. 49 of 2016**  
<https://www.legislation.gov.au/F2016L00580/asmade/text>

**Opisthorchiasis (Balance of Probabilities) – No. 46 of 2016**  
<https://www.legislation.gov.au/F2016L00584/asmade/text>

**Opisthorchiasis (Reasonable Hypothesis) – No. 45 of 2016**  
<https://www.legislation.gov.au/F2016L00579/asmade/text>

**Optochiasmatic arachnoiditis (Balance of Probabilities) – No. 58 of 2016**  
<https://www.legislation.gov.au/F2016L00568/latest/text>

**Optochiasmatic arachnoiditis (Reasonable Hypothesis) – No. 57 of 2016**  
<https://www.legislation.gov.au/F2016L00566/latest/text>

**Otosclerosis (Balance of Probabilities) – No. 62 of 2016**  
<https://www.legislation.gov.au/F2016L01154/asmade/text>

Otosclerosis (Reasonable Hypothesis) – No. 61 of 2016

<https://www.legislation.gov.au/F2016L01152/asmade/text>

Parkinson's disease and secondary parkinsonism (Balance of Probabilities) – No. 56 of 2016

<https://www.legislation.gov.au/F2016L00570/latest/text>

Parkinson's disease and secondary parkinsonism (Reasonable Hypothesis) – No. 55 of 2016

<https://www.legislation.gov.au/F2016L00560/asmade/text>

Sarcoidosis (Balance of Probabilities) – No. 60 of 2016

<https://www.legislation.gov.au/F2016L01143/latest/text>

Sarcoidosis (Reasonable Hypothesis) – No. 59 of 2016

<https://www.legislation.gov.au/F2016L01144/latest/text>

Scheuermann's disease (Balance of Probabilities) – No. 76 of 2016

<https://www.legislation.gov.au/F2016L01343/asmade/text>

Scheuermann's disease (Reasonable Hypothesis) – No. 75 of 2016

<https://www.legislation.gov.au/F2016L01344/asmade/text>

Spasmodic torticollis (Balance of Probabilities) – No. 64 of 2016

<https://www.legislation.gov.au/F2016L01139/asmade/text>

Spasmodic torticollis (Reasonable Hypothesis) – No. 63 of 2016

<https://www.legislation.gov.au/F2016L01136/asmade/text>

Suicide and attempted suicide (Balance of Probabilities) – No. 66 of 2016

<https://www.legislation.gov.au/F2016L01149/latest/text>

Suicide and attempted suicide (Reasonable Hypothesis) – No. 65 of 2016

<https://www.legislation.gov.au/F2016L01145/latest/text>

## **Notification of Investigations (where there is no existing Statement of Principles)**

The AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

**distal biceps brachii tendinopathy - <https://www.legislation.gov.au/C2024G00378/latest/text>**

## **New Statements of Principles**

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 23 July 2024:

**Cardiomyopathy (Balance of Probabilities) – No. 58 of 2024**

<https://www.legislation.gov.au/F2024L00761/asmade/text>

**Cardiomyopathy (Reasonable Hypothesis) – No. 57 of 2024**

<https://www.legislation.gov.au/F2024L00759/asmade/text>

**Gastric ulcer and gastric erosion (Balance of Probabilities) – No. 52 of 2024**

<https://www.legislation.gov.au/F2024L00754/asmade/text>

**Gastric ulcer and gastric erosion (Reasonable Hypothesis) – No. 51 of 2024**

<https://www.legislation.gov.au/F2024L00753/asmade/text>

**Hepatitis E infection (Balance of Probabilities) – No. 40 of 2024**

<https://www.legislation.gov.au/F2024L00737/asmade/text>

**Hepatitis E infection (Reasonable Hypothesis) – No. 39 of 2024**

<https://www.legislation.gov.au/F2024L00736/asmade/text>

**Malignant neoplasm of the bile duct (Balance of Probabilities) – No. 54 of 2024**

<https://www.legislation.gov.au/F2024L00756/asmade/text>

**Malignant neoplasm of the bile duct (Reasonable Hypothesis) – No. 53 of 2024**

<https://www.legislation.gov.au/F2024L00755/asmade/text>

**Tinea (Balance of Probabilities) – No. 56 of 2024**

<https://www.legislation.gov.au/F2024L00758/asmade/text>

**Tinea (Reasonable Hypothesis) – No. 55 of 2024**

<https://www.legislation.gov.au/F2024L00757/asmade/text>

**Traumatic contusion or haematoma (Balance of Probabilities) – No. 44 of 2024**

<https://www.legislation.gov.au/F2024L00742/asmade/text>

**Traumatic contusion or haematoma (Reasonable Hypothesis) – No. 43 of 2024**

<https://www.legislation.gov.au/F2024L00741/latest/text>

**Tuberculosis (Balance of Probabilities) – No. 48 of 2024**

<https://www.legislation.gov.au/F2024L00747/latest/text>

**Tuberculosis (Reasonable Hypothesis) – No. 47 of 2024**

<https://www.legislation.gov.au/F2024L00746/latest/text>

## **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 23 July 2024:

**Cardiomyopathy – No. 86 of 2015**

<https://www.legislation.gov.au/F2015L00918/latest/text>

**Cardiomyopathy – No. 85 of 2015**

<https://www.legislation.gov.au/F2015L00917/latest/text>

**External bruise (Balance of Probabilities) – No. 6 of 2016**

<https://www.legislation.gov.au/F2016L00005/asmade/text>

**External bruise (Reasonable Hypothesis) – No. 5 of 2016**

<https://www.legislation.gov.au/F2016L00008/asmade/text>

**Gastric ulcer and duodenal ulcer – No. 62 of 2015**

<https://www.legislation.gov.au/F2015L00658/latest/text>

**Gastric ulcer and duodenal ulcer – No. 61 of 2015**

<https://www.legislation.gov.au/F2015L00657/latest/text>

**Hepatitis E (Balance of Probabilities) – No. 113 of 2015**

<https://www.legislation.gov.au/F2015L01333/asmade/text>

**Hepatitis E (Reasonable Hypothesis) – No. 112 of 2015**

<https://www.legislation.gov.au/F2015L01332/asmade/text>

**Malignant neoplasm of the bile duct – No. 70 of 2015**

<https://www.legislation.gov.au/F2015L00655/latest/text>

**Malignant neoplasm of the bile duct – No. 69 of 2015**

<https://www.legislation.gov.au/F2015L00654/latest/text>

**Tinea – No. 11 of 2015**

<https://www.legislation.gov.au/F2014L01814/asmade/text>

**Tinea – No. 12 of 2015**

<https://www.legislation.gov.au/F2014L01816/asmade/text>

**Tuberculosis – No. 82 of 2015**

<https://www.legislation.gov.au/F2015L00914/asmade/text>

**Tuberculosis – No. 81 of 2015**

<https://www.legislation.gov.au/F2015L00913/asmade/text>



With the exception of the Commonwealth Coat of Arms and any third-party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <https://www.pmc.gov.au/government/commonwealth-coat-arms>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#).