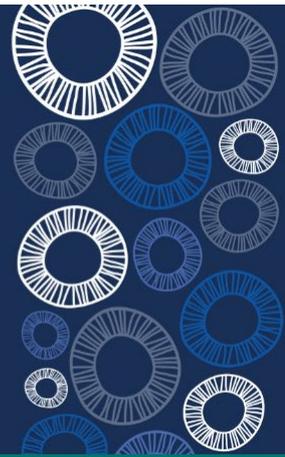




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 14/2024

15 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

AAT Recent Decisions	3
Aviation	3
Child Support	3
Citizenship	4
Compensation	5
Conflict of Laws	5
Education and Research	6
Freedom of Information	6
Migration	6
National Disability Insurance Scheme	10
Practice and Procedure	11
Refugee	12
Social Security	14
Taxation	14
Veterans' Affairs	14
Appeals	15
Appeals lodged	15
Appeals finalised	15
Statements of Principles	16
New Statements of Principles	16
Statements of Principles to be revoked	17

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.

Aviation

[Wiseway Logistics Pty Ltd and Secretary, Department of Home Affairs](#) [2024] AATA 2250 (24 June 2024); A Poljak, Senior Member

AVIATION TRANSPORT SECURITY – Review of decision not to renew Applicant's designation as a regulated air cargo agent (RACA) – Consideration of Applicant's history non-compliance – Consideration of Applicant's current capacity to perform the functions of a RACA – Consideration of Applicant's current systems and culture – Decision under review affirmed

Child Support

[Babbs and Babbs](#) (Child support) [2024] AATA 794 (27 February 2024); J Thomson, Member

CHILD SUPPORT – percentage of care – whether there was a change to the pattern of care – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[BKCZ and Child Support Registrar](#) (Child support second review) [2024] AATA 2359 (10 July 2024); B Pola, Senior Member

CHILD SUPPORT – remittal from Federal Court of Australia – review of Social Services and Child Support Division decision – where arrangements for care of children affected by COVID-19 pandemic – whether change of pattern of care took place – where actual care to be considered – where Other Party had taken reasonable steps to comply with existing arrangements – change of pattern of care occurred – decision set aside and substituted

[Boothe and Child Support Registrar](#) (Child support) [2024] AATA 487 (15 February 2024); R Ellis, Senior Member

CHILD SUPPORT – refusal to grant an extension of time to object – merit in objection – decision to grant - decision under review set aside and substituted

[DNTV and Child Support Registrar](#) (Child support second review) [2024] AATA 2273 (5 July 2024); W Frost, Member

CHILD SUPPORT – percentage of care – revocation of existing care percentage determinations – care period – pattern of care – actual care – delegated physical care – responsible person – no change in the care of the Children – decision affirmed

[DRQL and Child Support Registrar](#) (Child support second review) [2024] AATA 2278 (5 July 2024); P Ranson, Member

CHILD SUPPORT – percentage of care determination – change in care – where there is dispute as to whom had care of the child during the care period – whether either parent provided actual care during the care period – where there were periods during which neither parent provided actual care – application of Polec & Staker – decision under review varied

[Lees and Hackett](#) (Child support) [2024] AATA 789 (20 February 2024); S Letch, Member

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

[Levett and Haycraft](#) (Child support) [2024] AATA 783 (29 February 2024); J Leonard, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the parents – a ground for departure established – decision to depart – decision under review set aside and substituted

[McLean and Corddry](#) (Child support) [2024] AATA 478 (12 February 2024); J Leonard, Member

CHILD SUPPORT – non-agency payments - whether payments made to a third party in lieu of child support – payments made to child – no child support liability at the time of payments – not satisfied mutually intended to be paid as satisfaction of amount under enforceable maintenance liability - decision under review set aside and substituted

[Thaxter and Thaxter](#) (Child support) [2024] AATA 793 (1 March 2024); R Ellis, Senior Member

CHILD SUPPORT – percentage of care – what was the likely pattern of care from the start of the administrative assessment – decision under review affirmed

Citizenship

[Dawlatzada and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 2272 (5 July 2024); A Younes, Deputy President

CITIZENSHIP – Application for citizenship by conferral – Whether the Tribunal can be satisfied that applicant is of good character – driving offences – possessing prohibited drug – Decision under review affirmed

[Diing and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2024] AATA 2407 (12 July 2024); J Cipolla, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – refusal of citizenship application – whether Applicant has satisfied sections 21(2)(d), (e), (f) – successful completion of citizenship test requirement – Applicant failed to attend any scheduled appointments to sit and complete citizenship test – administrative instruments – right to sit and resit citizenship test – decision under review affirmed

[Po and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 2156 (26 June 2024); S Evans, Member

CITIZENSHIP – Delegate of the minister found Applicant did not satisfy s 21(4)(d) of the Citizenship Act 2007 (Cth) – delegate not satisfied Applicant met the general residence requirement under subsections 22(1)(a) and (c) – ISSUE: whether the discretion provided in section 22(9) of the Act can be exercised – Applicant does not satisfy the criteria – decision affirmed

[Vanaki and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 2159 (1 July 2024); A Poljak, Senior Member

CITIZENSHIP – Application for citizenship by conferral – Whether the Tribunal can be satisfied that applicant is of good character – Application of Citizenship Procedural Instruction 15 – Decision under review affirmed

Compensation

[Kothe and Telstra Corporation Limited](#) (Compensation) [2024] AATA 2412 (9 July 2024); D J Morris, Senior Member

COMPENSATION – applicant is a former employee of the respondent – applicant applied to tribunal for review of reconsideration decision which declined liability to pay compensation – history of matter – tribunal made decision by consent – applicant lodges further claim for workers' compensation – respondent denies claim as matter already resolved by consent decision – respondent seeks dismissal – matter already dealt with by decision following consent agreement cannot be revisited – tribunal dismisses matter as an abuse of process

[Osman and Australian Postal Corporation](#) (Compensation) [2024] AATA 2274 (4 July 2024); A Nikolic AM CSC, Senior Member

COMPENSATION – stress and anxiety condition – perceptions of bullying and harassment – whether disease arose out of or in the course of employment – whether employment contributed to disease to a significant degree – relevance of principles of issue estoppel and res judicata – inconsistent evidence – medical evidence – issues of credibility and reliability – whether disease or aggravation resulted from reasonable administrative action – decision under review affirmed

Conflict of Laws

[Shi and Commissioner for Fair Trading](#) (NSW) [2024] AATA 2224 (3 July 2024); Emeritus Professor P A Fairall, Senior Member

MUTUAL RECOGNITION – application of Trans-Tasman Mutual Recognition (New South Wales) Act 1996 – substantial equivalence – mutual recognition principle – application for professional mechanical engineer under Design and Building Practitioners Act 2020 (NSW) – current registration as roles with air-conditioning specialty under Building Act 2004 (NZ) – whether being an independent qualified person and producer statement author is substantially equivalent to being a professional mechanical engineer – decision under review is set aside and substituted

Education and Research

[Graham-Micett and Secretary, Department of Education](#) [2024] AATA 2162 (1 July 2024); P Ranson, Member

HECS-HELP – remission of debt – re-crediting of debt – whether special circumstances apply under the Higher Education Support Act 2003 (Cth) – special circumstances do not apply – decision under review affirmed

Freedom of Information

[Patrick and Director-General, Australian Submarine Agency](#) (Freedom of information) [2024] AATA 2411 (12 July 2024); Deputy President Britten-Jones

FREEDOM OF INFORMATION – review of decision to refuse access to documents prepared by the Nuclear-Powered Submarine Taskforce within the Department of Defence – whether disclosure of the documents would, or could reasonably be expected to, cause damage to the security, the defence or the international relations of the Commonwealth pursuant to ss 33(a)(i), (ii) or (iii) of the FOI Act – whether disclosure of the documents would divulge any information or matter communicated in confidence pursuant to s 33(b) of the FOI Act – where disclosure of the document would breach confidence and trust between the government of Australia and the governments of the United States and the United Kingdom – the documents are exempt from disclosure under s 33 of the Freedom of Information Act – decision under review is affirmed

Migration

[2206684](#) (Migration) [2024] AATA 1219 (4 April 2024); Glynis Bartley, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – age at time of application – department's decision made partly on applicant's appearance – claim that birth certificate provided to agent, who did not provide it to department not accepted – certificate unable to be verified but has similar features to genuinely issued documents – passport also not provided to department – applicant now over 18 – DNA tests conclude highly likely sponsor and applicant are uncle and nephew – parents deceased – younger brother granted visa – combined hearing with application by sponsor's half-sister/applicant's aunt – best interests – applicant, aunt and cousin living precariously in third country – financial support by sponsor – decision under review remitted

[2309285](#) (Migration) [2024] AATA 973 (16 April 2024); B Cullen, Senior Member

MIGRATION – cancellation – Bridging C (Class WC) visa – Subclass 030 (Bridging C) – incorrect information with the visa application – previous criminal convictions – illegal entry – deportation from another country – overstaying a Temporary Transit visa – impact on the applicant's business – financial hardship – indefinite detention – decision under review affirmed

[Chavez](#) (Migration) [2024] AATA 717 (28 February 2024); G Bartley, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine spousal relationship – financial aspects – nature of the household – social aspects – nature of the parties' commitment – decision under review remitted

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

(Migration) [2024] AATA 2231 (20 June 2024); K Raif, Senior Member

MIGRATION – visa cancellation – protection of the community – serious criminal offending – risk of re-offending – expectations of the Australian community – nature duration and ties to community – close ties to Australia - legal consequence of decision – impediments if removed – weight or respective considerations when compared to one another – satisfaction about other reason – decision to refuse set aside and substituted

Bui and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 2302 (17 May 2024); Dr L Kirk, Senior Member

Migration – sophisticated drug syndicate – drug importation – false identities – exposure of Australian community to serious harm – devastating impact upon community, destroying lives, families and fabric of our society– limited connections to Australia – no history of paid employment – community expectations – expert report conclusions rejected for “professional omission” – recent pre-sentencing report favoured – some evidence of remorse – good prospects of rehabilitation – excellent prison record – progress to full rehabilitation – privileged upbringing – intelligent and well educated – character references and employment opportunities upon release – low to medium risk of re-offending – Ministerial Direction No. 99 – risk of re-offending unacceptable – decision under review affirmed

Camarse and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 2146 (20 June 2024); T Tavoularis, Senior Member

MIGRATION – 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 – Tribunal finding the Applicant has strong protective factors in Australia – Tribunal finding Applicant’s recidivist risk as acceptable – Tribunal finding factors against revocation outweighed by factors in favour of revocation – Tribunal finding there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

Chowdhury (Migration) [2024] AATA 1011 (5 April 2024); A Mercer, Senior Member

MIGRATION – Skilled Work Regional (Provisional) (Class PS) visa – Subclass 491 (Skilled Work Regional (Provisional)) – Accountant (General) – skills assessment – more than 3 years old at time of invitation to apply – new assessment obtained after the date of invitation – Tribunal declined indefinite deferral of decision-making – decision under review affirmed

Dass and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024] AATA 2398 (20 June 2024); Senior Member O’Donovan

MIGRATION – mandatory cancellation of the applicant’s visa – applicant is a citizen of Fiji – family violence offences – drug and property offences – driving offences – failure to pass character test – whether there is another reason to revoke the cancellation – Direction No 99 – protection of the Australian Community – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – best interests of minor children – decision under review affirmed

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

AATA 2378 (11 July 2024); Senior Member George

MIGRATION – cancellation of Applicant’s Class TY Subclass 444 Special Category (Temporary) visa – very serious offending – family violence – decision affirmed

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

AATA 2316 (13 June 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 – 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

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

AATA 2409 (5 July 2024); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – non-revocation of mandatory visa cancellation – Direction No. 110 – protection of Australian community – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of decision – extent of impediments if removed – supply of large commercial quantity of methylamphetamine – low risk of reoffending – where applicant has strong familial ties to Australia – consideration of DFAT travel advice in light of ongoing Israel and Hamas conflict – decision under review set aside and substituted

[Moegatuli Afegogo and Minister for Immigration, Citizenship and Multicultural Affairs](#)

(Migration) [2024] AATA 2222 (20 June 2024); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether ‘another reason’ to revoke cancellation decision – applicant stabs friend when drunk – applicant remorseful – applicant on short-term visa intended to assist Pacific Islander community members to earn money to return to their families – applicant has no prior criminal record and there is no appreciable risk of recidivism – decision set aside in these circumstances and revocation decision substituted

[Nehra](#) (Migration) [2024] AATA 959 (19 April 2024); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – incorrect information in the visa application – bogus documents – education qualifications – applicant studied at Institute affiliated with the University – successful study progress in postgraduate degrees in Australia – family financial hardship – qualifications and work in aged care – decision under review set aside

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

AATA 2150 (12 June 2024); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BF Transitional (Permanent) visa – UK citizen – where Applicant does not pass the character test – where Applicant has a substantial criminal record – where numerous convictions include trafficking in dangerous drug – whether there is “another reason” why the decision to cancel the Applicant’s visa should be revoked – consideration of Ministerial Direction No. 99 – decision under review affirmed

[Peek and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2361 (20 June 2024); T Tavoularis, Senior Member

MIGRATION – remittal – non-revocation of mandatory cancellation of a visa – failure to pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – repeated domestic violence offending – Tribunal finding risk of recidivism as real and unacceptable – where factors against revocation outweigh factors in favour – Tribunal finding there is not another reason to revoke the mandatory cancellation decision – decision under review affirmed

[PYYV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2163 (1 July 2024); D J Morris, Senior Member

MIGRATION – applicant is a citizen of the Republic of India – applicant held skilled visa – visa cancelled owing to substantial criminal record – sexually based offences involving a child – applicant made representations to delegate of Minister – delegate refused to revoke mandatory cancellation – request for review by Tribunal – new ministerial direction – primary considerations – protection of Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – expectations of Australian community – legal consequences of decision – extent of impediments if removed – low risk of reoffending is found but very serious nature of offending and recklessness of offending means even low risk is unacceptable – decision under review is affirmed

[Truong](#) (Migration) [2024] AATA 1101 (22 March 2024); D Crawshay, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – legal permission for child's removal – law of Vietnam – relocating with children overseas after divorce and/or separation – consent to the grant of visa – divorce order – shared rights to the child – lost communication with the father – whether father still alive – common law presumption of death – enquiries made about the whereabouts of the father – age and health profile of the father – decision under review affirmed

[Wang and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2357 (20 June 2024); S Evans, Member

MIGRATION – Applicant citizen of China – visa mandatorily cancelled pursuant to section 501(3A) of the Migration Act 1958 (Cth) – substantial criminal record – supply a prohibited drug – review of decision to refuse to revoke mandatory cancellation under section 501CA(4) – decision under review affirmed

National Disability Insurance Scheme

[DQKZ and National Disability Insurance Agency](#) [2024] AATA 2276 (5 July 2024); P French, Member

NATIONAL DISABILITY INSURANCE SCHEME – National Disability Insurance Agency – reviewable decision of Chief Executive Officer – becoming a participant – access request – whether applicant meets the access criteria – whether applicant meets the disability requirements – whether applicant has a disability attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or has one or more impairments to which a psychosocial disability is attributable – whether impairments are, or are likely to be, permanent – whether impairment or impairments result in substantially reduced functional capacity – whether applicant meets the early intervention requirements – whether impairments are, or are likely to be, permanent – whether early intervention supports would likely have a significant impact on the course of impairment – whether any beneficial supports are appropriately provided by the NDIS – disability and early intervention requirements not met – reviewable decision affirmed

[KXHC and National Disability Insurance Agency](#) [2024] AATA 2277 (4 July 2024); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – where the Applicant is an accepted participant of the National Disability Insurance Scheme – decision under review set aside

[NLXY and National Disability Insurance Agency](#) [2024] AATA 2275 (5 July 2024); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – definition of reasonable and necessary – what is reasonable to expect families, carers, informal networks and the community to provide – value for money – transportation to and from school – autism spectrum disorder – educational supports – decision affirmed

[Robinson and National Disability Insurance Agency](#) [2024] AATA 2380 (11 July 2024); Senior Member Katter

NATIONAL DISABILITY INSURANCE AGENCY – access criteria – multiple impairments – whether impairments are permanent – whether impairments result in substantially reduced functional capacity – decision under review set aside

[Swan and National Disability Insurance Agency](#) [2024] AATA 2381 (11 July 2024); N Purcell, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – Arnold-Chiari Malformation – Syringomyelia – Osteoarthritis – hand weakness – Rule 5.8 – deeming provision – assistive technology and equipment – usually requires assistance – section 24(1)(c) – whether substantially reduced functional capacity – decision affirmed

Practice and Procedure

[Colin and Tax Practitioners Board](#) [2024] AATA 2151 (28 June 2024); D Benk, Senior Member

PRACTICE AND PROCEDURE – STAY APPLICATION – tax agents’ registration – false and misleading statements – underreported income – failure to lodge returns and business activity statements prospects of success – public interest – hardship – early hearing – dissolution of interim stay

[DQKZ and National Disability Insurance Agency](#) [2024] AATA 2271 (5 July 2024); P French, Member

PRACTICE AND PROCEDURE – recusal application – actual bias – apprehended bias – application refused

[FSWN and National Disability Insurance Agency](#) [2024] AATA 2379 (28 May 2024); Dr K Dodd, Member

PRACTICE AND PROCEDURE – interlocutory hearing – recusal – application that a member recuse themselves from the hearing due to apprehended bias – qualifications and experience of a member – whether a member with medical qualifications can bring an impartial mind to evidence relating to alternative therapies – naturopathy – prejudgement – whether the member has a professional interest in the outcome – Ebner v Official Trustee in Bankruptcy applied

[Koseler and National Disability Insurance Agency](#) [2024] AATA 2223 (3 July 2024); L Proske, Member

PRACTICE AND PROCEDURE – applicant failed to appear at directions hearing – appropriate notice given to the applicant as required by s 42A(7) of the AAT Act – application for review dismissed pursuant to s 42A(2) of the AAT Act

[Mickleberg and Military Rehabilitation and Compensation Commission](#) (Compensation) [2024] AATA 2158 (1 July 2024); A George, Senior Member

PRACTICE AND PROCEDURE – dismissal application – whether the application has no reasonable prospects of success – s 42B(1)(b) of the AAT Act – dismissal application refused

[O’Hara and Comcare](#) (Compensation) [2024] AATA 2145 (26 June 2024); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – summons – objections to grant of access – scope of summons – documents within scope – relevance – objections refused

[Russo and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2315 (9 July 2024); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – application for review to General & Other Division (‘Tier 2 review’) – decision under review made by Social Services and Child Support Division

(‘Tier 1 review’) – where Tier 1 review application was lodged out of time – where Tier 1 review concerned Disability Support Payments (DSP) – where Applicant already in receipt of DSP at the time of Tier 1 review – where the Tier 2 review unlikely to yield any different or more favourable outcome for the Applicant – where Tier 2 review has no prospect of success – application for review dismissed

PRACTICE AND PROCEDURE – application for review to General & Other Division ('Tier 2 review') – decision under review made by Social Services and Child Support Division

('Tier 1 review') – where Tier 1 review concerned Mobility Allowance Payments (MOB) – where Applicant is a NDIS participant – application of National Insurance Disability Scheme 2013 Act (Cth) and Social Security Act 1991 (Cth) – where Tier 2 review unlikely to yield any different or more favourable outcome for the Applicant – where Tier 2 review has no prospect of success – application for review dismissed 1918510 (Refugee) [2023] AATA 4836 (28 November 2023)

Refugee

[1918510](#) (Refugee) [2023] AATA 4836 (28 November 2023); G Cullen, Senior Member

REFUGEE – protection visa – Fiji – Federal Court remittal – political opinion – Soqosoqo Duavata ni Lewenivanua (SDL) – Social Democratic Liberal Party (SODELPA) – against the former Bainimarama regime – photographed by a bodyguard of Bainimarama – fear of FijiFirst – change in political landscape since the December 2022 elections – further military coup speculative – delay in departure – decision under review affirmed

[1829874](#) (Refugee) [2024] AATA 1021 (16 January 2024); P Hunter, Member

REFUGEE – protection visa – Sierra Leone – political opinion – All People's Congress (APC) – fear of the Sierra Leone People's Party (SLPP) – particular social group – single women – single mothers with young children – single mothers without family support – victim of an attempted rape – widespread discrimination – capacity to subsist – sexual and gender-based violence – state protection – right to enter and reside in a third country – Economic Community of the West African States (ECOWAS) – decision under review remitted

[2112808](#) (Refugee) [2024] AATA 1034 (31 January 2024); A Murphy, Member

REFUGEE – protection visa – India – particular social group – single mother – victim of gender – based violence – divorce and re-marriage – honour killing – threats of forced prostitution – Australian citizen child – effective protection – internal relocation – decision under review remitted

[2317142](#) (Refugee) [2024] AATA 1515 (1 February 2024); A Murphy, Member

REFUGEE – protection visa – Malaysia – gender identity – non binary/ Genderqueer – sexual orientation – pansexual/Queer – particular social group – LGBTQI+ community in Malaysia – future risk of harm – moderate risk of official and societal discrimination – exacerbated by Muslim religion – decision under review remitted

[1834369](#) (Refugee) [2024] AATA 1123 (23 February 2024); W Pennell, Member

REFUGEE – protection visa – Indonesia – riots, racism, terrorism and serious crime – no harm and possibility of relocation – ethnicity and religion – Chinese Buddhist – comment by presidential candidate – vague, speculative claims, no supporting evidence and minimal response to tribunal's communications – country information – low risk of violence and moderate risk of low-level discrimination – decision under review affirmed

[1804734](#) (Refugee) [2024] AATA 1121 (1 March 2024); P Papadopoulos, Member

REFUGEE – protection visa – China – fear of harm from foster family – threat of arranged marriage and sale of Australia-born child – otherwise unable to register child – delay in applying for protection – applied to gain Medicare card after child's birth – most claims acknowledged as false and discontinued at hearing – loan shark – sister-in-law's illegal entry into third country to work and apply for protection – exaggerated and inconsistent claims, evasive and uncorroborated evidence and deliberate concealment of family's circumstances – new relationship and second child not applicant – decision under review affirmed

[2103091](#) (Refugee) [2024] AATA 2174 (22 March 2024); J McLeod, Member

REFUGEE – protection visa – Iran – arrival by sea with members of family unit wife and two children – not unauthorised maritime arrivals and fast track applicants as defined – second application made after birth of third child – fourth child born after delegate's decision not an applicant – ethnicity – original claim as stateless Faili Kurds retracted – advised by people smugglers – Iranian Kurds – accused of stealing from workplace, fired and interrogated – no charge, unhindered departure and no independent evidence of adverse interest – religion – non-committed Muslims converted to Christianity in Australia – attendance, baptism and activities and development of commitment – some claims and evidence embellished – supporting statements and photos – genuine conversion not for purpose of strengthening claims – political opinion – second applicant's online activism in women's movement – family questioned – gender – wife and daughters – length of residence, westernised lifestyles and mental health, and children's language – country information – religious conversions not recognised – modification of behaviour not reasonable, effective protection measures not available and chance of harm relates to all areas – decision under review remitted

[1914378](#) (Refugee) [2024] AATA 1816 (16 April 2024); K Allen, Member

REFUGEE – protection visa – China – business dispute – mistreated and persecuted by security officials and underworld figures – claims abandoned and new claims raised – religion – teenage child's interest in and conversion to Islam with support of parents – attendance, activities and supporting statements – conversion accepted as genuine – country information – monitoring of and actions against religious groups and activities, especially Muslims – prohibition of religious activities to and by minors – small ethnic minority Islamic community in home city – applicant's unique profile as Han Chinese teenager who converted in Australia – limited experience of school and community in China – modification of behaviour not reasonable and relocation not an option – members of family unit parents – decision under review remitted

[1908355](#) (Refugee) [2024] AATA 1397 (19 April 2024); J Henderson, Member

REFUGEE – protection visa – Vietnam – arrival by sea – not unauthorised maritime arrival or fast-track applicant as defined and statutory bar does not apply – first application not invalid so second application invalid – no claims raised at entry interview – came to Australia to work to pay parents' debt – claims raised several months later and expanded subsequently – political opinion – involvement in human rights group – friend arrested and accused of being anti-government – applicant investigated, interviewed and beaten, then monitored and harassed – unlawful departure – organisation activities in Australia – expanding claims over time – passage of time and experience of free and democratic life in Australia – confident presentation and honest responses against interest – real chance of being identified as failed asylum seeker – membership of particular social group – husband and prospective father of Australian citizens – country information – decision under review remitted

Social Security

[Moustakas; Secretary, Department of Social Services and](#) (Social services second review) [2024] AATA 2160 (27 June 2024); S Evans, Member

SOCIAL SECURITY – age pension – member of a member of a couple – whether ‘special reason’ to determine respondent as not a member of a couple – inability to pool resources – couple have other reasonable means of support available to them – applicant owns home and has savings – Tribunal not satisfied there exist either financial or other circumstances which warrant exercising the discretion – the reviewable decision is set aside and substituted

[Pedel and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2182 (2 July 2024); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY - paid parental leave – eligibility – Australian residency test – effect of absence from Australia on Australian residency test – whether discretionary extension can be exercised for defence force member overseas for longer than 56 weeks and no more than 3 years — decision set aside and remitted

STATUTORY INTERPRETATION – meaning of ‘deployment’ – whether to adopt a textual or purposive approach – where primary statutes do not define ‘deployment’ – whether to adopt meaning of ‘deployment’ from subordinate legislation – where subordinate legislation conflicts with purpose of statute – purposive approach adopted – ‘deployment’ defined in its ordinary meaning

[Smith; Secretary, Department of Social Services and](#) (Social services second review) [2024] AATA 2358 (10 July 2024); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – family tax benefit – whether debt raised was due to a sole administrative error – whether special circumstances to waive extended to coronavirus pandemic – decision set aside and substituted – decision affirmed

Taxation

[GNBF and Commissioner of Taxation](#) (Taxation) [2024] AATA 2152 (24 June 2024); D K Grigg, Senior Member

TAX – review under Part IVC of the Taxation Administration Act 1953 (Cth) – amended assessments of income tax pursuant to section 167 of the Income Tax Assessment Act 1936 – whether evasion – consideration of section 170(1) (item 5) of the ITAA 1936 – onus of proof – limited documentation – consideration of extent of corroboration required – penalties – whether intentional disregard, recklessness or lack of reasonable care – whether base penalty uplift applies – whether penalties should be remitted – whether shortfall interest charge should be remitted – decisions affirmed

Veterans' Affairs

[Naur and Repatriation Commission](#) (Veterans' entitlements) [2024] AATA 2377 (11 July 2024); Senior Member George

VETERANS – partner service pension – whether applicant was in a de facto relationship with the Veteran at the time of his death – consideration of circumstances of the relationship – decision under review 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
Bachelard and Australian Federal Police	[2024] AATA 312
DSDJ and Secretary, Department of Social Services	[2024] AATA 1532
Edmonds and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 1389
Hall Infante and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 1485
Nadeem and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 774
PYYV and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 2163

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Campbell-Smith v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 4417	[2024] FCA 710
EMJ18 v Secretary, Department of Home Affairs	[2023] AATA 2551	[2024] FCAFC 87
KVRK v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3978	[2024] FCA 698
Quy v Commissioner of Taxation (No 3)	[2024] AATA 245	[2024] FCA 726
Ross and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2103	[2024] FCA 734
Tabuarua v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1383	[2024] FCA 748

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 23 July 2024:

Cerebrovascular accident (stroke) (Balance of Probabilities) – No. 46 of 2024

<https://www.legislation.gov.au/F2024L00745/asmade/text>

Cerebrovascular accident (stroke) (Reasonable Hypothesis) – No. 45 of 2024

<https://www.legislation.gov.au/F2024L00743/asmade/text>

Duodenal ulcer and duodenal erosion (Balance of Probabilities – No. 50 of 2024

<https://www.legislation.gov.au/F2024L00752/asmade/text>

Duodenal ulcer and duodenal erosion (Reasonable Hypothesis) – No. 49 of 2024

<https://www.legislation.gov.au/F2024L00749/asmade/text>

Mesothelioma (Balance of Probabilities) – No. 42 of 2024

<https://www.legislation.gov.au/F2024L00740/asmade/text>

Mesothelioma (Reasonable Hypothesis) – No. 41 of 2024

<https://www.legislation.gov.au/F2024L00739/asmade/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**:

Cerebrovascular accident – No. 66 of 2015

<https://www.legislation.gov.au/F2015L00653/latest/text>

Cerebrovascular accident – No. 65 of 2015

<https://www.legislation.gov.au/F2015L00652/latest/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>

Mesothelioma (Balance of Probabilities) – No. 105 of 2015

<https://www.legislation.gov.au/F2015L01320/latest/text>

Mesothelioma (Reasonable Hypothesis) – No. 104 of 2015

<https://www.legislation.gov.au/F2015L01319/latest/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.

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](#).