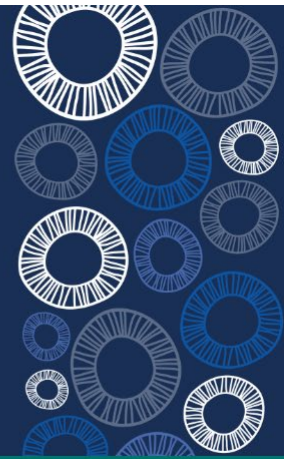




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 16/2023**

**14 August 2023**

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.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>Recent developments .....</b>	<b>3</b>
Update to Giving Documents or Things to the AAT Practice Direction .....	3
<b>AAT Recent Decisions .....</b>	<b>4</b>
Child Support.....	4
Citizenship .....	5
Compensation.....	5
Corporations .....	7
Education and Research .....	7
Freedom of Information .....	7
Migration .....	8
National Disability Insurance Scheme.....	12
Passports.....	13
Practice and Procedure .....	13
Refugee.....	14
Social Security.....	16
Taxation .....	18
Veterans' Affairs .....	19
<b>Appeals.....</b>	<b>20</b>
Appeals lodged.....	20
Appeals finalised .....	20

# Recent developments

## Update to Giving Documents or Things to the AAT Practice Direction

We have issued a new [Giving Documents or Things to the AAT Practice Direction](#) which removes obsolete lodgement methods.

The Giving Documents or Things to the AAT Practice Direction specifies ways in which a document or thing may be lodged with, or given to, the AAT in accordance with the *Administrative Appeals Tribunal Act 1975*, the *Migration Act 1958* and the *Migration Regulations 1994*. The Practice Direction has been updated to remove decommissioned lodgement methods.

Our preferred method of receiving documents, including applications for review, is through the [AAT online system](#).

The new Practice Direction is effective from 10 August 2023.

# AAT Recent Decisions

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

## Child Support

[Flynn and Plumb](#) (Child support) [2023] AATA 2134 (24 May 2023); J Bakas, Member

CHILD SUPPORT – particulars of the administrative assessment – whether minimum annual rate should be reduced to nil – decisions under review affirmed

CHILD SUPPORT – particulars of the administrative assessment – whether the incomes for past periods for the liable parent should be changed – conditions for changing the incomes to lower amounts are not met – decisions under review affirmed

[Quill and Jordan](#) (Child support) [2023] AATA 2167 (29 May 2023); S De Bono, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart – decision under review affirmed

[Walton and Silkstone](#) (Child support) [2023] AATA 2146 (1 June 2023); S Trotter, Senior Member

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

CHILD SUPPORT – percentage of care – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist

[Morden and Morden](#) (Child support) [2023] AATA 2142 (2 June 2023); S Trotter, Senior Member

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

[Whetten and Conisbey](#) (Child support) [2023] AATA 2166 (7 June 2023); M Baulch, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – existing percentage of care determinations revoked and new determinations made – court orders not complied with – reasonable action taken – interim period applied – decision under review affirmed

CHILD SUPPORT – percentage of care – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist – decision under review set aside and substituted

CHILD SUPPORT – date of effect of the tribunal's decision – late application for review – no special circumstances exist that prevented the application for review being lodged in time – tribunal declines to make a determination under subsection 95N(2)

## Citizenship

[Barik and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2479 (11 August 2023); B J Illingworth, Senior Member

CITIZENSHIP – Australian citizenship by conferral – failure to pay application fee – refusal to approve citizenship – residence requirement not satisfied – residence prohibition applies – discretion to treat an applicant as satisfying the general residence requirement – lawful non-citizen – unlawful non-citizen – decision under review is affirmed

[Halik and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2301 (1 August 2023); S Evans, Member

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

[MBQD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2452 (10 August 2023); B W Rayment OAM KC, Deputy President

CITIZENSHIP – good character – provision of false paternity information – Iraq – decision under review set aside and remitted

[Qarkaj and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2273 (29 June 2023); Dr N A Manetta, Senior Member

CITIZENSHIP – application for Australian citizenship refused – whether applicant is of “good character” under section 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – applicant’s criminal history considered – serious offending but person’s character can change over time – last offending 15 years ago – current personal circumstances considered – applicant has stable marital relationship and three children in Australia – applicant operates a successful business trading honestly – decision under review set aside

## Compensation

[Barnes and Comcare](#) (Compensation) [2023] AATA 2285 (31 July 2023); D O’Donovan, Senior Member

COSTS – whether costs should be ordered under s 67(8) of the SRC Act – whether indemnity costs should be awarded – when the discretion to award costs may be exercised – whether the reviewable decision was fundamentally defective – which party is responsible for uncertainty arising from deficiencies in the evidence – where leave was given for evidence to be filed late – whether prejudice to the respondent arose – costs ordered in part

[Brown and Australian Postal Corporation](#) (Compensation) [2023] AATA 2272 (5 July 2023); A Maryniak KC, Member

WORKERS' COMPENSATION – right eye injury – where previously accepted injury resulted in permanent impairment – where Applicant previously compensated for a 5% permanent impairment pursuant to section 25(4) of Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether Applicant entitled to further compensation – whether right eye impairment has increased by 10% or more – whether established that Applicant now has a whole person impairment of 15% or more – not established – Decision under review affirmed

[Jones and Comcare](#) (Compensation) [2023] AATA 2476 (30 June 2023); D O'Donovan, Senior Member

WORKERS' COMPENSATION - initial liability - employee suffered stress reaction to new work system - whether reaction outside bounds of normal mental functioning - whether precipitating events constitute employment - whether employment contributed to a significant degree - whether liability excluded by a wilful and false representation - whether any of the precipitating events reasonable administrative action - denial of liability set aside

[Keating and Comcare](#) (Compensation) [2023] AATA 2274 (28 July 2023); B J Illingworth, Senior Member and Dr L Stephan, Member

WORKERS COMPENSATION – Injury – Ailment – Disease – Liability to pay compensation – Administrative Action in a Reasonable Manner – Stress – Major Depressive Disorder – Decision Affirmed

[McCorley and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 2425 (8 August 2023); M Williams, Member

VETERANS' AFFAIRS — Defence-related claims — whether the Applicant suffered an injury or disease — claim for Ménière's disease — decision under review affirmed

[Messenger and Comcare](#) (Compensation) [2023] AATA 2407 (4 August 2023); P Britten-Jones, Deputy President

COMPENSATION - Claims for psychological injuries - Whether requirement to give notice under s 53 applicable - Whether Mr Messenger suffered an ailment during his employment - Whether ailment significantly contributed to by employment - Whether Mrs Messenger suffered an aggravation of a pre-existing condition - Whether aggravation significantly contributed to by employment - Reasonable administrative action - Decisions under review affirmed

[Mulquiney and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 2480 (11 August 2023); S Webb, Member

MILITARY COMPENSATION – compensation claim for service injury or disease – depression – adjustment disorder – female sexual dysfunction – borderline personality traits or structure – diagnosis – liability – applicable statements of principles – category 2 stressor – pain – connection between disease and service raised on material – contribution to a material degree – service disease – entitlement to compensation – decision set aside and substituted

## Corporations

[HUNTLEY MANAGEMENT LIMITED and Australian Securities and Investments Commission](#) [2023] AATA 2290 (21 July 2023); D K Grigg, Senior Member

FINANCIAL SERVICES INDUSTRY – STAY APPLICATION – breaches of sections 292, 301, 319, 601HG and 912A of the Corporations Act – Suspension order for 12 months under s 915C of the Corporations Act – discretionary power to suspend financial services licence – public interest – decision under review varied

## Education and Research

[Tursunbek and Secretary, Department of Education](#) [2023] AATA 2483 (11 August 2023); J C Kelly, Senior Member

HIGHER EDUCATION SUPPORT – HECS-HELP debt – application for re-crediting – whether the application for remission of the HECS debt was made before the end of the application period – whether the requirement that the application be made before the end of that period on the ground that it was not possible for the application to be made before the end of that period should be waived – reviewable decision affirmed

## Freedom of Information

[OnMarket BookBuilds Pty Ltd and The Treasury](#) (Freedom of information) [2023] AATA 2328 (31 July 2023); The Hon. J Pascoe AC CVO, Deputy President and G Lazanas, Senior Member

FREEDOM OF INFORMATION – review of decisions of the Treasury to refuse access to documents regarding Australian Business Growth Fund Pty Ltd (ABGF) – whether documents are exempt documents pursuant to s 45 of the Freedom of Information Act 1982 (Cth) (the FOI Act) – consideration of meaning of action for breach of confidence – whether documents are exempt documents pursuant to s 47(1)(b) of the FOI Act – consideration of meaning of information having a commercial value that could reasonably be expected to be destroyed or diminished if disclosed – whether documents are exempt as would be privileged from production on the ground of legal professional privilege pursuant to s 42 of the FOI Act – decisions under review affirmed

[Walker Group Holdings Pty Ltd and Australian Conservation Foundation Incorporated](#) (Freedom of information) [2023] AATA 2307 (1 August 2023); B W Rayment OAM KC, Deputy President

FREEDOM OF INFORMATION – whether documents are exempt or conditionally exempt from disclosure under ss 47 and 47G of the Freedom of Information Act 1982 (Cth) – reviewable decisions affirmed

## Migration

[Barghachoun and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2304 (31 July 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – Applicant fails character test – substantial criminal record – offences include armed robbery, dishonesty offences, assaults, property and traffic/ driving offences – Applicant is a 53-year-old man who arrived in Australia when he was 13 years old – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no family violence – strength, nature and duration of ties to Australia – best interests of minor stepchildren, great nieces and great-nephews in Australia – expectations of the Australian community – legal consequences of the decision – consideration of the Applicant’s protection claims deferred – extent of impediments if removed to Lebanon – Reviewable Decision set aside and substituted

[CMTK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2335 (4 August 2023); A Poljak, Senior Member

MIGRATION – mandatory cancellation of Class BB Subclass 155 Five Year Return (Residence) visa under section 501(3A) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside and substituted

[Dayadaya and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2456 (26 July 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 (Five Year Resident Return) visa – where Applicant does not pass the character test – whether the power to cancel the visa should be exercised pursuant to section 501(2) – consideration of Ministerial Direction No. 99 – decision under review affirmed

[FBLQ and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2427 (8 August 2023); A Nikolic, Senior Member

MIGRATION – mandatory cancellation of Class BC Subclass 100 Partner (Migrant) Visa – citizen of Philippines – violent sexual offending – failure to pass good character test – Ministerial Direction No. 99 applied – reviewable decision affirmed

[Finau and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2283 (28 July 2023); J Owen, Deputy President

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is affirmed



**[George and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**

(Migration) [2023] AATA 2454 (8 August 2023); K Raif, Senior Member

MIGRATION – mandatory cancellation of visa – failure to pass character test – whether there is another reason why visa cancellation should be revoked - Ministerial Direction 99 – protection of Australian Community – nature and seriousness of applicant’s conduct – risk to Australian community – whether conduct engaged in by applicant constituted family violence – strength, nature and ties to Australia – best interests of minor children in Australia – expectations of Australian Community – legal consequences – impediments to removal – decision under review affirmed

**[Kim and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2023] AATA 2455 (12 July 2023); D Cosgrave, Member

MIGRATION – Discretionary visa cancellation – Cambodian citizen – Class BB Five Year Resident Return (Subclass 155) visa - s 501(2) of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – whether the Tribunal should exercise the discretion under s 501(2) of Migration Act 1958 (Cth) to cancel the visa – Ministerial Direction No. 99 applied – Respondent’s delegate’s decision set aside

**[LGNC and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2023] AATA 2282 (31 July 2023); J C Kelly, Senior Member

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

**[MCVN and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2023] AATA 2426 (8 August 2023); R Bellamy, Senior Member

MIGRATION – refusal to grant a Protection visa – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – where Applicant has been convicted by a final judgment of a particularly serious crime, whether he is a danger to the Australian community – multiple violent offences – decision under review affirmed

**[Niu and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2023] AATA 2478 (11 August 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant committed serious offences involving fraud against banks – whether there is ‘another reason’ to revoke the mandatory cancellation decision – the primary considerations of the expectations and protection of the Australian community outweigh the countervailing considerations of the best interests of minor children, ties to Australia and extent of impediments if removed – decision affirmed

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

AATA 2481 (10 May 2023); L Benjamin, Member

MIGRATION – Mandatory visa cancellation – Ethiopian citizen – Class XB Subclass 200 refugee visa - s 501CA of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – whether “another reason” exists for Tribunal to revoke mandatory cancellation of visa under s 501CA of the Migration Act 1958 (Cth) – Ministerial Direction No. 99 applied – Respondent’s delegate’s decision affirmed

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

AATA 2318 (14 July 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BW Subclass 857 Regional Sponsored Migrant Scheme– where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – decision under review affirmed

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

AATA 2339 (1 August 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act section 501CA(4) – primary considerations – other considerations – whether there is another reason to revoke mandatory cancellation of applicant’s visa – Ministerial Direction No.99 – substantial criminal record – nature and seriousness of the offending – strength, nature and duration of ties to Australia – expectations of the Australian community – extent of impediments if removed – decision set aside and substituted

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

AATA 2317 (21 July 2023); S Burford, Senior Member

MIGRATION – decision of delegate of Minister to refuse to grant the Applicant a bridging visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a 36 year old man who arrived in Australia as a 26 year old – extent of impediments if returned to Lebanon – decision of the delegate of Minister to refuse to grant the Applicant a bridging visa is affirmed

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

AATA 2284 (31 July 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of the Migration Act – refusal of delegate of the Minister to revoke mandatory cancellation of applicant’s visa – whether there is “another reason” to revoke cancellation of applicant’s visa – Ministerial Direction 99 – Applicant is a 58-year-old citizen of New Zealand who arrived in Australia as a 22 year old – returned to New Zealand for 12 years - sexual offence –family violence – very serious criminal record– protection of the Australian community – medium to high risk of reoffending —mental health of Applicant considered – impact on family members of adverse decision – there is not another reason to revoke the decision to cancel the Applicant’s visa – reviewable decision affirmed

[WWXF and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2275 (27 July 2023); Dr L Kirk, Senior Member

MIGRATION – matter remitted from the Federal Circuit Court of Australia – refusal to grant a Temporary (Partner) Class UK visa – where visa was refused under s 501(1) because applicant did not pass character test – substantial criminal record - Ministerial Direction No. 99 – primary considerations – protection of the Australian community – seriousness of offending and future risk – expectations of the Australian community – other considerations – international non-refoulement obligations - extent of impediments if removed – links to the Australian community – the strength, nature and duration of ties to Australia – reviewable decision set aside and substituted

[XJGN and Minister for Immigration, Citizenship & Multicultural Affairs](#) (Migration) [2023] AATA 2453 (10 August 2023); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where Applicant does not pass character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – Protection of the Australian community – whether the Applicant committed family violence – links to the Australian community – expectations of the Australian community – legal consequences of the decision – reviewable decision affirmed

[XNDR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2450 (10 August 2023); B W Rayment OAM KC, Deputy President

MIGRATION – non-revocation of mandatory cancellation of Class WA Subclass 010 Bridging A visa – citizen of Bangladesh – involvement in Bangladesh Nationalist Party (BNP) – theft, obtaining financial advantage by deception, make false accusation with intent to subject other to investigation and intimidation convictions – decision under review set aside and substituted

[ZTFH and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2338 (11 July 2023); R Bellamy, Senior Member

MIGRATION – revocation of mandatory cancellation of a Global Special Humanitarian visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – where receiving country is South Sudan – where substantial risk of indefinite detention – decision under review set aside

[Mansaray](#) (Migration) [2023] AATA 1772 (14 April 2023); M Cooke, Senior Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan relative) – orphan relative of an Australian relative – sibling relationship – half-sister – DNA test results – first degree relative relationship index – second degree relative relationship index – decision under review remitted

[Vocaj](#) (Migration) [2023] AATA 1822 (8 June 2023); D Crawshay, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – genuinely intend to marry – genuinely intend to live together as spouses – Notice of Intended Marriage – money transfers and superannuation nomination – joint travel – extended joint residence periods – regular communication – family social media recognition – decision under review remitted

[Addepalli](#) (Migration) [2023] AATA 1857 (13 June 2023); A Mendes Da Costa, Member

MIGRATION – Skilled (Residence) (Class VB) visa – Subclass 887 (Skilled - Regional) – one year of full-time work in specified regional area while holding specified visa – full-time, part-time and concurrent work for three relevant employers does not add to one year – study and work history and community activities – current related employment in region and sector with skills shortages, and value to employer – supporting statements – referred for ministerial consideration – decision under review affirmed

[Naidu](#) (Migration) [2023] AATA 1830 (15 June 2023); P Maishman, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – Federal Circuit and Family Court remittal – compelling reasons to waive Schedule 3 criteria – child born of the relationship – long-standing relationship – financial hardship – decision under review remitted

[Uno Caffe Pty Ltd](#) (Migration) [2023] AATA 1875 (22 June 2023); P Maishman, Member

MIGRATION – approval of a nomination – position of Chef – labour market testing – inadequate detail in job advertisements – decision under review affirmed

## **National Disability Insurance Scheme**

[Forbes and National Disability Insurance Agency](#) [2023] AATA 2408 (7 August 2023); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria- NDIS Act s24(1)(c) – s24(1)(e) – s25 - end stage kidney disease - whether applicant meets disability requirements - whether impairments substantially reduce functional capacity- whether applicant meets early intervention requirements - whether likely to require support under National Disability Insurance Scheme for applicant's lifetime - whether supports more appropriately funded through another service system - decision affirmed

[HHRQ and National Disability Insurance Agency](#) [2023] AATA 2430 (7 August 2023); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Autism - ABA therapy - intensive feeding therapy - reasonable and necessary supports – consideration of section 34 National Disability Insurance Scheme Act 2013 (Cth) - decision set aside and remitted to the Respondent

[Mifsud and National Disability Insurance Agency](#) [2023] AATA 2484 (11 August 2023); A Younes, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – fibromyalgia – osteoarthritis – lumbar disk prolapse – chronic pain – whether the impairments are, or likely to be, permanent – whether the impairments result in substantially reduced functional capacity – whether the Applicant is likely to require support under the scheme – decision under review affirmed

[Mohebati-Arani and National Disability Insurance Agency](#) [2023] AATA 2399 (7 August 2023);  
The Hon. P Goward AO, Senior Member

Self-managed plan – NDIA-managed plan – choice and control - Applicant at unreasonable risk – vulnerable person – role of family — mismanagement of funds – decision affirmed

[Pavlakis and National Disability Insurance Agency](#) [2023] AATA 2485 (10 August 2023); K Buxton, Senior Member

Application for Review of Decision — National Disability Insurance Scheme — Plan — Review of Supports in Plan — Statement of Participant Supports — Section 42D Remittal — New Plan — Whether 42D remittal creates a new plan — Whether Reviewable decision Ultra Vires — Decision under review set aside and remitted

## Passports

[KFDJ and Minister for Foreign Affairs](#) [2023] AATA 2429 (7 July 2023); B J McCabe, Deputy President and D O'Donovan, Senior Member and S Webb, Member

Passports – cancellation – adverse security assessment – refusal/cancellation request by a competent authority – discretion to cancel passport – relevant considerations – changed circumstances – unreliable evidence – extreme ideology – potential prejudice to security – decision affirmed

## Practice and Procedure

[Carpenter and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2299 (7 July 2023); L Benjamin, Member

PRACTICES AND PROCEDURES – Applicant's failure to comply with directions in relation to application for review

[Gaylard and John Holland Pty Ltd](#) (Compensation) [2023] AATA 2424 (8 August 2023); R Cameron, Senior Member

PRACTICE AND PROCEDURE – objection by the applicant to the respondent's inspection of material produced under summons – relevance of material produced under summons to the issues raised by the reviewable decision – licence and traffic records – objection disallowed

[Kuchlmayr and Australian Capital Territory](#) (Compensation) [2023] AATA 2305 (1 August 2023); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – summons – objection to production – scope of summons – relevance – objections upheld

[McDermott and Comcare](#) (Compensation) [2023] AATA 2300 (1 August 2023); B W Rayment, Deputy President OAM KC

PRACTICE AND PROCEDURE – application for reinstatement – application for review dismissed for non-compliance with Tribunal Direction – reinstatement refused

[McHugh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2405 (4 August 2023); S Webb, Member

PRACTICE AND PROCEDURE – application for conferral of Australian citizenship by descent – character test – criminal record – applicability of policy requirement for holistic assessment – alleged extenuating circumstances – alleged psychiatric, neurological and intellectual impairments – impecuniosity – request for preliminary acceptance of impairments by the Tribunal – request for order to compel Respondent to arrange and fund independent medical and psychological examinations – statutory duties and inquisitorial function of the Tribunal – duty to ensure each party has a reasonable opportunity to prepare case – duty to make obvious inquiry about critical facts – no power to compel Applicant to undergo a medical or psychiatric examination against her will – no duty to obtain further medical or psychiatric evidence – request refused

[Ott and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2280 (25 July 2023); L Benjamin, Member

PRACTICES AND PROCEDURES – Applicant’s failure to comply with directions in relation to application for review of a decision under section 501CA of the Migration Act 1958

[Tran and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2395 (7 August 2023); D Cosgrave, Member

PRACTICE AND PROCEDURE - MIGRATION – whether the Tribunal has jurisdiction to review a refusal of a section 501(1) decision – Return Residence) (Class BB) (Subclass 155) visa – whether the decision is a Part 5 Reviewable Decision – whether requirements for making application have been met – no jurisdiction found

## Refugee

[2008120](#) (Refugee) [2023] AATA 1784 (16 February 2023); D James, Senior Member

REFUGEE – protection visa – Nigeria – ethnicity and member of particular social group – Igbo and son of cult member – father killed by Biafran mob and applicant and family threatened, or father killed by mystery illness caused by cult and applicant and brother threatened with forced recruitment – delay in applying for protection – applied after student visa cancelled – no protection claims raised in that review hearing – inconsistent claims and evidence and non-responsive or evasive explanations – no treatment sought for claimed mental health conditions – no harm or threats to sisters in home country – country information – decision under review affirmed

[1723126](#) (Refugee) [2023] AATA 2226 (6 March 2023); G Hamilton, Member

REFUGEE – protection visa – Sri Lanka – ethnicity – Tamil – actual or imputed political opinion – social group – Tamil fisherman – Tamil fisherman from Udappu – asylum seeker – departed illegally – long term resident in the West – subjected to extortion attempt – family visited by authorities – decision under review affirmed

[1715212](#) (Refugee) [2023] AATA 2240 (15 March 2023); B Darcy, Member

REFUGEE – protection visa – Sri Lanka – race – Tamil – imputed political opinion – Tamil male with pro-LTTE sentiments – relatives in the LTTE – particular social group – failed asylum seeker – credibility issues – sur place activities and behaviour modification – involved in commemorative events in Australia – well-founded fear of persecution – would be taking unreasonable steps to modify behaviour to avoid real chance of persecution in Sri Lanka – would conflict with applicant's conscience and conceal his true political beliefs – decision under review remitted

[1911392](#) (Refugee) [2023] AATA 2244 (20 March 2023); K Chapple, Member

REFUGEE – protection visa – Papua New Guinea – particular social group – woman who has fled from domestic and family violence in PNG – single mother – gender-based violence – victim of coercive control – physical assault – rape – secondary applicant's health issues – adequate state protection or support services not available – decision under review remitted

[1827549](#) (Refugee) [2023] AATA 1973 (24 March 2023); J Lindsay, Member

REFUGEE – protection visa – Turkey – particular social group – homosexual male – political opinion – anti-government protester – detained after political protest – threatened and assaulted by family members – fear of harm from Turkish authorities – efforts by Turkish officials to deter LGBT rights activism – decision under review remitted

[2200104](#) (Refugee) [2023] AATA 2438 (8 May 2023); A Murphy, Member

REFUGEE – cancellation – protection visa – Afghanistan – identity and incorrect information given in visa application – other name known by, citizenship, right to enter and passport not declared – Afghan identity documents provided with visa application – information about Pakistani passport in different name received by department – other details and computerised national identity card number – genuine documents obtained fraudulently – evidence supporting original identity – country information – endemic document fraud – discretion to cancel visa – non-refoulement – ethnicity, religion and imputed political opinion – Hazara Shia who worked for foreign forces and wife's work with international organisation – visa would have been granted in any case – long residence, education, work and financial support to family members overseas – voluntary return unlikely and prolonged immigration detention possible – protection finding not quashed or set aside – volatile security situation – decision under review set aside

[2008565](#) (Refugee) [2023] AATA 1856 (18 May 2023); W Pennell, Member

REFUGEE – protection visa – Pakistan – successful businessman with international links – extortion, threats and attempted kidnapping by extremist group – police report provided – relocation and continued threats – delay in applying for protection on advice of third party – coerced payments to third party for visa and business reasons – fear of harm from third party or connections – country information – deteriorating security situation – members of family unit – decision under review remitted

[2102561](#) (Refugee) [2023] AATA 1811 (5 June 2023); S Baker, Member

REFUGEE – cancellation – protection visa – Iraq – Federal Court remittal – incorrect information given in visa application – citizenship – stateless Bidoon or Iraqi citizen – fear of harm in Kuwait and Iraq – provided with Iraqi personal status and residence cards but no right to remain and limited other rights – declared Iraqi citizenship/residence in wife’s partner visa application and wife and children hold Iraqi passports – that application prepared by third party who possibly confused residence and citizenship – those passports issued irregularly after applicant arrived in Australia – applicant’s return travel on Australian titre de voyage – genuine belief of statelessness at time of application – country information – requisite level of satisfaction not reached – decision under review set aside

[2214360](#) (Refugee) [2023] AATA 1813 (7 June 2023); L Hardy, Member

REFUGEE – protection visa – Romania – member of particular social group – young single female with no family or social connections or Romanian language ability – education, employment and ability to subsist – family violence by mother and step-father and apprehended domestic violence order – application for partner visa as dependant withdrawn by mother – period as unlawful non-citizen – accommodation and services provided by charity organisation – waiver of right to hearing and request for referral for ministerial consideration – compassionate circumstances – age and potential health and psychological impacts – referred for ministerial consideration – decision under review affirmed

## Social Security

[Austin and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2302 (1 August 2023); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – ABSTUDY and ABSTUDY Coronavirus Supplement – whether the Applicant was overpaid – decision to raise and recover debt – whether a debt to the Commonwealth – whether the debt should be recovered – whether recovery of all or part of the debt should be waived or written off – whether debt attributable to sole administrative error of the Commonwealth – whether there are special circumstances that make it desirable to waive the debt – special circumstances established – Reviewable Decision set aside and substituted

[Betts and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2428 (12 July 2023); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – Social Security Act 1991 (Cth) – Disability Support Pension – Qualification – Physical, intellectual or psychiatric impairment – Impairment Tables – Continuing inability to work – Decision set aside and substituted

[Green and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2281 (28 July 2023); K Millar, Senior Member

SOCIAL SECURITY – disability support pension – suspension of disability support pension – portability – unlimited portability – whether qualified for unlimited portability – decision under review affirmed



[Haddara and Secretary, Department of Social Services](#) (Social services second review) [2023]  
AATA 2314 (2 August 2023); R West, Member

SOCIAL SECURITY – overpayment of social security benefits – Newstart Allowance – associated application – joint hearing – common issue whether member of a couple – re-calculation of amount of overpayment – debt owed to the Commonwealth – no waiver or write off – decision varied

[Haddara and Secretary, Department of Social Services](#) (Social services second review) [2023]  
AATA 2316 (2 August 2023); R West, Member

SOCIAL SECURITY – review of multiple decisions – overpayment of social security benefits – associated application – joint hearing – common issue whether member of a couple – recalculation of overpayments – debts owed to the Commonwealth – no waiver or write off – decisions affirmed, varied, and set aside and remitted with directions

[Jahandideh and Secretary, Department of Social Services](#) (Social services second review) [2023]  
AATA 2315 (2 August 2023); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – whether the applicant satisfied the qualification criteria at the date of his claim or during the qualification period – whether applicant has impairments that had been fully diagnosed, treated and stabilised – whether reasonable treatment was undertaken for his conditions – whether applicant’s conditions were permanent – reviewable decision affirmed

[KYRZ and Secretary, Department of Social Services](#) (Social services second review) [2023]  
AATA 2475 (13 July 2023); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – Family Tax Benefit – Entitlement to Family Tax Benefit Payments – Pattern of care between parents – Determination of care percentage – Decision under review set aside and substituted

[Lo Presti and Secretary, Department of Social Services](#) (Social services second review) [2023]  
AATA 2394 (7 August 2023); S Evans, Member

SOCIAL SECURITY — Family tax benefit — Top-up payments — Whether applicant eligible for top-up payment — Tax return lodgement requirements not met — Whether special circumstances exist to allow extension of time for notification of non-lodgement — Reviewable Decision affirmed

[Moncrieff; Secretary, Department of Social Services and](#) (Social services second review) [2023]  
AATA 2323 (2 August 2023); D Mitchell, Member

SOCIAL SECURITY – disability support pension – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – whether severe impairment – whether continuing inability to work – decision under review set aside and substituted

[Takiari and Secretary, Department of Social Services](#) (Social services second review) [2023]  
AATA 2397 (7 August 2023); S Evans, Member

SOCIAL SECURITY —family tax benefit — whether applicant member of a couple — section 4(3) of the Social Security Act 1991 – where applicant’s former partner is incapacitated by illness – where applicant continues to live with former partner due to common child - reviewable decision set aside and remitted with directions

[Tomaiuolo and Secretary, Department of Social Services](#) (Social services second review) [2020] AATA 6225 (3 August 2020); P Britten-Jones, Deputy President

SOCIAL SECURITY – Debt to Commonwealth arising from payment of a disability support pension to which applicant not entitled – Whether business income recorded in a tax return can correctly be characterised as “income” – Whether waiver of debt available – Decision under review is affirmed

[Wilson; Secretary, Department of Social Services and](#) (Social services second review) [2020] AATA 6223 (19 August 2020); M Kennedy, Member

SOCIAL SECURITY – Carer Payment – Carer Allowance – Carer supplement – overpayment – debt has not arisen wholly or partly from the debtor – debts not waived – decision set aside and substituted

[Yell and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2451 (10 August 2023); J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – compensation preclusion period – health care card – whether there are special circumstances so that any or part of the compensation payment can be disregarded, and the preclusion period reduced – whether the health care card claim was correctly rejected on the basis that the applicant’s income was above the allowable limit during the relevant period – reviewable decision affirmed

## **Taxation**

[Bains and Commissioner of Taxation](#) (Taxation) [2023] AATA 2477 (11 August 2023); R Olding, Senior Member

TAXATION – INCOME TAX – where applicant received payment from Fairness Fund established by Victorian Government in connection with changes to the regulation of the taxi industry – whether payment is income according to ordinary concepts – decision set aside

[BPFN and Commissioner of Taxation](#) (Taxation) [2023] AATA 2330 (28 July 2023); I R Molloy, Deputy President

Taxation – income tax – exempt current pension income (ECPI) – non-arm’s length income (NALI) – arm’s length transaction – borrowing – lending – loan agreements – loan facility – interest rate – deed of charge – funding resolutions – private lending – decision set aside

[Ross and Commissioner of Taxation](#) (Taxation) [2023] AATA 2495 (11 August 2023); I R Molloy, Deputy President

Asset betterment – assessable income – shortfall interest – taxable income – tax related liability – penalty assessment – base penalty amount – administrative penalty

[TKYY and Commissioner of Taxation](#) (Taxation) [2023] AATA 2497 (10 August 2023); B J McCabe, Deputy President

TAXATION - whether interest on loans can be deducted - where purpose of loans a fraudulent investment opportunity - where interest on loans was only partially paid - operation of s 14ZV of TAA permits applicant to raise deduction of interest - whether a finding of fraud or evasion should be made - whether penalties should be remitted - decision under review affirmed

## Veterans' Affairs

[Bird and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2327 (3 August 2023); J Sosso, Deputy President

VETERANS' ENTITLEMENTS – Claim for travel expenses of attendant – was the veteran accompanied by an attendant? – what is the veteran's entitlement for reimbursement of the attendant's travel expenses? – decision under review affirmed

[The Estate of Barry Campbell and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2303 (1 August 2023); A George, Senior Member and Member Ormston

VETERANS – Conditions – Statement of Principles concerning Chronic Obstructive Pulmonary Disease (No. 18 of 2023) - Statement of Principles concerning Fibrosing Interstitial Lung Disease (No. 86 of 2021) – Veterans Entitlement Act – Veterans Review Board – Australian Army – 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
<b>Chang &amp; Anor and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 864</a>
<b>Equality Australia Ltd and Commissioner of the Australian Charities and Not-for-profits Commission</b>	<a href="#">[2023] AATA 2161</a>
<b>YBLR and National Disability Insurance Agency</b>	<a href="#">[2023] AATA 1472</a>
<b>ZWCF and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 1441</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Demir v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 62</a>	<a href="#">[2023] FCA 870</a>
<b>GWRV v Minister for Immigration, Citizenship and Multicultural Affairs &amp; Anor</b>	<a href="#">[2021] AATA 2803</a>	<a href="#">[2023] HCASL 117</a> <a href="#">[2023] FCAFC 39</a> <a href="#">[2022] FCA 602</a>
<b>Knight v Commonwealth Ombudsman</b>	<a href="#">[2021] AATA 2504</a>	<a href="#">[2023] FCA 868</a>
<b>Merican v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 404</a>	<a href="#">[2023] FCA 931</a>
<b>Public Trustee of South Australia (as litigation representative for Isherwood) v National Disability Insurance Agency (No 2)</b>	<a href="#">[2021] AATA 3061</a>	<a href="#">[2023] FCA 852</a>
<b>QXZB v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2020] AATA 4851</a>	<a href="#">[2023] FCAFC 120</a> <a href="#">[2020] AATA 4851</a>
<b>Victorian Building Authority v Cau</b>	<a href="#">[2020] AATA 4851</a>	<a href="#">[2023] FCAFC 120</a> <a href="#">[2020] AATA 4851</a>



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