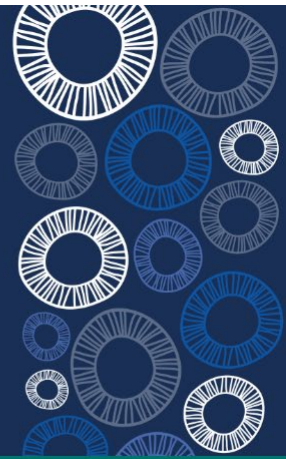




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 16/2024

12 August 2024

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

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

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Contents

AAT Recent Decisions	3
Bankruptcy	3
Child Support.....	3
Citizenship	4
Compensation.....	4
Freedom of Information	4
Migration	5
National Disability Insurance Scheme.....	6
Practice and Procedure	8
Refugee.....	10
Social Security.....	11
Taxation	12
Veterans' Affairs	14
Appeals.....	15
Appeals lodged.....	15
Appeals finalised	15

AAT Recent Decisions

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

Bankruptcy

[Fitzgerald and Inspector-General in Bankruptcy](#) [2024] AATA 2731 (31 July 2024); L Benjamin, Member

BANKRUPTCY – where Trustee objected to discharge of bankruptcy – where objection made out pursuant to subsection 149D(1)(f) of Bankruptcy Act 1966 (Cth) – Applicant does not have reasonable excuse for failure to meet statutory obligations – decision affirmed

Child Support

[Auger and Child Support Registrar](#) (Child support) [2024] AATA 1893 (24 April 2024); S De Bono, Senior Member

CHILD SUPPORT – extension of time to apply to tribunal – change of assessment – high costs of educating child and income, property and financial resources – application made one year after objections officer's decision – father ceased working and income reduced to zero – mother rested on rights – more appropriate to apply for further change of assessment – application refused

[CGJK and Child Support Registrar](#) (Child support second review) [2024] AATA 2725 (5 August 2024); A E Burke AO, Member

CHILD SUPPORT – review of care percentage determinations – whether there has been a change in the pattern of care – whether existing determination of care should be revoked – actual care – extent of care – inconsistent evidence – conflicting evidence – when actual care changed – whether special circumstances existed that prevented Father lodging objection – decisions under review set aside and new decisions substituted for child S and child A

[Greaves and Child Support Registrar](#) (Child support) [2024] AATA 1877 (22 April 2024); S Letch, Member

CHILD SUPPORT – application for extension of time – very short delay – arguable case – extension of time granted – decision under review set aside

[Rushforth and Rushforth](#) (Child support) [2024] AATA 1886 (22 April 2024); I Sheck, Member

CHILD SUPPORT – percentage of care – changed pattern of care – ground for departure – altered care arrangements – decision under review set aside and substituted

[Shovelton and Shovelton](#) (Child support) [2024] AATA 1887 (19 April 2024); J Thomson, Member

CHILD SUPPORT – percentage of care – court orders – agreement by parents that care percentages accurate – not necessary to consider circumstances of mother’s late objection to initial decision – decision under review set aside and substituted

[Stepney and Ziegler](#) (Child support) [2024] AATA 2014 (23 April 2024); C Breheny, Member

CHILD SUPPORT – percentage of care – date of effect – lodging objection within the required time frame – not satisfied that there are special circumstances – decision under review affirmed

[Thomas and Newhouse](#) (Child support) [2024] AATA 2028 (19 April 2024); S Hoffman, Member

CHILD SUPPORT – change of assessment – income, property and financial resources – earning capacity – adjusted taxable income is varied – decision under review set aside and substituted

Citizenship

[Al Ayoubi and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2024] AATA 2667 (30 July 2024); Dr S Fenwick, Member

CITIZENSHIP – application for citizenship by conferral – national of Lebanon – whether applicant is of good character – convictions for family violence and other acts of violence – multiple traffic offences – consideration of time passed since most recent offending – decision affirmed

Compensation

[Drazinic and Military Rehabilitation and Compensation Commission](#) (Compensation) [2024] AATA 2706 (1 August 2024); A George, Senior Member

VETERANS – Australian Army – whether applicant sustained an injury – whether applicant entitled to compensation – panic disorder – adjustment disorder – anxiety disorder – chronic insomnia disorder – hip osteoarthritis – bilateral rotator cuff syndrome – lumbar spondylosis – decisions under review affirmed

[Kelk and OSM Australia Pty Ltd](#) (Compensation) [2024] AATA 2733 (2 August 2024); L Benjamin, Member

COSTS - Application for costs of and incidental to appeal - where Applicant successful party in substantive application before Tribunal - Respondent contends costs unjust - where costs appropriate in present case - costs to be agreed and failing such agreement to be taxed

Freedom of Information

[Francis and Chief Executive Officer, Sport Integrity Australia](#) (Freedom of information) [2024] AATA 2687 (24 June 2024); R I Hanger AM KC, Deputy President

FREEDOM OF INFORMATION – request for access – right of access to documents – whether document is exempt from disclosure – whether document is lawfully available – whether document is in the public domain – whether a leak constitutes public disclosure- whether there has been a breach of confidence

[Patrick and Secretary, Department of Industry, Science and Resources](#) (Freedom of information) [2024] AATA 2689 (31 July 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – review of decision of Department of Industry, Science and Resources with respect to documents relating to a gas reservation scheme – respondent contends that material in the documents in issue is exempt from disclosure under various provisions of the FOI Act relating to international relations (s 33(a)(iii)), legal professional privilege (s 42) and material obtained in confidence (s 45), together with conditional exemptions for Commonwealth-State relations (s 47B) and deliberative processes (s 47C) – consideration of whether there was sufficient evidence to establish that information received by the Commonwealth was confidential and that it was received in confidence for the purposes of s 45 and s 47B of the FOI Act – public interest test with respect to deliberative material found to favour access – decision under review set aside

Migration

[Eromosele](#) (Migration) [2024] AATA 1632 (5 June 2024); K Raif, Senior Member

MIGRATION – cancellation – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – incorrect information in the visa application – amended birth certificates for children – undeclared relationship with a previous partner now deceased – former wife accepted parental responsibilities for step-children – employment in the disability sector – best interests of the Australian citizen child – decision under review set aside

[Gao](#) (Migration) [2024] AATA 1615 (5 June 2024); J Pennell, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect answers and a bogus document in a previous visa application – IELTS Test report for another person – establishment of multiple businesses providing employment – best interests of the child – financial hardship – decision under review set aside

[Johnny](#) (Migration) [2024] AATA 1531 (28 May 2024); K Raif, Senior Member

MIGRATION – Child (Residence) (Class BT) visa – Subclass 802 (Child) – applicant became a dependent child since the last substantive visa application – Order of Adoption – visa application sent by post delayed – no substantive visa at the time of visa application – best interests of the child – referral for Ministerial Intervention – decision under review affirmed

[Leo'o Olo and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) AATA 2774 (8 August 2024); R Bellamy, Senior Member

MIGRATION – cancellation of Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether to exercise the discretion to cancel his visa – consideration of Ministerial Direction No. 110 – repeated serious violent offending – decision under review affirmed

[Nguyen](#) (Migration) [2024] AATA 1537 (31 May 2024); A McMurrin, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Graduate Work stream – Australian study requirement – course completion date – Electrical Engineer – qualification 'closely related' to nominated occupation – decision under review remitted

[Richardson](#) (Migration) [2024] AATA 1646 (31 May 2024); D Kelly, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – position of Motor Mechanic – visa application over 6 months after the nomination approval – contribution to Australia – applicant working with V8 supercars – applicant’s spouse registered is an NDIS provider – referral for Ministerial Intervention – decision under review affirmed

[SABCHA PTY LTD](#) (Migration) [2024] AATA 1436 (22 May 2024); M Cooke, Senior Member

MIGRATION – Employer Nomination – approval of nominated position – Temporary Residence Transition stream – adverse information – major ongoing investigation by the Fair Work Office (FWO) – underpayment – failure to keep records – reasonable to disregard – skills shortages – hospitality industry – allegations denied by applicant – decision under review affirmed

[Sione and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2024] AATA 2701 (1 August 2024); Dr S Fenwick, Member

MIGRATION – mandatory cancellation of visa – national of Samoa – Class BC (Subclass 100) Partner visa – failure to pass character test – multiple convictions for offences of violence – multiple convictions for family violence – diverse other offending – whether another reason mandatory cancellation should be revoked – Ministerial Direction No. 110 applied – ties to Australia and best interests of minor children considered – decision affirmed

[Wright and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 2680 (30 July 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Special Category (Class TY) (subclass 444) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – Applicant convicted of indecently dealing with a child under the age of 13 years – offending involved a serious breach of trust – Applicant’s partner is Australian citizen – Applicant’s two biological daughters are Australian citizens – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 110 – decision under review is affirmed

[Yago and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2024] AATA 2775 (6 August 2024); Ms A E Burke AO, Member

CITIZENSHIP – refusal of approval for Australian citizenship by conferral – citizenship test exemption – whether Applicant suffers from a permanent or enduring mental incapacity at the time of application – medical evidence considered – decision set aside and remitted to Department

National Disability Insurance Scheme

[Clixby and National Disability Insurance Agency](#) [2024] AATA 2669 (30 July 2024); The Hon P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of supports in plan – epilepsy – Supported Disability Accommodation (SDA) – nursing care – probative evidence – prescription medication – reasonable and necessary support – medical advice – veracity of evidence – midazolam – decision under review affirmed

[Gaffiero and National Disability Insurance Agency](#) [2024] AATA 2641 (26 July 2024); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of supports – adult participant who is deaf – review of statement of participant supports in NDIS plan – whether request for funding for the purchase and installation of a specific brand of hard-wired visual alerting system (“Visualert”) should be included – whether requested support should be funded under the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) – whether requested support represents “value for money” – requested support does not meet the “reasonable and necessary support” criteria under s 34(1) of the NDIS Act – instead, the Applicant should be provided with funding for the cost of supplementing her current portable Bellman Visit alerting system – decision set aside and remitted with a direction that a new statement of participant supports be approved for the Applicant to include funding for the cost of supplementing the Applicant’s current portable alerting system

[Pett and National Disability Insurance Agency](#) [2024] AATA 2690 (30 July 2024); B J Illingworth, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – whether compensation received for 2 personal injury claims was a compensation reduction amount within the meaning of section 11 of the National Disability Insurance Scheme Act 2013 – if a compensation reduction amount applied, the appropriate calculation of the compensation reduction amount to be applied

[PRALJAK and NATIONAL DISABILITY INSURANCE AGENCY](#) [2024] AATA 2685 (31 July 2024); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – access criteria – multiple impairments – permanent impairment – whether impairment results in substantially reduced functional capacity – decision under review set aside – decision substituted that applicant meets the access criteria

[Richards and National Disability Insurance Agency](#) [2024] AATA 2708 (2 August 2024); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access – chronic back pain- anxiety and depression – whether applicant meets disability requirements – NDIS Act s24(1)(c) – whether impairments are permanent- whether impairments substantially reduce functional capacity – whether NDIS required for lifetime – whether supports most appropriately funded through NDIS – Queensland Community Support Scheme – NDIS Act s25 – whether meets the early intervention requirements – decision under review affirmed

[Willcocks and Chief Executive Officer, National Disability Insurance Agency](#) [2024] AATA 2722 (5 August 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 requirement – 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 impairments affect capacity for social and economic participation – whether likely to require support under the NDIS for the person’s lifetime – disability requirements met – reviewable decision set aside

Practice and Procedure

[Branch and Chief Executive Officer, National Disability Insurance Agency](#) [2024] AATA 2778 (26 July 2024); P French, Member

National Disability Insurance Scheme – reviewable decision of Chief Executive Officer – decision to approve the statement of participant supports in a participant’s plan – applicant seeks review of Agency’s record of diagnosis or impairment – diagnosis/impairment does not form part of a statement of participant supports – no jurisdiction – application misconceived – applicant seeks assistance of NDIA to obtain compensation and redress for alleged mistreatment by State child protection and mental health authorities and fraud by Optus – application misconceived – applicant seeks to include subsistence and care costs of pet dog in statement of participant supports – dog not an assistance animal – no evidence as to how dog constitutes an impairment related support – no evidence that such subsistence and care costs are other than day-to-day living costs of a pet – request lacking in substance – application dismissed

[CRLW and National Disability Insurance Agency](#) [2024] AATA 2686 (25 July 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – the applicant passed away before the application for review was finalised – residence requirement for access cannot be met – no reasonable prospect of success – application dismissed

[Dring; Secretary, Department of Social Services and](#) (Social services second review) [2024] AATA 2717 (2 August 2024); K Parker, Senior Member

PRACTICE AND PROCEDURE – stay application – decision under review concerns the rate of age pension payable to the Respondent under the Social Security Act 1991 (Cth) – Respondent seeking implementation of the decision under review requiring the back payment to him in the vicinity of \$30,000 – Applicant concerned there is a real risk he will be unable to subsequently recover this lump sum payment if he is successful in this application for review – Applicant opposes request for the stay – Tribunal satisfied that it is desirable to order a stay – stay application granted – matter referred for an expedited substantive hearing as parties have indicated their readiness and the issues are discrete

[Dyne and National Disability Insurance Agency](#) [2024] AATA 2719 (2 August 2024); J Toohey, Member

National Disability Insurance Scheme – Jurisdiction Issue – Where no request for review made under subsection 100(3) – Where no review decision made under subsection 100(6) – Tribunal does not have jurisdiction under section 103

[HFTS and Commissioner of Taxation](#) (Taxation) [2024] AATA 2707 (2 August 2024); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – Third-party access request – decision published and anonymised – third-party access denied

[Jones and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 2705 (1 August 2024); B J Illingworth, Senior Member

PRACTICE AND PROCEDURE - interlocutory application – extension of time – application to review revocation of Australian citizenship over five years out of time – revocation of Australian citizenship resulting in grant of ex-citizen visa – subsequent cancellation of ex-citizen visa on character grounds – whether it is arguable that the Ministerial revocation discretion miscarried and was for the purpose of retribution, denunciation or deterrence – merits of application, potential miscarriage of justice, and fairness to the Applicant weigh heavily in Applicant’s favour – application for extension of time granted

[Martelli and Secretary, Department of Social Services](#) (Social services second review); [2024] AATA 2721 (4 August 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – family tax benefit debt – where applicant sought second review – where application for second review lodged out of time – where dispute about whether letter received – where first review provided oral decision but no written reasons – where tribunal later advised applicant she could seek written reasons – where relevant Act requires applicant to be told at same time oral reasons are given – where aspects of Tribunal’s letter to applicant ambiguous – where letter deemed to have been received – but where practice followed led to lack of procedural fairness – interests of justice favour time being extended for second review – extension of time granted

[Plonsker and Secretary, Department of Employment & Workplace Relations](#) [2024] AATA 2716 (2 August 2024); K Parker, Senior Member

PRACTICE AND PROCEDURE – application for extension of time (‘EOT Application’) for lodgement of an application for review – Respondent opposes EOT Application on the basis the substantive application would serve no utility – Applicant seeks review of a decision to refuse to re-credit her HELP balance with an amount equal to the amounts of vocational education and training (‘VET’) FEE-HELP assistance in respect of three VET units of study with a VET provider – Applicant successfully completed all units – substantive application lodged two days after expiry of 28-day statutory time limit under s 29(2) of the Administrative Appeals Tribunal Act 1975 (Cth) – substantive application has no prospects of success due to the wording of subclause s 46AA(1) in Schedule 1A of the Higher Education Support Act 2003 (Cth) – not reasonable in all the circumstances to extend the time for lodgement – EOT Application not granted

[Tran and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2695 (1 August 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – where carer payment and carer allowance suspended – where applicant sought internal review of suspension decision – where applicant sought first review by Tribunal – where applicant now seeks second review and stay of decision – what is the decision the subject of the stay – decision is operative decision not first review decision – applicant in gaol but not yet convicted of an offence or sentenced – effect of a stay – no purpose in Tribunal staying the decision where carer payment subsequently cancelled – no application for internal review of cancellation decision – no first review of cancellation decision – desirability of combining matters – whether tribunal should exercise discretion to otherwise affect the implementation of the reviewable decision – stay refused

SOCIAL SECURITY – pensions, benefits and allowances – carer payment and carer allowance – purpose of benefits is for income support – income support not necessary when recipient is in gaol

Refugee

[1724993](#) (Refugee) [2024] AATA 2047 (30 April 2024); J Pennell, Senior Member

REFUGEE – protection visa – Taiwan and Hong Kong – relationship ceased and first applicant departed Australia – no response to invitation to comment – no jurisdiction – second applicant's reliance on first applicant's claims – fear of harm from moneylender and gang – tracked and threatened – no explanation for fear of harm in Taiwan if returned to Hong Kong – second applicant's loan from finance company half repaid – passage of time – vague oral evidence and no documentary evidence – country information – effective state protection measures – decision under review affirmed

[1814427](#) (Refugee) [2024] AATA 1367 (8 April 2024); M Haag, Member

REFUGEE – Protection Visa – Vietnam – imputed political opinions - being perceived to hold views or information adverse to the interests of the Vietnamese Government as a result of his connection to his father – fear harm on return to Vietnam due to the circumstances of the first applicant's father's employment for the Government owned company – a real chance that authorities of the Vietnamese Government will seek to harm the applicant – decision under review remitted

[1831471](#) (Refugee) [2024] AATA 1583 (14 March 2024); K Chapple, Member

REFUGEE – protection visa – Vietnam – political opinion – anti-government opinions and economic conditions – membership of particular social group – domestic violence, divorce and threats from ex-husband – period as unlawful non-citizen – application prepared by another person without applicant's knowledge of contents – claim on political ground not relied on and claim on domestic violence ground limited to evidence given at hearing – country information – prevalence of domestic violence, laws and inconsistent police response – uncontested and contested divorce procedures – claim of domestic violence accepted – limited contact and no evidence of violence since divorce and ex-husband living in different area – applicant's partner and child in Australia, with partner's application for protection visa in progress – decision under review affirmed

[1900598](#) (Refugee) [2024] AATA 1578 (29 February 2024); T Caravella, Member

REFUGEE – protection visa – Cameroon – ethnicity and imputed political opinion – Anglophone Cameroonian – crime, high unemployment and discrimination but no harm – separatist insurgency and widespread violence while applicant in Australia – social media activity – fear of gender-based harm – vulnerability as young single woman – brother's protest activities – arrested, missing for some time and now refugee in third country – unhesitant, detailed and consistent evidence – one supporting statement overstates applicant's activities – country information – no adequate state or police protection or right to enter or reside in any other country – decision under review remitted

[1909589](#) (Refugee) [2024] AATA 1381 (13 February 2024); P Hunter, Member

REFUGEE – protection visa – India – particular social group – land dispute with cousin – credibility concerns – inconsistent evidence – effective protection measure – localised chance of harm – internal relocation – decision under review affirmed

REFUGEE – protection visa – India – arrival in Australia by sea – Territory of Ashmore and Cartier Islands – Part 7-reviewable decision – section 91K bar not applicable – validity of second visa application – section 48A bar not lifted – invalid visa application – decision under review substituted

[1931741](#) (Refugee) [2024] AATA 1580 (15 February 2024); W Pennell, Senior Member

REFUGEE – protection visa – South Africa – ethnicity and membership of particular social groups – white South African – violent crimes and harassment, trauma and anxiety – workers dismissed and replaced by less-skilled people – employment opportunities and capacity to subsist – government policies and corruption and police corruption or inaction – education and health care – gender-based violence – level of state protection available – extensive new evidence, information and submissions – country information – attacks on whites falls short of ‘white genocide’ – Convention protects from persecution, not discrimination – relocation not available – complementary protection – real risk of significant harm – members of family unit – decision under review remitted

[2007730](#) (Refugee) [2024] AATA 1526 (5 February 2024); B Cullen, Senior Member

REFUGEE – protection visa – Zimbabwe – political opinion – member of opposition party – membership of particular social groups – women who have experienced family violence – returned failed asylum seeker – HIV positive people – work with specified people, gathering information about conditions in specified places – arrested, detained, assaulted, sexually abused and threatened – straightforward and credible evidence – country information – political instability and danger of actual or imputed lack of support for government – members of family unit children – exposure to violence, stress and trauma – son assaulted – decision under review remitted

[2100168](#) (Refugee) [2024] AATA 1174 (12 January 2024); A Murphy, Member

REFUGEE – protection visa – Iran – main issue – whether there is valid visa application to consider – initial arrival at Territory of Ashmore and Cartier Islands – Full Federal Court decision that not fast track applicant – granted Temporary Safe Haven – thought to trigger statutory bar in s 91K – applied for TPV on 28 June 2017 – erroneously referred to as an application for Safe Haven Enterprise visa – TPV application deemed invalid due to statutory bar triggered by grant of subclass 449 visa – statutory bar lifted – applicant lodged further application for SHEV on 20 August 2020 – refused by delegate on 5 January 2021 – Full Court of the Federal Court judgement that arrivals at Territory of Ashmore and Cartier Islands not irregular maritime arrivals – therefore 2017 TPV application was valid – Tribunal identified that SHEV application which is subject of review application appeared to be invalid – first visa application had not been refused or withdrawn at time second visa application was made – invalidity cannot now be cured by withdrawing the protection visa application lodged in 2017 – valid application for a TPV awaiting determination by Department that was lodged prior to application for SHEV – applicant does not satisfy requirements in item 1404 of Schedule 1 to the Regulations – visa application invalid and cannot be considered – decision under review set aside

Social Security

[Brinkley and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2720 (5 August 2024); P Ranson, Member

SOCIAL SECURITY– disability support pension – whether medical conditions are fully diagnosed, fully treated and fully stabilised – whether impairment attracts 20 points or more under the Impairment Tables during the Relevant Period – whether there has been participation in program of support – some treatments not proceeded with – decision under review affirmed

[Christensen and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2705 (2 August 2024); P Ranson, Member

Social Security – Age Pension – rate of pension – assets – property valuation – homeowner – sole owner – new indexation of asset valuation – increase in asset valuation – reduction of rate of pension based on asset valuation – formal valuation accepted – real estate appraisal not accepted – decision under review affirmed

[Hammouche and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2668 (30 July 2024); Dr S Fenwick, Member

SOCIAL SERVICES – qualification for Austudy and COVID-19 supplement – activity test – whether undertaking full-time study – whether all or part of any debts should be written-off or waived – decision affirmed

[McIntyre and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2772 (7 August 2024); D. J. Morris, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – where applicant receiving newstart allowance – applicant originally receiving benefit as a single person – where applicant married – where applicant contends he advised respondent of marriage – where status as member of a couple not recorded – where overpayment occurred owing to exceeding income threshold through wife's income – debt – internal review affirmed debt – can all or part of debt be written off or waived – first review waived all of debt – statutory provisions regarding write off or waiver – special circumstances in this case – first review decision is set aside and substituted with a decision waiving part of the debt

[Pietsch and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2678 (31 July 2024); A Nikolic, AM CSC, Senior Member

SOCIAL SECURITY – age pension – whether Applicant is a member of a couple for purpose of calculating rate of age pension – whether special reason not to treat Applicant as member of a couple – claims of discriminatory application of the pension income test – claims of financial difficulty – reviewable decision affirmed

[Robert Wayne Collins and Veronika Mohor and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 2776 (9 July 2024); K Millar, Deputy President

SOCIAL SECURITY – overpayment – Age Pension – Newstart Allowance – debts due to Commonwealth – whether applicants were overpaid – whether income reported to Centrelink – bankruptcy – effect of bankruptcy on any debt – where debt incurred by fraud – whether overpayment was calculated correctly – transactions incorrectly attributed as income – decisions under review set aside

Taxation

[Armidale Jockey Club and Commissioner of Taxation](#) (Taxation) AATA 2726 (30 July 2024); D K Grigg, Senior Member

TAX – assessment of superannuation guarantee charge - whether correctly imposed - whether jockeys deemed “employees” of turf racing club pursuant to section 12(3) or section 12(8) of the Superannuation Guarantee (Administration) Act 1992 – decision under review affirmed

[Australian Turf Club Ltd and Commissioner of Taxation](#) [2024] AATA 2728 (30 July 2024); D K Grigg, Senior Member

TAX - assessment of superannuation guarantee charge - whether correctly imposed - whether jockeys deemed “employees” of turf racing clubs pursuant to section 12(3) or section 12(8) of the Superannuation Guarantee (Administration) Act 1992 – decision under review varied

[Bootlis and Commissioner of Taxation](#) (Taxation) [2024] AATA 2723 (2 August 2024); I Hanger AM KC, Deputy President

Where applicant’s tax agent lodged tax returns for relevant years – where applicant filed amended tax returns containing sizable deductions without tax agents knowledge in respect of a trust that did not exist – where applicant accepted statements made in the amended tax returns were incorrect – whether Commissioner has correctly imposed a penalty for recklessly making a false and misleading statement – whether Commissioner’s decision to not exercise discretion to remit penalties should have been made differently – whether claimed hardships enliven discretion to remit – whether applicant has discharged her burden of proof pursuant to section 14ZZK(b)(i) of the Taxation Administration Act 1953 (Cth)

[CJYB and Commissioner of Taxation](#) (Taxation) [2024] AATA 2640 (29 July 2024); R Olding, Senior Member and N Gaudion, Member

TAXATION – INCOME TAX – burden of proof – whether PAYG credits form part of assessment under review – where applicant did not give evidence – decisions affirmed

[Clarence River Jockey Club Ltd and Commissioner of Taxation](#) (Taxation) AATA 2729 (30 July 2024); D K Grigg, Senior Member

TAX – assessment of superannuation guarantee charge - whether correctly imposed – whether jockeys deemed “employees” of turf racing clubs pursuant to section 12(3) or section 12(8) of the Superannuation Guarantee (Administration) Act 1992 – decision under review varied

[CMGT and District Registrar, Administrative Appeals Tribunal](#) [2024] AATA 2777 (6 August 2024); B J Illingworth, Senior Member

FEES - Registry refused Application for reduction of fee – Application to review refusal – Applicant failed to comply with directions – Applicant failed to provide sufficient evidence – appropriate opportunity given for the Applicant provide full financial records – Applicant failed to provide complete bank statement – Applicant failed to provide explanation in relation to an undisclosed bank account that he regularly receives money from – request for reduction refused – the decision under review is affirmed

[Grenfell Jockey Club Limited](#) (Taxation) [2024] AATA 2730 (30 July 2024); D K Grigg, Senior Member

TAX – assessment of superannuation guarantee charge - whether correctly imposed – whether jockeys deemed “employees” of turf racing clubs pursuant to section 12(3) or section 12(8) of the Superannuation Guarantee (Administration) Act 1992 – decision under review affirmed

[Illawarra Turf Club Ltd and Commissioner of Taxation](#) (Taxation) AATA 2725 (30 July 2024); D K Grigg, Senior Member

TAX – assessment of superannuation guarantee charge - whether correctly imposed – whether jockeys deemed “employees” of turf racing clubs pursuant to section 12(3) or section 12(8) of the Superannuation Guarantee (Administration) Act 1992 – decision under review varied

Veterans’ Affairs

[Lowth and Repatriation Commission](#) (Veterans’ entitlements) [2024] AATA 2692 (25 July 2024); McLean Williams, Member

VETERANS’ AFFAIRS – Defence-related claims – accepted medical condition – correct date of effect – period for an application lodgement – whether discretion to extend time limit to lodge application is permissible – decision under review affirmed

[Smith and Repatriation Commission](#) (Veterans’ entitlements) [2024] AATA 2724 (5 August 2024); Mr S. Webb, Member

VETERANS’ ENTITLEMENTS – claim for disability pension – operational service – incapacity – kind of disease – idiopathic Parkinson’s Disease – clinical onset or clinical worsening – standard of proof – Statement of Principles – hypothesis of service causation – factors – exposure to pesticides – depressive disorder or generalised anxiety disorder – smoking – ‘regular smoking habit’ threshold – factual matters raised by the materials – requirement to consider the whole of the material – hypothesis not pointed to by raised facts – no ‘reasonable hypothesis’ – disease not service-caused – decision affirmed

[YRXW and Military Rehabilitation and Compensation Commission](#) (Veterans’ entitlements) [2024] AATA 2681 (31 July 2024); D J Morris, Senior Member

VETERANS’ ENTITLEMENTS – where the applicant served in the Royal Australian Navy – where the applicant has several medical conditions accepted as service-caused – where the applicant was assessed as having a combined impairment rating of 80 points – where the applicant received an additional payment for two eligible young persons under s 80 of the Military Rehabilitation and Compensation Act 2004 – where liability was accepted for a further service-caused condition – where the applicant was assessed as having 89 impairment points – where a delegate determined applicant had received the maximum compensation payable under s 80 – where the applicant sought review of that determination – where the Veterans’ Review Board affirmed the determination – where the applicant sought review by the Tribunal – construction of s 80 of the Act – beneficial nature of the Act – submissions about extrinsic material – explanatory memorandum wording – meaning of the word ‘whenever’ – legislative intention is clear – decision under review is affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Pedel and Secretary, Department of Social Services	[2024] AATA 2182
SRGF and Comcare	[2024] AATA 1818
Wang and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 2357

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Farrow-Smith v Comcare	[2022] AATA 3157	[2024] FCA 835
Ghimire v Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 3	[2024] FCA 816
He v Secretary, Department of Education, Skills and Employment	[2020] AATA 1491	[2024] FCA 819 [2023] FedCFamC2G 356
Luckman v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2024] AATA 456	[2024] FCA 851
NRWQ v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2879	[2024] FCAFC 101 [2023] FCA 950
Spall v Minister for Home Affairs	[2021] AATA 4290	[2024] FCA 849
RCLN v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1335	[2024] FCA 876



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