



Administrative  
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AAT  
Bulletin

# AAT Bulletin

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

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

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# AAT Recent Decisions

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

## Child Support

[FFTS and Child Support Registrar](#) (Child support second review) [2022] AATA 2546 (25 July 2022); G Lazanas, Senior Member

CHILD SUPPORT – INTERLOCUTORY – practice and procedure – stay order application – percentage of care decision – whether stay order would secure effectiveness of hearing – prospects of success – prejudice or hardship – stay order granted

[MPWY and Child Support Registrar](#) (Child support second review) [2022] AATA 2630 (17 August 2022); J Rau SC, Senior Member

CHILD SUPPORT – percentage of care – change in percentage of care – whether percentage of care changed – whether care arrangement is complied with – whether reasonable action taken to obtain care of the children – decision under review is varied

[NXVH and Child Support Registrar](#) (Child support second review) [2022] AATA 2594 (6 July 2022); C J Furnell, Senior Member

CHILD SUPPORT – previous application dismissed for failure to comply with Tribunal Direction within reasonable time – application for extension of time to lodge a new application for Tribunal review – Social Services and Child Support Division of Tribunal refused application for extension of time – whether Tribunal able to grant extension of time – whether Tribunal functus officio – whether Applicant seeking reinstatement of previous application – principles and criteria relating to extension of time applications – length of delay – reason for delay – prejudice to the respondent and other party – general prejudice – merits of underlying application – decision to refuse extension of time application affirmed

[Bugden and Sarchet](#) (Child support) [2022] AATA 2120 (7 June 2022); T Bubutievski, Member

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

[Kingaby and Rixon](#) (Child support) [2022] AATA 2373 (27 May 2022); D Tucker, Member

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

[Leyton and Leyton](#) (Child support) [2022] AATA 2058 (27 May 2022); J Longo, Senior Member (Presiding) and H Moreland, Member

CHILD SUPPORT – departure determination – costs of education - manner expected by both parents - cost of maintaining the children are significantly affected – a ground for departure established – decision to depart - decision under review set aside and substituted

[Parnell and Colbeck](#) (Child support) [2022] AATA 2105 (7 June 2022); T Bubutievski, Member

CHILD SUPPORT – particulars of the administrative assessment – whether post separation costs should be excluded from the adjusted taxable income for the last relevant year – additional income was earned not in the ordinary course after separation – an amount should be excluded - decision under review set aside and substituted

[Tompson and Tompson](#) (Child support) [2022] AATA 2141 (31 May 2022); P Jensen, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable incomes for past periods for the liable parent should be changed – decision not to amend - decisions under review affirmed

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable incomes for past period for the liable parent should be changed – decision under review set aside and substituted

## **Citizenship**

[Al Thufairi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 2628 (14 June 2022); A Poljak, Senior Member

CITIZENSHIP – application for citizenship by conferral – application for citizenship refused – whether applicant's identity satisfied under s24 of the Australian Citizenship Act 2007 (Cth) – whether applicant is of good character under s21(2)(h) of the Australian Citizenship Act 2007 (Cth) – decision under review affirmed

[\*\*FVVM and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Citizenship) [2022]  
AATA 2595 (2 August 2022); C J Furnell, Senior Member

CITIZENSHIP – application for citizenship by conferral – refusal of citizenship – Australian Citizenship Act 2007 (Cth) – whether the Tribunal can be satisfied that applicant is of good character – application of Citizenship Procedural Instruction 15 – provision of false personal information regarding family composition – Tribunal not satisfied Applicant is of good character – decision affirmed

[\*\*Gilbert and Minister for Immigration, Citizenship, and Multicultural Affairs\*\*](#) (Citizenship) [2022]  
AATA 2600 (16 August 2022); J Rau SC, Senior Member

CITIZENSHIP – application for Australian citizenship – application for citizenship refused – whether Tribunal is satisfied Applicant is of good character – prior conviction – decision under review is affirmed

[\*\*HVTP and Minister for Immigration, Citizenship, and Multicultural Affairs\*\*](#) (Citizenship) [2022]  
AATA 2544 (11 August 2022); R Bellamy, Senior Member

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – section 21(2)(h) of Australian Citizenship Act 2007 – whether Applicant is of good character – decision under review affirmed

[\*\*Josiah and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Citizenship) [2022]  
AATA 2627 (1 August 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – where Applicant's country of birth is Liberia – delegate not satisfied of Applicant's identity – s 24(3) Australian Citizenship Act 2007 (Cth) – whether Tribunal is satisfied of Applicant's identity – Citizenship Policy – National Identity Proofing Guidelines – Revised Citizenship Procedural Instructions – three pillars of identity – Applicant claims to have no relatives overseas – no biometric information – no documents from life prior to arrival in Australia – inconsistencies in life story – payments to persons with same surname overseas – Tribunal not satisfied of Applicant's identity – decision affirmed

[\*\*Mosavi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs\*\*](#) (Citizenship) [2022] AATA 2545 (20 June 2022); Dr D Cremean, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – good character – whether Tribunal is satisfied of Applicant's good character – s 21 Australian Citizenship Act 2007 (Cth) – Citizenship Procedural Instructions – charges for unlawful assault, contravention of a family violence intervention order, and failure to answer bail – Tribunal not satisfied that Applicant is of good character – decision affirmed

**Nowrozi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2022] AATA 2550 (12 August 2022); B J Illingworth, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – application for citizenship refused – whether Tribunal is satisfied as to the Applicant’s identity pursuant to section 24(3) of the Australian Citizenship Act 2007 – Applicant’s credibility questioned – decision under review is affirmed

**Rusanov and Minister for Immigration, Citizenship and Multicultural Affairs** (Citizenship) [2022]

AATA 2548 (12 August 2022); R Bellamy, Senior Member

CITIZENSHIP – refusal of an application for Australian citizenship by conferral – section 21(2)(h) of Australian Citizenship Act 2007 – whether Applicant is of good character – decision under review affirmed

**Vo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Citizenship) [2022] AATA 2520 (9 August 2022); C Puplick AM, Senior Member

CITIZENSHIP – by conferral – permanent resident – application for citizenship – applicant married to Australian citizen – applicant does not meet residence requirements – discretion under subsection 22(9) of the Australian Citizenship Act 2007 (Cth) enlivened – application of Australian Citizenship Instructions – whether applicant has a close and continuing association with Australia – discretion not to be exercised in Applicant’s favour – decision under review affirmed

CITIZENSHIP – by conferral – permanent resident – application for citizenship – Applicant a minor at the time of application – whether Applicant satisfies requirements of subsection 21(5) of the Australian Citizenship Act 2007 (Cth) – whether Applicant subject to significant hardship – whether discretion in subsection 24(2) of the Australian Citizenship Act 2007 (Cth) should be exercised adversely to the Applicant – Tribunal does not import other tests into exercise of discretion – decision set aside and remitted

## **Compensation**

**Fratar and John Holland Pty Ltd** (Compensation) [2022] AATA 2602 (16 August 2022); I R Hanger

AM QC, Deputy President

COMPENSATION – right to compensation, except for medical treatment for a left eye injury, cataract and retinal tear and a secondary adjustment disorder with depressed mood were suspended – failure to undertake a rehabilitation program without reasonable excuse – decision affirmed

## Corporations

[Pogana Pty Ltd and Registrar of Personal Property Securities](#) [2022] AATA 2441 (2 August 2022); J C Kelly, Senior Member

PERSONAL PROPERTY SECURITIES – amendment demand for a financing change statement to be registered to amend registration of security interest – whether there are reasonable grounds to suspect that the amendment was not authorised – application of s 32 of the Personal Property Securities Act 2009 (Cth) – whether the secured party expressly or impliedly authorised a disposal giving rise to the proceeds – whether the secured party expressly or impliedly agreed that a dealing giving rise to the proceeds would extinguish the security interest – decision under review affirmed

## Customs

[Electracom Pty Ltd and Comptroller-General of Customs](#) [2022] AATA 2539 (10 August 2022); B McCabe, Deputy President and A Poljak, Senior Member

CUSTOMS – tariff classification of goods – whether subject goods are subject to special anti-dumping duties – consideration of Report to the Minister No. 148: Certain Aluminium Extrusions Exported to Australia from the People’s Republic of China and relevant ministerial notices – consideration of relevant legislation and cases – decisions under review affirmed

## Freedom of Information

[Hutchinson and Comcare](#) (Freedom of information) [2022] AATA 2435 (2 August 2022); Dr M Evans-Bonner, Senior Member

FREEDOM OF INFORMATION – appeal from decision of the Australian Information Commissioner – whether document subject to legal professional privilege under s 42 of the Freedom of Information Act 1982 (Cth) – Tribunal finds that the disputed document is subject to legal professional privilege and therefore exempt – Reviewable Decision affirmed

[Maurizi and Department of Foreign Affairs and Trade](#) (Freedom of information) [2022] AATA 2598 (15 August 2022); B W Rayment OAM QC, Deputy President

FREEDOM OF INFORMATION – whether access to certain documents pursuant to the Freedom of Information Act 1982 (Cth) may be granted, either wholly or in part – whether documents are exempt or conditionally exempt – reviewable decision affirmed

[QMSF and Chief Executive Officer, Services Australia](#) (Freedom of information) [2022] AATA 2488 (20 May 2022); Dr S Fenwick, Senior Member

FREEDOM OF INFORMATION – refusal of access to documents – whether all reasonable steps have been taken to find documents – whether documents in possession but cannot be found or do not exist – decision affirmed

[Rivas and Secretary, Attorney-General's Department](#) (Freedom of information) [2022] AATA 2599 (9 May 2022); B W Rayment OAM QC, Deputy President

FREEDOM OF INFORMATION – Extradition request/s made in respect of the applicant by a foreign country – documents already in the public domain – FOI request refused under s25 of the FOI Act – documents claimed to be exempt under s33(a)(iii) – decision affirmed

[Singh and Commonwealth Ombudsman](#) (Freedom of information) [2022] AATA 2597 (15 August 2022); B W Rayment OAM QC, Deputy President

FREEDOM OF INFORMATION – whether access to certain documents pursuant to the Freedom of Information Act 1982 (Cth) may be granted, either wholly or in part – whether documents are exempt or conditionally exempt – whether documents attract legal professional privilege – reviewable decisions affirmed

## **Migration**

[Barghachoun and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2492 (8 August 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class BF Transitional (permanent) visa (“his 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. 90 – decision under review is affirmed

[Bassi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2543 (14 June 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – substantial criminal record – whether another reason for revocation of mandatory cancellation – serious offending – possession of cocaine for distribution at private party – very serious offending but limited commercial purpose – interests of minor children in Australia carrying substantial weight – decision made on balance to revoke cancellation – decision under review set aside

[Boaza and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2645 (18 August 2022); A Poljak, Senior Member

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked? – Direction no. 90 considered – relevant law and material considered – decision under review set aside and substituted

[Buntin and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2604 (16 August 2022); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BS Subclass 801 (Partner) 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. 90 – breach of domestic violence orders – decision under review affirmed

[Chukwuma and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2653 (19 August 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class BB Subclass 155 Five Year Return 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 – possibility of indefinite detention considered – consideration of Ministerial Direction No. 90 – decision under review is set aside and substituted with a decision that the cancellation of the Applicant’s visa is revoked

[DJYG and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2553 (20 July 2022); T Tavoularis, Senior Member and A Julian-Armitage, Member

MIGRATION – Non-revocation of a mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – various traffic and drug-related offending, aggravated break and enter – Applicant presently residing with his family in New Zealand – decision under review affirmed

[Harshazi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2547 (12 August 2022); K Millar, Senior Member

MIGRATION – mandatory cancellation of Class BB Subclass 155 – Five Year Resident Return visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – decision under review is set aside and substituted

[Hill and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 2537 (14 July 2022); A George, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BC Subclass 100 Spouse (Permanent) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – decision under review affirmed

[LXHH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2490 (8 August 2022); M Griffin QC, Senior Member

MIGRATION – mandatory cancellation of visa – Class BC Subclass 100 Partner visa – where visa was cancelled under s 501CA(4) because applicant did not pass character test – substantial criminal record - Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – special consideration – mandatory cancellation of visa is not revoked - decision under review affirmed

[LYPM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2601 (25 July 2022); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa under s 501CA(4) – character test – substantial criminal record – juvenile offending – conviction not recorded – offending as young person – drug use – exercise of discretion to revoke cancellation of visa – Ministerial Direction No. 90 – primary and other considerations – protection of Australian community – strength, nature and duration of ties to Australia – impediments to removal – mandatory cancellation of visa revoked – decision under review set aside and substituted

[Okoh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2542 (6 July 2022); Dr N A Manetta, Senior Member

MIGRATION – refusal of bridging visa under s 501(1) of the Migration Act – Direction 90 – applicant guilty of participation in online frauds – sentence of two years – substantial criminal record – primary considerations in Direction 90 weigh against applicant – applicant refused protection visa but has filed review application in Tribunal that is awaiting listing – applicant not removed to detention despite having no visa – applicant not eligible to work without visa – doubts about ability of applicant to work and support himself on an ongoing basis pending hearing of review application – circumstances of case very unusual – other considerations may prevail over primary considerations in an appropriate case – decision set aside

[Pewhairangi and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 2596 (12 July 2022); Senior Member George

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – decision under review affirmed

[Pham and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 2551 (12 August 2022); A Nikolic AM CSC, Senior Member

MIGRATION – visa refusal – citizen of Vietnam – Bridging E (Class WE) and Combined Partner (Class UK/BS) Visa – rehabilitation and remorse – risk of engaging in criminal conduct in Australia – inconsistencies in evidence – intentional breach of migration laws – cultivation of commercial quantity of cannabis – risk of reoffending – best interests of children – exercise of discretion – Ministerial Direction No. 90 applied – reviewable decision affirmed

[PVFV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 2651 (10 August 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – Applicant is a 30-year-old woman with schizophrenia – Applicant is the subject of a guardianship and administration order made by the State Administrative Tribunal of Western Australia – Applicant came to Australia in 2004 at the age of 12 as a dependent under a partner visa and later a spouse visa – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of Applicant's minor son, nephews and nieces – expectations of the Australian community – Australia's international non-refoulement obligations – Applicant born in refugee camp in Kenya to Somali citizen parents – Country of reference is Somalia – Applicant owed protection obligations – links to the Australian community – strength, nature and duration of ties to Australia – Tribunal found that there is another reason to revoke the Cancellation Decision – Reviewable Decision set aside and substituted – Legal consequences of the Tribunal's decision – prospect of indefinite detention – whether s 501F(3) of the Migration Act 1953 (Cth) applies so that regardless of the Tribunal's decision the Applicant would be indefinitely detained – s 501F(3) found not to apply – recommendation Applicant should be released from immigration detention as soon as possible so as not to be unlawfully detained

[RJFB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 2538 (10 August 2022); M East, Member

MIGRATION – decision of delegate of Minister to refuse the Applicant's application for a protection visa – character test – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no domestic violence – no minor children – expectations of the Australian community – extent of impediments if removed – links to the Australian community – strength, nature and duration of ties – Reviewable Decision set aside and substituted with the decision that the power conferred by s 501(1) of the Migration Act not be exercised in respect of the Applicant's application for a Protection (subclass 866) visa

[SGTX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 2536 (10 August 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – convictions for sexual offences against a minor and aggravated burglaries – whether there is 'another reason' to revoke mandatory cancellation decision – applicant has strong links to the Australian community and would face significant impediments and serious risk of harm if removed to South Sudan – the primary considerations of the protection and expectations of the Australian community outweigh the countervailing considerations - the decision under review is affirmed

[Shemaon and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 2650 (12 August 2022); C Puplick AM, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – expectations of the Australian community – impediments to removal – links to the Australian community – decision set aside and substituted

[Skedden and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 2440 (2 August 2022); J Rau SC, Senior Member

MIGRATION – mandatory revocation of Class TY Subclass 444 Special Category (temporary) visa under section 501(3A) – where Applicant does not pass the character test – whether the discretion to revoke the visa cancellation should be exercised – consideration of Ministerial Direction No. 90 – significant criminal record prior to entry not disclosed on entry card – minor children in Australia – Family violence – decision under review is affirmed

[\*\*SQNX and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2022] AATA 2649 (18 August 2022); J Redfern, Deputy President and J Owen, Deputy President

MIGRATION – non-revocation of mandatory cancellation of a subclass 444 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. 90 – mental health – guardianship – protection of and risk to the Australian community – extent of impediments – deportation notification arrangements between Australia and New Zealand – decision under review affirmed

[\*\*Tambanemoto and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2022] AATA 2534 (3 August 2022); C Puplick AM, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – best interests of minor children – expectations of the Australian community – impediments to removal – links to the Australian community – decision set aside and substituted

[\*\*Tapihiko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs\*\*](#) (Migration) [2022] AATA 2603 (16 August 2022); Senior Member Griffin QC

MIGRATION – mandatory cancellation of visa – TY Subclass 444 Special Category (Temporary) visa – where visa was cancelled under s 501CA(4) because applicant did not pass character test – substantial criminal record - Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations – extent of impediments if removed – impact on victims – links to the Australian community – the strength, nature and duration of ties to Australia – special consideration – mandatory cancellation of visa is revoked – decision under review set aside and substituted

[\*\*TGZT and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2022] AATA 2647 (18 August 2022); Dr C Huntly, Member

MIGRATION – Migration Act s 501CA(4) – decision of a delegate of the Minister not to revoke the mandatory cancellation of the applicant’s visa – whether there is “another reason” to revoke the cancellation of the applicant’s visa – applicant a 32-year-old man who arrived in Australia as a six-year-old child – best interests of the children – stolen generations – extent of impediments if removed – strong links to the Australian community – there is another reason to revoke the mandatory cancellation of the applicant’s visa – reviewable decision set aside and substituted

**WFFJ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 2626 (10 August 2022); Deputy President Boyle

MIGRATION – Migration Act s 501CA(4) – decision of a delegate of the Minister not to revoke the mandatory cancellation of the applicant’s visa – whether there is “another reason” to revoke the cancellation of the applicant’s visa – index offence drug dealing – extensive criminal record – applicant a 35-year-old citizen of New Zealand who arrived in Australia as a 12-year-old – unaddressed mental health conditions– protection of Australian community – there is not another reason to revoke the mandatory cancellation of the applicant’s visa – reviewable decision affirmed

**Winika and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs**

(Migration) [2022] AATA 2487 (22 July 2022); S Evans, Member

MIGRATION – Non-revocation of mandatory cancellation – Class TY Subclass 444 Special Category (Temporary) Visa – where the Applicant does not pass the character test by virtue of his “substantial criminal history” – whether there is “another reason” to revoke the mandatory cancellation – consideration of Ministerial Direction 90 – multiple domestic violence offences brought on by drug use – interests of minor children who are teenagers – decision under review set aside and substituted

**1819561** (Migration) [2022] AATA 2356 (11 May 2022); J Clarke, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – lesser level of face-to-face contact comes about because of the parties living in separate countries – sponsor’s medical condition – parties displayed a detailed knowledge of each other – parties are validly married – applicants are currently in a genuine spousal relationship – evidence of long-term commitment to a spousal relationship – decision under review remitted

**2114277** (Migration) [2022] AATA 2430 (23 June 2022); P Maishman, Member

MIGRATION – cancellation – Employer Nomination (Permanent) (Class EN) Visa – Subclass 186 Employer Nomination Scheme – incorrect answers in visa applications – bogus documents – identity details – subject to an exclusion period – period of unlawful residence – applicant changed her name at marriage – Australian citizen spouse – best interests of the Australian citizen children – decision under review set aside

**2115559** (Migration) [2022] AATA 2347 (15 February 2022); K Chapman, Member

MIGRATION – cancellation – Working Holiday (Temporary) (Class TZ) visa – Subclass 417 (Working Holiday) – incorrect information provided in second extension application – six months of specified work in regional area while holding first extension – integrity checks – discretion to cancel visa – COVID-19 restrictions and prevalence in home country – attempts to obtain specified work – no approach to department – paid third party to complete and lodge application – full admissions and acceptance of responsibility – value of current work to employer – meritorious conduct in assisting victim of crime and giving evidence at trial – finely balanced factors – decision under review set aside

[Gomez Calvo](#) (Migration) [2022] AATA 2407 (14 July 2022); N Schmitz, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – application made within 28 days of expiry of last substantive visa – factors beyond applicant’s control and compelling reasons for granting visa – partner’s essential work deployment and mandatory COVID quarantine in remote location with no WIFI – unable to lodge application – international travel restrictions – credible evidence – decision under review remitted

[Palaparthi](#) (Migration) [2022] AATA 2406 (8 July 2022); W Shum, Member

MIGRATION – Skilled Regional Sponsored (Provisional) (Class SP) visa – Subclass 489 (Skilled – Regional (Provisional)) – bogus document or false or misleading information given in visa application – 12 months of relevant skilled employment in Australia – letter from employer states 13 months of employment but movement records show applicant offshore for 3 months in that period – letter given in relation to previous application and certifying body relied on it in relation to current application – certifying body not a party referred to in criterion – no points claimed for Australian employment experience or use of letter in current application – members of family unit – no jurisdiction for secondary applicant child – decision under review remitted

## **National Disability Insurance Scheme**

[Mastin and National Disability Insurance Agency](#) [2022] AATA 2648 (17 June 2022); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – extension of time to apply for review – prejudice – interests of justice – application refused

## **Practice and Procedure**

[Borella and Tax Practitioners Board](#) (Taxation) [2022] AATA 2489 (8 August 2022); G Lazanas, Senior Member

PRACTICE AND PROCEDURE – application for stay of decision – termination of tax agent registration and imposition of two year ban – whether conditional stay should be granted pending decision on application for review – whether condition of requiring applicant to notify clients of respondent’s administrative action and proceedings on foot appropriate – factors relevant to the granting of a stay – prospects of success – consequences if stay not granted – public interest – consequences for respondent in carrying out its functions – whether substantive application would be rendered nugatory – stay application granted on conditions including requirement for applicant to notify clients

[Boxell and National Disability Insurance Agency](#) [2022] AATA 2681 (19 August 2022); P Smith, Member

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – application for review – whether there is a reviewable decision for the Tribunal to review – whether the request for an internal review was withdrawn by the Applicant – internal review request reinstated by the Respondent – no reviewable decision for the Tribunal to review – application for review dismissed

[Endacott and Chief Executive Officer, Services Australia](#) (Freedom of information) [2022] AATA 2518 (1 March 2022); B J Illingworth, Senior Member

PRACTICE AND PROCEDURE – JURISDICTION – Freedom of Information Act – Administrative Appeals Tribunal Act 1978 (Cth) – Tribunal Has No Jurisdiction – Section 42A(4)

[Keane and Decision Maker](#) [2022] AATA 2519 (6 April 2022); B J Illingworth, Senior Member

JURISDICTION – Fair Work Commission decision – Fair Work Act – Appeal – Tribunal has no jurisdiction to hear the extension of time application or the substantive application

[TDWF and Commissioner of Taxation](#) (Taxation) [2022] AATA 2549 (4 July 2022); B W Rayment OAM QC, Deputy President

Confidentiality order – delayed disclosure order – non-publication and non-disclosure order – whether documents should be withheld from the applicant until after evidence in chief at hearing – procedural fairness – openness in the Tribunal process – whether delayed disclosure is necessary for the respondent's effective cross examination – whether delayed disclosure amounts to trial by ambush – application dismissed

[YKDD and National Disability Insurance Agency](#) [2022] AATA 2541 (18 July 2022); R I Hanger AM QC, Deputy President and D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – statement of reasons – what is the reviewable decision – decision remittal – new plan – application dismissed

## **Refugee**

[1708746](#) (Refugee) [2022] AATA 2396 (14 June 2022); A Grant, Member

REFUGEE – protection visa – Somalia – ethnicity – member of minority tribes – discrimination, killings of family members and internal displacement – accepted as refugee in third country – arrived in Australia on partner visa – tribal discrimination from wife's family and community – relationship ceased and new relationship – country information – status of minority tribes – fragile state – state protection not available and relocation not reasonable – decision under review remitted

[1801303](#) (Refugee) [2022] AATA 2294 (25 May 2022); P Vlahos, Member

REFUGEE – protection visa – Egypt – member of particular social group – abused women – control and physical and mental abuse by strict Muslim brother and other family members – general conservatism, fundamentalism and violence – imputed religious and political opinion – liberal and questioning views and lifestyle, including interest in Christianity – residence and work and non-marital relationship in third country – brief returns for study and sister’s wedding – mental health and treatment – economic hardship – country information – legal rights limited in practice – decision under review remitted

[1809582](#) (Refugee) [2022] AATA 2330 (13 May 2022); J Meyer, Member

REFUGEE – protection visa – Iran – religion – conversion to Christianity – imputed political opinion – royalist family member – cultural festival – torture – employment – killing in detention – physical assault – extra-marital relationship – honour killing – returned asylum seeker – mental health issues – decision under review remitted

[1913358](#) (Refugee) [2022] AATA 2507 (18 June 2022); D Dragovic, Deputy President

REFUGEE – cancellation – protection visa – Iran – incorrect information in visa applications – race – Faili Kurd – nationality – stateless – Iranian citizenship – education – employment – non-refoulement obligations – mental health issues – best interests of the children – indefinite detention – decision under review set aside

[2004049](#) (Refugee) [2022] AATA 2394 (10 June 2022); P Noonan, Member

REFUGEE – protection visa – Vietnam – political opinion – opposition to the government – political party – particular social group – single mother – human rights and democracy campaigner – education – employment – social media protests – delay in applying for protection – family violence claims – decision under review affirmed

[2115158](#) (Refugee) [2022] AATA 2509 (14 June 2022); D Dragovic, Deputy President

REFUGEE – protection visa – Pakistan – religion – particular social group – inter-sect marriage – fear attacks by a terrorist group – fear of killing – threatening visits to family – member of the separated family unit – parenting agreement and child support arrangements – substantially reliant – decision under review remitted

[2202420](#) (Refugee) [2022] AATA 2516 (7 June 2022); J Pennell, Senior Member

REFUGEE – protection visa – Estonia – particular social group – criminal informant – fear of harm by criminal associates – applicant’s identity revealed in media reports – mental health condition – health and mental health facilities under resourced – delay in applying for protection – close ties to the community – Australian citizen son – Ministerial intervention requested – decision under review affirmed

## Social Services

[Clarke and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 2521 (4 May 2022); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – where condition not fully diagnosed and cannot be assigned impairment points – decision under review affirmed

[Mikulcik and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 2646 (18 August 2022); D Mitchell, Member

SOCIAL SECURITY – Austudy payment – payment start date – rate of payment – basic rate or long term income support student rate – decision under review affirmed

[Naaman and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 2533 (10 August 2022); R West, Member

SOCIAL SECURITY – overpayment of social security benefits – disability support pension debts – whether member of a couple – decision set aside

[Naaman and Secretary, Department of Social Services](#) (Social services second review) [2022]  
AATA 2535 (10 August 2022); R West, Member

SOCIAL SECURITY – overpayment of social security benefits – parenting payment debts – carer payments debt – whether member of a couple – decision set aside

[Smyrniadou and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 2433 (25 July 2022); R West, Member

SOCIAL SECURITY – disability support pension – chronic back pain re: degenerative lumbar spondylosis – radiculopathy – whether conditions fully treated and stabilised in the qualification period – whether impairments attract rating of 20 points or more under Impairment Tables – decision affirmed

## Superannuation

[Goulopoulos and Commissioner of Taxation](#) [2022] AATA 2540 (9 August 2022); I R Molloy, Deputy President

SUPERANNUATION – self-managed superannuation fund – disqualification of individual as responsible officer of corporate trustee - number, nature and seriousness of contraventions – fit and proper person – Tribunal's powers – power not relied on by decision-maker - decision affirmed

## Taxation

[Absolute Vision Technologies Pty Limited and Innovation and Science Australia](#) (Taxation) [2022] AATA 2319 (13 July 2022); B J McCabe, Deputy President and D K Grigg, Senior Member

TAX – R&D Tax Incentive – whether activities undertaken by the Applicant are eligible research and development activities under the Industry Research and Development Act 1986 (Cth) and Income Tax Assessment Act 1997 (Cth) – where expert evidence unchallenged – where lack of contemporaneous documentation – decision under review affirmed

[Adcon Resources Vic Pty Ltd and Commissioner of Taxation](#) (Taxation) [2022] AATA 2629 (16 August 2022); D Mitchell, Member

TAXATION – goods and services tax – GST grouping – part of the same 90% owned group – whether the two companies proposing to form a GST group met the company ownership requirements – start date of GST group – decisions under review affirmed

[Chhua and Commissioner of Taxation](#) (Taxation) [2022] AATA 2593 (12 August 2022); Ian Molloy, Deputy President & N Gaudion, Member

TAXATION – income tax – audit conducted – notices of amended assessments issued – penalty assessments – shortfall penalties – objection made – whether assessments excessive – evasion – jurisdiction of the Tribunal to consider validity of assessments – actual taxable income not established – objection affirmed

[FSYC and Commissioner of Taxation](#) (Taxation) [2022] AATA 2680 (19 August 2022); D Mitchell, Member

TAXATION – application for release from tax debt – whether debt related to goods and services tax can be released – where family violence was present – 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>Barghachoun and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2492</a>
<b>Garland and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2022</a>
<b>KZQV and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2055</a>
<b>RLXN and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2152</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Beckett v Tax Practitioners Board</b>	<a href="#">[2021] AATA 1234</a>	<a href="#">[2022] FCA 930</a>
<b>BYMD v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3476</a>	<a href="#">[2022] FCA 936</a>
<b>HRZN v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 1035</a>	<a href="#">[2022] FCAFC 133</a>
<b>Knight v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4595</a>	<a href="#">[2022] FCAFC 127</a>
<b>Nathanson v Minister for Home Affairs</b>	<a href="#">[2019] AATA 642</a>	<a href="#">[2022] HCA 26</a> <a href="#">[2020] FCAFC 172</a> <a href="#">[2019] FCA 1709</a>
<b>VNPC v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4628</a>	<a href="#">[2022] FCA 921</a>

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