



Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 17/2023

28 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 LPExtFeedback@aat.gov.au.



Contents

AAT Recent Decisions	3
Aviation.....	3
Child Support.....	3
Citizenship	4
Compensation.....	4
Education and Research	4
Freedom of Information	5
Human Rights.....	5
Migration	5
Practice and Procedure	9
Professions and Trades.....	11
Refugee.....	11
Social Security.....	12
Taxation	13
Trade	13
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.

Aviation

[Clarke and Civil Aviation Safety Authority](#) [2023] AATA 2628 (18 August 2023); S Boyle, Deputy President

CIVIL AVIATION – authorisations under the Civil Aviation Act 1988 – Civil Aviation Safety Regulations 1998 – whether defence force qualification is at least equivalent to civilian aviation authorisation – whether applicant is entitled to be granted civil authorisation based on defence qualifications – Tribunal not satisfied that the defence qualifications are at least equivalent to authorisations sought – decision affirmed

Child Support

[Amin and Nissen](#) (Child support) [2023] AATA 2160 (14 June 2023); F Staden, 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 set aside and substituted

[Harris and Harris](#) (Child support) [2023] AATA 2137 (8 June 2023); R Ellis, 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 – court orders not complied with – reasonable action taken – interim period applied – date of effect – decision under review set aside and substituted

[Poldark and Poldark](#) (Child support) [2023] AATA 2132 (7 June 2023); M Baulch, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income accepted – decisions under review affirmed

[Siviter and Siviter](#) (Child support) [2023] AATA 2133 (24 May 2023); S Letch, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should have been refused – estimate of income accepted – decision under review set aside and substituted

[Underwood and Bovary](#) (Child support) [2023] AATA 2147 (8 June 2023); M Martellotta, Member

CHILD SUPPORT – non-agency payment – prescribed payments – should not be credited – decision under review set aside and substituted

Citizenship

[Hsiao and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2540 (14 August 2023); J Sosso, Deputy President

CITIZENSHIP – application for citizenship by conferral – where applicant has been approved for a grant of citizenship – applicant advised she has 12 months to make pledge of commitment – common ground that applicant did not make pledge – discretion exercised to cancel approval due to failure to make pledge of commitment within 12 months – supervening event of global COVID-19 pandemic – closure of national and international borders – assessment of applicant’s circumstances – decision under review set aside and substituted

[Tomecek and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2520 (11 August 2023); A George, Senior Member

CITIZENSHIP – applicant’s application for citizenship by conferral refused – whether applicant satisfied the residency requirement – applicant outside Australia for the period of 4 years immediately before the day of application for citizenship – consideration of ministerial discretion under s 22(11) – decision under review affirmed

Compensation

[Karaferis and Australian Postal Corporation](#) (Compensation) [2023] AATA 2634 (21 August 2023); Dr D Cremean, Senior Member

COMPENSATION – entitlement to compensation for psychological impairment – review of determination that employer not liable to pay compensation under s 24 or 27 of the SRC Act – whether the Applicant suffers an impairment as a result of his accepted condition – whether the impairment is permanent – degree of impairment under the relevant Guide – decision set aside and a decision in his favour substituted

Education and Research

[Cruickshank and Secretary, Department of Education](#) [2023] AATA 2678 (22 August 2023); B Pola, Senior Member

HIGHER EDUCATION SUPPORT – respondent refusal of removal of HECS-HELP debt – whether special circumstances exist – whether applicant circumstances beyond his control – whether the applicant’s circumstances made their full impact on or after the census date – medical evidence of applicant health conditions considered – Higher Education Support Act 2003 (Cth) applied – cumulative statutory test applied – decision affirmed

[Tollo and Secretary, Department of Education](#) [2023] AATA 2578 (15 August 2023); B Pola, Senior Member

HIGHER EDUCATION SUPPORT – respondent refusal of removal of HECS-HELP debt – whether special circumstances exist – whether the applicant’s circumstances were beyond his control – whether the applicant’s circumstances made their full impact on or after the census date – medical evidence of applicant health conditions presented – Higher Education Support Act 2003 (Cth) applied – statutory elements not satisfied – decision affirmed

Freedom of Information

[VKJY and Secretary, Department of Home Affairs](#) (Freedom of information) [2023] AATA 2551 (14 August 2023); B W Rayment OAM KC, Deputy President and S Evans, Member

FREEDOM OF INFORMATION — costs application under Freedom of Information Act 1982 (Cth) s 66(1)(a) — statutory interpretation — whether power to recommend to Minister that applicant’s costs of the proceedings be paid by the Commonwealth is enlivened — where application brought under s 57A(1)(b) — previous decision of the Tribunal on same question — application refused

Human Rights

[DPFX and Director-General of Security](#) [2023] AATA 2522 (27 July 2023); S Boyle, Deputy President and Brig. A G Warner AM LVO (Retd), Member and S Barton, Member

SECURITY – ss 17(c) and 37(1) of the ASIO Act – ASIO adverse security assessment – assessment that the Applicant is directly or indirectly a risk to security – recommendation for revocation of security clearance – Applicant’s suitability to protect security classified information – Protective Security Policy Framework – personnel security adjudicative guidelines – Security Assessment Determination No. 3 – whether there are reasonable grounds to support adverse security assessment – deliberate omission of information and concealment of relevant facts – breach of confidentiality undertaking – reviewable decision affirmed

Migration

[Bah and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2718 (4 August 2023); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 202 Global Special Humanitarian visa where Applicant does not pass the character test – consideration of Ministerial Direction No. 99 – strong evidence of rehabilitation – risk of re-offending remote – substantial impediments to survival in receiving country – decision under review set aside

[Barber and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2651 (22 August 2023); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – family violence committed by the non-citizen – expectations of the Australian community – impediments to removal – decision affirmed

[Bier and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2717 (24 August 2023); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of South Sudan – Class XB Subclass 202 Global Special Humanitarian visa – multiple criminal convictions – violent offending – family violence – failure to pass good character test – substantial criminal record – where visa previously cancelled in 2019 – non-revocation of second visa cancellation decision – whether there is another reason to revoke the mandatory cancellation – Ministerial Direction no. 99 applied – decision affirmed

[Campbell and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2542 (8 August 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – aggregate sentence – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – offences and conduct involving family violence, assault, weapons and ammunition possession – Applicant is a 49 year old citizen of New Zealand who arrived in Australia as a 32 year old adult – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – strength, nature and duration of ties to Australia – no minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to New Zealand – Reviewable Decision affirmed

[Fetelika and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2606 (18 August 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – Applicant is a citizen of New Zealand – assault – family violence – Direction 99 considered – strength, nature and duration of Applicant's ties to Australia – best interests of minor children and impact on victims weigh in favour of revocation – low risk of reoffending – there is another reason to revoke the visa cancellation decision – reviewable decision set aside and substituted

[HQVD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2632 (21 August 2023); Dr S Fenwick, Senior Member

MIGRATION – mandatory cancellation of visa – national of United Kingdom – Partner (Class BS) (Subclass 801) visa – failure to pass character test – serious non-physical sexual offences – whether another reason cancellation should be revoked – consideration of Ministerial Direction No. 99 – best interests of minor children – decision affirmed

[HWGF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2577 (9 August 2023); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of 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 minor children – expectations of the Australian community – extent of impediments if removed – Applicant is a 28 year old man who arrived in Australia as a 11 year old refugee – best interests of minor children – links to the Australian community – legal consequences of the decision – extent of impediments if returned to Democratic Republic of Congo – Non-Revocation Decision is set aside and substituted with a decision that the cancellation of the visa be revoked

[Kejoa and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2603 (17 August 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class WA Subclass 010 Bridging A (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. 99 – decision under review affirmed

[KQHR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2624 (17 August 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – significant history of serious offending – applicant suffered sexual abuse as a ward of the state – applicant is owed non-refoulement obligations and has lived in Australia for 56 years – whether there is 'another reason' to revoke the mandatory cancellation decision – the countervailing considerations of ties to Australia and likely indefinite detention outweigh the primary considerations of the expectations and protection of the Australian community – decision set aside and substituted

[LMFV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2676 (3 August 2023); B W Rayment OAM KC, Deputy President

MIGRATION – refusal to revoke mandatory cancellation – citizen of Sierra Leone – sexual intercourse with person with cognitive impairment – reckless grievous bodily harm by transmission of HIV – PTSD – psychologist evidence low risk of offending – decision under review set aside and substituted

[Miglani and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 2719 (23 August 2023); D J Morris, Senior Member

MIGRATION – applicant is citizen of the Republic of India – applicant refused Bridging E (Class WE) visa under s 501(1) of Migration Act – review sought before Tribunal – two questions – does applicant pass character test – if not, should the discretion be exercised to refuse to grant the visa – is foundation for decision that applicant fails character test met – applicant committed sexual assault on a child – exercise of the discretion – ministerial Direction No. 99 – primary considerations – protection of the Australian community – whether the applicant has engaged in family violence conduct – strength, nature and duration of ties with Australia – expectations of Australian community – other considerations – decision under review is affirmed

[Nguyen and Minister for Immigration, Citizenship Multicultural Affairs](#) (Migration) [2023] AATA 2543 (2 August 2023); R Skaros, Senior Member

MIGRATION – 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

[Rawiri and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2576 (14 August 2023); S Evans, Member

MIGRATION – visa cancelled under subsection 501CA(4) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there a reason why the visa should not be refused on character grounds – Direction no. 99 considered – reviewable decision set aside and substituted

[Trinh and Minister for Immigration, Citizenship and Multicultural Affairs](#) [2023] AATA 2538 (14 August 2023); D J Morris, Senior Member

MIGRATION – review applicant seeks review of decision to refuse visa applicant a provisional partner visa – visa applicant a citizen of the Socialist Republic of Vietnam – visa refused by delegate on basis of risk visa applicant would offend in Australia – previous criminal convictions – breaches of visa conditions – questions before tribunal – does visa applicant fail character test – visa applicant found to fail character test – should discretion be exercised to refuse visa – Direction No. 99 – primary considerations – other considerations – recent relocation of review applicant – offending now ten years ago – no evidence of any further offending – no custodial sentence – decision under review set aside and new decision substituted

[2205136](#) (Migration) [2023] AATA 1960 (24 March 2023); M Judd, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – business interests in home country – property ownership – security issues in Pakistan – Hazara ethnicity – decision under review affirmed

[2018206](#) (Migration) [2023] AATA 1924 (15 May 2023); M Bourke, Member

MIGRATION – Confirmatory (Residence) (Class AK) – Subclass 808 visa – applicant does not meet the time of application criteria for a subclass 808 visa – daughter is an Australian citizen, as well as a Cambodian citizen – applicant was not the holder of a prescribed visa– referral for ministerial intervention – strong compassionate circumstances – to seek a pathway to apply to the Minister for ministerial intervention – decision under review affirmed

[2118274](#) (Migration) [2023] AATA 2190 (5 January 2023); A Duffield, Senior Member

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 (Partner) – genuine and continuing relationship – validly married – interim family violence order against applicant discontinued after undertakings by applicant – relationship ceased and sponsorship withdrawn before reconciliation and birth of child – financial, household and social aspects of relationship and nature of commitment – applicant financially dependent on sponsor – initial difficulties with life in Australia and step-children before counselling – remorse, responsibility and change of behaviour – relationships with each other’s family but no wide social network – largely consistent and credible evidence – supporting statements from family and friends – decision under review remitted

[2205934](#) (Migration) [2023] AATA 1927 (20 April 2023); A Murphy, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass 155 (Five Year Resident Return) – identity – name, place and date of birth, family composition, citizenship and right of residence – combined hearing with brother’s on same issues – facial comparison matched to secondary applicant in aunt’s previous humanitarian visa application – different family composition and details provided in that and other applications by applicant and other relatives – advice from people smugglers and fellow detainees to hide connections to relatives already in Australia – details in aunt’s application favoured because no other relatives in Australia at that time – cultural name formats and transliterations and unknown dates of birth – some relatives hold documents with security features – DNA testing conducted in Australia – false identity used to obtain visa, but true identity now confirmed – country information – decision under review set aside

[Suepsri](#) (Migration) [2023] AATA 1948 (30 May 2023); A Mendes Da Costa, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – café or restaurant manager – nomination withdrawn by original owner’s son after original owner’s death – genuine position, company financially capable of employing applicant and applicant’s long-term valuable work in role – unwitting victim of dispute within owners’ family – age and migration status – referred for ministerial consideration – decision under review affirmed

Practice and Procedure

[BLZQ and National Disability Insurance Agency](#) [2023] AATA 2629 (17 August 2023); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – applicant requesting reasons for decision – adequacy of the reasons – request for declaration under s 28 (5) AAT Act granted – direction under s 28 (6) AAT Act that the respondent provide an additional statement containing further and better particulars

[BQXT and Child Support Registrar](#) (Child support second review) [2023] AATA 2674 (22 August 2023); L Benjamin, Member

PRACTICES AND PROCEDURES – Applicant’s repeated failure to comply with directions in relation to conduct

[Budd and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2631 (17 August 2023); W Frost, Member

PRACTICE AND PROCEDURE – application for dismissal under s 42B of the Administrative Appeals Tribunal Act 1975 – whether the application should be dismissed – whether application is frivolous, vexatious, misconceived or lacking in substance – whether application is futile or being pursued for a collateral purpose – application dismissed

[Keys and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2605 (26 July 2023); A Nikolic AM CSC, Senior Member

PRACTICE AND PROCEDURE – interlocutory application – reinstatement of application – where application finalised in March 2020 by consent of the parties – consideration of Tribunal's consent, remittal, and reinstatement powers – relevant law and circumstances considered – whether application dismissed in error – reinstatement application declined

[Lahrs and National Disability Insurance Agency](#) [2023] AATA 2625 (18 August 2023); K Buxton, Senior Member

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

[NJCX and Comcare](#) (Compensation) [2023] AATA 2677 (22 August 2023); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – psychological ailment – application for summons – objections – relevance – scope – discretion – Tribunal objectives – proximity to substantive hearing – broad scope not justified by legitimate forensic purpose – objections upheld – discretion not exercised – application refused

[PQPD and Child Support Registrar](#) (Child support second review) [2023] AATA 2675 (23 August 2023); Emeritus Professor P A Fairall, Senior Member

PRACTICE AND PROCEDURE – extension of time application – child support assessment determination – reasons for delay – prospects of success – prejudice – decision under review affirmed

[Taylor and National Disability Insurance Agency](#) [2023] AATA 2721 (24 August 2023); I Thompson, Member

PRACTICE AND PROCEDURE – access request to become a participant of the NDIS rejected – decision affirmed on internal review – application for review by the Tribunal not lodged in time – application for extension of time – whether reasonable in all the circumstances to extend time – application granted

[Webeck and Comcare](#) (Compensation) [2023] AATA 2630 (18 August 2023); S Webb, Member

PRACTICE & PROCEDURE – application for interlocutory decision to set aside and remit decision under review – liability for injury established under Compensation (Commonwealth Government Employees) Act 1971 – claims for payment of compensation – heads of entitlement – accrued rights – operation of transitional provisions – Tribunal jurisdiction – application to proceed to hearing – application refused

Professions and Trades

[Double Bay Aged Care Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2023] AATA 2673 (4 August 2023); B W Rayment OAM KC, Deputy President

AGED CARE – refusal of application for approval as provider of aged care (home care) – whether key personnel are suitable to be involved in the provision of aged care – change in key personnel – more information required regarding key personnel and financial circumstances of the applicant – decision under review set aside and remitted

[Rachelle and Victorian Institute of Teaching](#) [2023] AATA 2722 (25 August 2023); P Britten-Jones, Deputy President

Trans-Tasman Mutual Recognition Act 1997 (Cth) – applicant's Victorian registration as a teacher cancelled under s 32(1) – drink driving convictions in New Zealand and various charges in Australia withdrawn, dismissed on appeal or recorded without conviction – failure to comply with statutory reporting obligations – whether appropriate in the circumstances to reinstate registration under s 32(2) – decision under review set aside and substituted

Refugee

[2010862](#) (Refugee) [2023] AATA 2000 (15 March 2023); W Pennell, Senior Member

REFUGEE – protection visa – Vietnam – South Vietnamese Catholic – compulsory military service – grandfather's military service during the Vietnam War – actual or imputed anti-government political opinion – religion – Catholicism – incompatibility with Marxist doctrines – difficulty in attaining education and employment – adverse inference – delay in seeking protection – voluntary returns to Vietnam – late claim not raised earlier – de facto relationship with an Australian citizen – Ministerial Intervention requested – decision under review affirmed

[2012515](#) (Refugee) [2023] AATA 2243 (21 April 2023); S Roushan, Senior Member

REFUGEE – protection visa – Myanmar – race – Karen – political opinion – pro-democracy demonstrations – particular social group – failed asylum seeker – torture – detention – employment – postings on social media – protests in Australia – decision under review remitted

[1731022](#) (Refugee) [2023] AATA 2506 (27 April 2023); R Da Costa, Member

REFUGEE – protection visa – Sri Lanka – imputed or actual political opinion – original claim as suspected supporter of LTTE – detained, questioned, beaten and pressured to inform on others – later claim as low-level, non-combatant member – wounded, surrendered, rehabilitated and released – returned failed asylum seeker – wife and daughters' fear of harm from gender-based discrimination, harassment or violence – economic and political unrest – credibility – inconsistent claims and evidence – obtained passport and departed legally – no significant political activity in Australia – country information – members of family unit – Australian-born child now citizen and not included in application – genuine efforts to integrate – referred for ministerial consideration – decision under review affirmed

[2118180](#) (Refugee) [2023] AATA 2588 (16 June 2023); G Hamilton, Member

REFUGEE – cancellation – protection visa – Iran – combined hearing of reviews for husband’s protection visa and wife’s 5-year resident return visa – incomplete and incorrect answers given in protection visa application – husband’s claim as stateless Faili Kurd – department’s information of Iranian citizenship and passports – family relationships not declared – new passports obtained, money transfers and return travel – applications for citizenship refused on character grounds – husband’s conviction and suspended sentence – discretion to cancel visa – advised by others in detention centre to claim statelessness and claim maintained for extended time – certain incorrect information conceded – departed lawfully on genuine passports – conversion to Christianity in Australia – length of residence, work and church and community activities – mental health – separation and reconciliation – first child a dual national and newborn second child – best interests of children – non-refoulement and legal consequences – slight balance in favour of non-cancellation – decisions under review set aside

[1827638](#) (Refugee) [2023] AATA 2683 (19 June 2023); J Pennell, Senior Member

REFUGEE – protection visa – stateless/Iran – original claims as stateless Faili Kurd and secondary applicant to wife’s application – later declaration to be Kurdish Iranian citizen – discrimination and capacity to subsist – political opinion – participation in Green Movement protests – religion – non-practicing Muslim with tattoo – returned failed asylum seeker – mental health – vague and inconsistent claims and evidence – country information – no harm to family members – no conversion or religious activity – applicant and wife separated – wife and children’s application remitted after separate review – violence, controlling behaviour and threats to take custody if returned – not a member of family unit of wife but member of family unit of children – decision under review remitted

[2105543](#) (Refugee) [2023] AATA 2581 (20 June 2023); T Hamilton-Noy, Member

REFUGEE – cancellation – protection visa – stateless/Iraq/Iran – Federal Court remittal – incorrect answers given in visa application – undocumented stateless Faili Kurd – political, economic and social discrimination – documentation provided to department by relative shows Faili Kurdish Iranian citizenship – discretion to cancel visa – claim maintained for extended time and in different forums before non-compliance conceded – advised by other boat passengers to claim statelessness – documents held by relative for safekeeping provided to department after family dispute – departed lawfully on valid passport – length of residence, work, family, community activities and health – country information – member of family unit – consequential cancellation of son’s visa with no jurisdiction to review – son’s wife and child Australian citizens – possibility of prolonged immigration detention – combined hearing with wife’s separate review – decision under review set aside

Social Security

[Broadstock and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2561 (15 August 2023); J C Kelly, Senior Member

SOCIAL SECURITY – mobility allowance – whether the applicant was unable to use public transport without substantial assistance permanently or for an extended period of time due to his medical condition during the qualification period – whether the applicant was undertaking a qualifying activity for mobility allowance purposes during the qualification period – job search activities – reviewable decision set aside

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2560 2560 (15 August 2023); A Nikolic AM CSC, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant's medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – decision under review affirmed

[Edenborough and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2604 (18 August 2023); J C Kelly, Senior Member

FAMILY ASSISTANCE – family tax benefit – rent assistance – whether the decision to cease payment of rent assistance was correct – whether the applicant had been notified that rent assistance had ceased – whether there were special circumstances preventing the applicant from making an application for review within 52 weeks of being notified of the original decision – reviewable decision affirmed

[Jones and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2602 (17 August 2023); R Bellamy, Senior Member

Social Security – Disability Support Pension – Overpayment due to own and partner's income not being taken into account – Honest belief that income was reported – Whether to waive or write-off the debt – Whether debt due to sole administrative error – Whether special circumstances make it desirable to waive whole or part of the debt

[TMFD and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2523 (14 August 2023); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

Taxation

[Tawfik and Commissioner of Taxation](#) (Taxation) [2023] AATA 2541 (10 August 2023); R Olding, Senior Member

TAXATION – INCOME TAX – where applicant was entitled to receive a bonus relating to his employment in Kuwait – where applicant was not a resident of Australia during the period of employment – where employer delayed payment of the bonus – where payment received in three instalments after applicant had become a resident of Australia – whether bonus payments derived when earned or upon receipt – held payments derived upon receipt – decision affirmed

Trade

[June & Juniper PTY LTD and Australian Trade and Investment Commission](#) (Austrade) [2023] AATA 2653 (21 August 2023); B W Rayment OAM KC, Deputy President

FOREIGN AFFAIRS AND TRADE – export market development grants – whether the goods are eligible goods – whether Australia will derive a significant net benefit from the sale of goods outside Australia – fitness products sold via Amazon – decision under review set aside and remitted

Veterans' Affairs

[Baker and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2709 (24 August 2023); Brigadier A G Warner, AM LVO (Retd), Member

VETERANS' AFFAIRS – interlocutory hearing – Applicant applied for review of Veterans' Review Board decision – jurisdictional question – to be decided as preliminary issue – whether Tribunal has power to review Repatriation Medical Authority declaration not to make Statement of Principles – Tribunal has no jurisdiction

[Simmons and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2720 (25 August 2023); D Mitchell, Member

VETERANS' AFFAIRS – special rate pension – incapacity from service-caused conditions – prevented from being able to continue to undertake remunerative work that he was undertaking – alone test – loss of salary or wages – genuinely seeking to engage in remunerative work – substantial cause of inability to obtain work – decision under review set aside and substituted

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
Clifford and Tax Practitioners Board	[2023] AATA 2068
Dayadaya and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2456
Pillay and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2318

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Conservation Foundation Incorporated v Secretary, Department of Climate Change, Energy, the Environment and Water	[2021] AATA 4619	[2023] FCA 1005
Buzadzic v Commissioner of Taxation	[2021] AATA 4820	[2023] FCA 954
Lovell v K & S Freighters Pty Ltd	[2022] AATA 2867	[2023] FCA 968
NRWQ v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2879	[2023] FCA 950
Storry v Business Licensing Authority	[2021] AATA 5329	[2023] FCA 964 [2023] FCA 102
Waqa v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3791	[2023] FCA 990



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

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

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

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

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