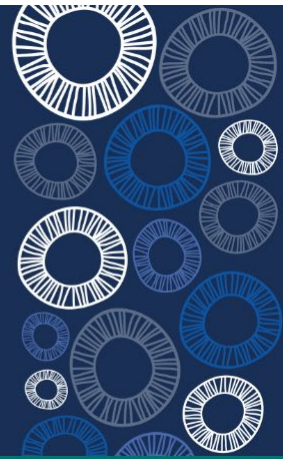




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

Issue No. 18/2024

9 September 2024

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

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

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

**NOTE:** The AAT Bulletin will cease at the end of September 2024 ahead of the establishment of the new Administrative Review Tribunal. Please visit the [AustLII website](#) for published decisions and the [Tribunal website](#) for updates.

Let us know what you would like to see in a future Tribunal newsletter by [completing this short survey](#).

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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

[Armager and Child Support Registrar](#) (Child support) [2024] AATA 2305 (6 May 2024); R Ellis, Senior Member

CHILD SUPPORT – application for extension of time – explanation for the delay – grounds for departure – costs of supervised contact – money, goods or property received by the payee – extension of time refused

[Ellarby and Clarence](#) (Child support) [2024] AATA 2026 (17 May 2024); J Thomson, Member

CHILD SUPPORT – whether there has been a change in the pattern of care – pre-existing care percentages revoked – decision under review affirmed

[KNSM and Child Support Registrar](#) (Child support second review) [2024] AATA 3184 (6 September 2024); P Ranson, Member

CHILD SUPPORT – extension of time – length of delay in applying for review – initially applied incorrectly to QCAT – awareness of appeal rights – explanation for delay not accepted – whether the merits of the substantive application must be considered – substantive merits not found based on tax return provided – whether there is prejudice to the respondent and other party – public interest considerations – extension of time refused

[Ladams and Wadburn](#) (Child support) [2024] AATA 2307 (17 May 2024); D Benk, Senior Member

CHILD SUPPORT – departure determination – adjusted taxable income – income, property or financial resources – father self-employed – large taxation debt and legal fees paid from company funds – director loans added back but no other deductions – payment of many private expenses for mother and children – property proceedings ongoing – decision under review set aside

[MYGL and Child Support Registrar](#) (Child support second review) [2024] AATA 3179 (6 September 2024); Emeritus Professor P A Fairall, Senior Member

CHILD SUPPORT – revocation of existing care percentage determination – changes to level of care during relevant care period – date of effect of revocation – actual care of child – whether overnight care is relevant to actual care – substantial financial support considered – decision under review set aside and substituted

[NKDL and Child Support Registrar](#) (Child support second review) [2024] AATA 3148 (4 September 2024); L M Gallagher, Member

CHILD SUPPORT – percentage of care – whether there was a change in care – actual care – date of effect – evidence – decision under review affirmed

[Reabald and Checett](#) (Child support) [2024] AATA 1875 (10 May 2024); P Jensen, Member

CHILD SUPPORT – child support agreement – child support paid privately in advance – changed to collection by Child Support – collection of arrears – payments made fully or partly during arrears period – decision under review set aside and sent back with direction

[Stafford and Inwood](#) (Child support) [2024] AATA 1891 (14 May 2024); R Ellis, Senior Member

CHILD SUPPORT – percentage of care – existing percentage of care determinations revoked – parenting plan – care arrangement no longer being followed – new percentage of care determinations – date of effect – decision under review affirmed

[YKPT and Child Support Registrar](#) (Child support second review) [2024] AATA 3027 (27 August 2024); Dr N A Manetta, Senior Member

CHILD SUPPORT – percentage of care – one parent asserts increase in percentage of care – parent also asserts care provided by ex-partner's parents should be counted towards her care – submissions rejected on facts – Level 1 decision under review varied in minor way to reflect correct approach and findings

## **Citizenship**

[Ahmadi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 3003 (23 August 2024); Dr S Fenwick, Member

CITIZENSHIP – application for Australian citizenship by conferral – national of Afghanistan – identity – inconsistencies in family composition and biodata – inconsistent national identity documentation – consideration of biometric data – consideration of life story – decision set aside and remitted

[Awad and Minister for Immigration and Multicultural Affairs](#) (Citizenship) [2024] AATA 3118 (30 August 2024); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – citizen of Afghanistan – whether the Tribunal is satisfied of the Applicant's good character – Australian Citizenship Act 2007 (Cth) – criminal history 2003 to 2022 – denial of certain offences despite pleading guilty – false or misleading information in Statutory Declaration – Tribunal satisfied Applicant is not of good character at time of decision – decision affirmed

[FQHD, by his Mother and Minister for Immigration and Multicultural Affairs](#) (Citizenship) [2024] AATA 3116 (3 September 2024); D J Morris, Senior Member

CITIZENSHIP – Australian citizenship by conferral – applicants are citizens of the Republic of Singapore, minors and Australian permanent residents – where responsible parent lodged applications for three minor children at same time – where applicants met certain requirements – where responsible parent did not meet general residence requirement under Act at time applications were lodged – where Singapore does not permit its citizens to hold another citizenship – where application for citizenship for two children rejected by delegates of respondent on policy grounds – responsible parent seeks review by tribunal – desirable to consider the two applications together – status of the policy – desirability of applying policy for consistency of decision-making – where applications for three minor children all lodged at same time – where application for citizenship of one child was approved – where respondent submits error – whether application of policy would lead to unfair outcome – policy found to be reasonably applied – in this case application of ministerial policy would work an injustice – desirable for all three minor children to be treated the same – each decision under review is set aside and new decisions substituted with direction

[Kemmerich and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 2999 (23 August 2024); A Younes, Deputy President

CITIZENSHIP – Application for conferral of Australian citizenship – general residence requirements – close and continuing association with Australia – CPI 11 – overseas absences – Decision under review affirmed

[Mabiala and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 3040 (27 August 2024); J Henderson, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied applicant was of good character – Australian Citizenship Act 2007 s 21(2)(h) – Applicant is a citizen of France – Applicant's offences include minor traffic offences, driving without a licence, stealing, breach of bail undertaking, providing false information relating to identify and providing false vaccination records – Applicant provided false and misleading information on incoming passenger card and resident return visa application – History of family violence reports – Tribunal cannot satisfactorily ascertain Applicant is of good character – reviewable decision affirmed

[Vani and Minister for Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 3180 (6 September 2024); T Tavoularis, Senior Member

CITIZENSHIP – decision to refuse Australian citizenship by descent – where Applicant claims to be of Aboriginal heritage – where the Applicant has always remained offshore – application of tripartite test from *Love, Thoms v Commonwealth* – Tribunal finding that the Applicant does not satisfy the tripartite test – decision under review affirmed

## Compensation

[Holding and Comcare](#) (Compensation) [2024] AATA 3025 (29 August 2024); Emeritus Professor P A Fairall, Senior Member

WORKERS' COMPENSATION – whether Comcare is liable to pay compensation under ss 16 and 19 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether accident aggravated the pre-existing condition – whether aggravation ceased – whether need for surgery arose in relation to the compensable condition – whether workplace incident was 'crowded out' by other factors – decisions under review affirmed

[Martin and Comcare](#) (Compensation) [2024] AATA 3113 (2 September 2024); D O'Donovan, Deputy President

COMPENSATION – bipolar affective disorder – whether medical evidence sufficient to establish aggravation – workplace communication issues – meeting with General Counsel about email behaviour – whether reasonable administrative action – obligation to ensure safety of other employees – decision affirmed

[Quinn and Australian Postal Corporation](#) (Compensation) [2024] AATA 3004 (23 August 2024); A E Burke AO, Member

WORKER'S COMPENSATION – mail sorter – Australia Post – no present liability – whether injury was work related – conflicting medical evidence – whether pre-existing condition – whether degeneration – whether acute physiological change occurred – whether injury occurred whilst undergoing treatment – 2 separate determinations – first decision set aside; second decision affirmed

[Rope and Comcare](#) (Compensation) [2024] AATA 3005 (23 August 2024); D O'Donovan, Deputy President

COMPENSATION – somatic symptom disorder – whether materially contributed to by employment – three separate claims – claim for reimbursement for a philosophy textbook – claim for enrolment at the University of the 3rd Age – claim for psychological treatment – whether medical treatment that is reasonable to obtain – decisions under review affirmed

[Ziade and Australian Postal Corporation](#) (Compensation) [2024] AATA 3162 (5 September 2024); S Webb, Member

WORKERS COMPENSATION – costs – Calderbank offer of compromise settlement prior to hearing – decision not more favourable to the Applicant – limit on order for costs – costs not recoverable from date of compromise offer

## Education and Research

[Bell and Secretary, Department of Education](#) [2024] AATA 3007 (26 August 2024); B Pola, Senior Member

HIGHER EDUCATION SUPPORT – FEE-HELP – re-crediting a HELP balance – remission of debt – special circumstances – whether the applicant's circumstances were beyond their control – whether the applicant's circumstances made their full impact on or after the census date – whether the applicant's circumstances made it impracticable to complete the requirements – medical evidence – Tribunal does not find special circumstances – decision affirmed

[Sharif and Secretary, Department of Education](#) [2024] AATA 3185 (14 August 2024); A Maryniak KC, Member

EDUCATION – HECS-HELP – debt remission application – Higher Education Support Act 2003 – special circumstances – whether circumstances existed preventing the Applicant from making an application in the relevant period – Tribunal not satisfied such circumstances existed – reviewable decision affirmed

## Freedom of Information

[Tombazos; Chief Executive Officer, Australian Research Council and](#) (Freedom of information) [2024] AATA 3012 (23 August 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – review of decision of the Freedom of Information Commissioner who had overturned a decision of the Australian Research Council to refuse access to information in a spreadsheet – applicant contends that material in the document in issue is exempt from disclosure under s 45 of the FOI Act – consideration of what is required to found an action for breach of confidence – decision under review set aside

## Migration

[2113489](#) (Migration) [2024] AATA 2298 (6 June 2024); J Clarke, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – orphan relative of an Australian relative – age requirement – birth certificates in Somalia – whether parents were deceased – bogus document – counterfeit school records – compelling and compassionate circumstances – decision under review remitted

[2311855](#) (Migration) [2024] AATA 2290 (5 April 2024); K Millar, Deputy President

MIGRATION – Cancellation – Subclass 010 (Bridging A) visa – criminal conviction – ongoing review of the decision to refuse his application for a protection visa – compelling need to remain in Australia is met by the grant of a Bridging Visa E – cancelling his Subclass 010 visa will not affect his ability to remain in Australia – decision under review affirmed

[2407121](#) (Migration) [2024] AATA 2297 (15 April 2024); De-Anne Kelly, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – unlawful non-citizen – grounds for seeking the visa – will apply for a substantive visa – pending Ministerial Intervention request – abide by conditions imposed – reporting and notification requirement – no criminal conduct requirement – security bond – decision under review affirmed

[Asif](#) (Migration) [2024] AATA 2338 (24 June 2024); G Hallwood, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 Business Innovation and Investment (Provisional) – Significant Investor Extension stream – bogus document – business quotations – reconciling and correcting internal records – purposeful falsity – compelling circumstances affecting the interests of an Australian – decision under review affirmed

[Benioni and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 3048 (30 July 2024); D Cosgrave, Member

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa cancellation – failure to pass character test – whether there is another reason to set aside the mandatory visa cancellation – grievous bodily harm – Ministerial Direction No. 110 applied

[Elomari](#) (Migration) [2024] AATA 2344 (28 June 2024); J Watts, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – sponsorship limitation – shared finances – review applicant’s family commitments in Australia – social recognition of the relationship – lengthy cohabitation in Lebanon – compelling circumstances for waiver – decision under review remitted

[Hughes and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2024] AATA 3158 (4 September 2024); S Burford, Deputy President

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 110 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a 58 year old citizen of New Zealand and United Kingdom – extent of impediments if returned to New Zealand – Non-Revocation Decision is affirmed

[Johnston](#) (Migration) [2024] AATA 2342 (24 June 2024); K Millar, Deputy President

MIGRATION – Special Category (Temporary) (Class TY) visa – Subclass 444 (Special Category) – behaviour concern non-citizen – applicant deported from the United Kingdom – previous visa not allowing re-entry – shared care of Australian children – financial hardship – multiple re-entries on the same visa in error – circumstances not anticipated by the legislation – referral for Ministerial Intervention – decision under review affirmed

[KHAN](#) (Migration) [2024] AATA 2209 (17 June 2024); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – bogus documents – incorrect information in the visa application – university certificates – educational history – actions of previous education agent – courses cancelled in Australia – poor study progress – health issues of the children – decision under review affirmed

[Leorum](#) (Migration) [2024] AATA 2334 (25 June 2024); A Da Costa, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Labour Agreement stream – Minister of Religion (Monk) – no approved nomination – essential community support and religious guidance to the Buddhist and Cambodian communities – referral for Ministerial Intervention – decision under review affirmed

[Peralta Montes and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 3050 (28 August 2024); J Cipolla, Senior Member

MIGRATION – refusal of Applicant’s Subclass 186 visa – serious offending – crimes of a sexual nature against a minor – refusal revoked



**[Raumakita and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)** (Migration) [2024] AATA 3178 (4 June 2024); A Poljak, Senior Member

MIGRATION – mandatory cancellation of a Class BF Transitional (Permanent) visa under section 501(3A) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 - decision under review is affirmed

**[Rodriguez Torrez and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2024] AATA 3014 (23 August 2024); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class XB Subclass 201 In-country Special Humanitarian visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – Applicant was convicted of sexually penetrating a child of or over the age of 13 years and under the age of 16 years – Applicant was sentenced to 20 months of imprisonment – whether the decision to revoke the visa cancellation under section 501CA(4) should be set aside – consideration of Ministerial Direction No. 110 – legal consequences of the decision considered – no “protection finding” – decision under review is affirmed

**[Uliigaloa and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Migration) [2024] AATA 3157 (5 September 2024); J Cipolla, Senior Member

MIGRATION – cancellation of Applicant’s Class BS Subclass 801 Partner visa – substantial criminal record – family violence – alcohol abuse – protection of the Australian community – decision affirmed

**[Zhang](#)** (Migration) [2024] AATA 2400 (26 June 2024); R Anderson, Member

MIGRATION – Business Skills (Permanent) (Class EC) visa – Subclass 888 (Business Innovation) – ownership interest in a qualifying main business – no wine exports in part of the relevant period – continuing to actively operate – direct and continuous involvement in the management – China imposed anti-dumping duties on Australian wine – negotiations for diversifying export opportunities – limited customer base – decision under review remitted

## **National Disability Insurance Scheme**

**[Guy and National Disability Insurance Agency](#)** [2024] AATA 3029 (28 August 2024); S Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – value for money – request for regular access to a sex worker – sex therapy – autism spectrum disorder – social and communication deficits – long-term effects of a sex worker on functional capacity – distinction between sex worker and sex therapist – where allied health therapies represent value for money – purpose of the scheme – disability needs of the applicant – decision under review affirmed

**[Hall and National Disability Insurance Agency](#)** [2024] AATA 3151 (4 September 2024); Dr K Dodd, Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – Klinefelter syndrome – lumbar spondylosis – osteoporosis – osteoarthritis – depression and anxiety – lower back pain – hypopituitarism – whether the impairments are, or are likely to be, permanent – consideration of whether surgical intervention is an appropriate evidence-based treatment – whether impairments have resulted in substantially reduced functional capacity – assistive technology, equipment and home modification – decision affirmed

[Lampard and National Disability Insurance Agency](#) [2024] AATA 3150 (4 September 2024); G Melick AO SC, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – permanence – substantially reduced functional capacity – Anorexia and other conditions – early intervention requirements – disability requirements – functional capacity – self-care – whether the Applicant is to be granted access – decision under review set aside and substituted

[NMFF and National Disability Insurance Agency](#) [2024] AATA 3182 (6 September 2024); P French, Member

NATIONAL DISABILITY INSURANCE SCHEME – National Disability Insurance Agency – reviewable decision of Chief Executive Officer – preparing participants’ plans – approval of statement of participant supports – reasonable and necessary supports – whether requested support will assist the participant to pursue her statement of participant goals and aspirations – whether requested support represents value for money – whether requested support is effective and beneficial – whether requested support is most appropriately funded or provided through the NDIS – decision under review set aside and remitted for reconsideration with directions

[Patterson and National Disability Insurance Agency](#) [2024] AATA 3053 (28 August 2024); P Hunter, Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – multifactorial shortness of breath – heart failure – morbid obesity – whether there is substantially reduced capacity – access refused – decision affirmed

[Saeed and National Disability Insurance Agency](#) [2024] AATA 3030 (27 August 2024); N Purcell, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – pre-hearing process – pain – expert evidence – photo evidence – allegation of bias against expert – deeming provisions – substantially reduced functional capacity – decision affirmed

[White and National Disability Insurance Agency](#) [2024] AATA 3160 (5 September 2024); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – access criteria – disability requirements – decision under review set aside – decision substituted that applicant meets the access criteria

[Winn and National Disability Insurance Agency](#) [2024] AATA 3034 (27 August 2024); M Mischin, Deputy President

NATIONAL DISABILITY INSURANCE SCHEME – Specialist Disability Accommodation – eligibility criteria per section 11 National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020 (Cth) (SDA Rules) – whether extreme functional impairment per section 12 SDA Rules – whether very high support needs per section 13 SDA Rules – decision under review affirmed

## Practice and Procedure

[Baumgarten and eSafety Commissioner](#) [2024] AATA 3052 (28 August 2024); A Poljak, Senior Member

PRACTICE AND PROCEDURE – request made to the Tribunal by the applicant to exercise its discretion under subsection 40A(1)(b) of the Administrative Appeals Tribunal Act 1975 (Cth) to issue summonses – Whether request is relevant to the jurisdictional issues the Tribunal is yet to determine – Whether the Tribunal should exercise the discretion in subsection 40A(2) of the AAT Act to refuse the Applicant's request – Request to issue summons refused

[Catt and National Disability Insurance Agency](#) [2024] AATA 3006 (23 August 2024); T Bubutievski, Member

PRACTICE AND PROCEDURE – Application for extension of time – factors that are relevant when considering an application for extension of time – length of delay – explanation for the delay – merits of the substantive application for review – alternative avenues for relief available – application granted

[DVFW and Comcare](#) (Compensation) [2024] AATA 3051 (24 July 2024); S Webb, Member

PRACTICE AND PROCEDURE – jurisdiction – suspension of entitlements to compensation in respect of injury – notice of requirement to undergo medical examination – failure to undergo examination – reason for failure not found to be reasonable – suspension of compensation pending compliance – applicability of Fair Work Legislation Amendment (Closing Loopholes) Act 2023 – amendments not applicable – suspension decision not reviewable – Tribunal's jurisdiction conditioned by reviewable decision – no reviewable decision – no authority to evaluate reasonableness of excuse – proceedings stayed until notice complied with

[Long and National Disability Insurance Agency](#) [2024] AATA 3015 (21 August 2024); N Purcell, Member

PRACTICE AND PROCEDURE – deemed decision – jurisdiction – no internal review – alternative pathway – agreement to withdraw – fresh application – to avoid uncertainty application dismissed for lack of jurisdiction

[O'Hara and Comcare](#) (Compensation) [2024] AATA 3013 (2 July 2024); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – summons – objection to grant of leave to first inspect – relevant considerations – legal professional privilege – Commonwealth holds privilege – possibility of objectionable material – consideration of interests and procedural fairness – objections refused

[O'Hara and Comcare](#) (Compensation) [2024] AATA 3152 (4 September 2024); S Webb, Member

PRACTICE AND PROCEDURE – worker's compensation – rehabilitation program – summons – objections to grant of access – legal professional privilege – 'without prejudice' objection – public interest disclosure – national security – relevance – disparagement – objections not made out

[Rogers and Australian Securities and Investments Commission](#) [2024] AATA 3161 (30 July 2024); G Lazanas, Deputy President

PRACTICE AND PROCEDURE – whether Tribunal has jurisdiction to consider certain documents and information included in T-Documents referred to as Additional Client Files – where Additional Client Files were not before first instance decision-maker – where Additional Client Files pre-dated the reviewable decision of the decision-maker and could have been considered and relied upon – no relevant limitations in Corporations Act – no change in the nature of the decision or of the question before the decision-maker – not a different statutory question than that which was decided by the decision-maker – whether any procedural unfairness – held Tribunal has jurisdiction to consider Additional Client Files

[Sanders and Migration Agents Registration Authority](#) [2024] AATA 3028 (23 August 2024); I Hanger AM KC, Deputy President

PRACTICE AND PROCEDURE – Where applicant failed to provide an agreement for fees and services to client hotel – where applicant made assumptions as to the authority of an employment agency to act on behalf of the client hotel – where applicant failed to ascertain instructions directly from the Director of the client hotel – where applicant failed to test the veracity of documents sent by the employment agency purporting to provide confirmation the hotel client had nominated a visa applicant – whether applicant is a person of integrity or otherwise a fit and proper person to give immigration assistance – where breaches of the Code of Conduct did not involve dishonesty

[Visvis and Secretary, Department of Health and Aged Care](#) [2024] AATA 3159 (2 September 2024); A Poljak, Senior Member

ADMINISTRATIVE – Interlocutory application – Request for revocation of stay of decision of the respondent – Where applicant failed to comply with the conditions of Stay – Application granted – Stay revoked

## Refugee

[1809121](#) (Refugee) [2024] AATA 2175 (21 March 2024); A Goodier, Member

REFUGEE – protection visa – Ethiopia – ethnicity – Oromo – imputed political opinion – participation in protests – detention and torture – participation in peaceful protests in Australia – ethnic tensions – relocation unreasonable – cumulative profile and country information – decision under review remitted

[2005477](#) (Refugee) [2024] AATA 2300 (11 April 2024); G Hamilton, Member

REFUGEE – Protection Visa – Iran – religion – Baha'i – an outspoken critic of the Islamic faith – has renounced Islam – now agnostic – actual and imputed political opinion – anti-Iranian regime – membership of particular social groups – failed asylum seeker – non belief in religion in itself does not create a real chance of serious harm in Iran – tribunal does not accept that the applicant was ever introduced to the Baha'i faith or that he was or is a follower of Baha'i or any of its beliefs – applicant does not have a well-founded fear of persecution – decision under review affirmed

[209094](#) (Refugee) [2024] AATA 2376 (27 February 2024); P Katsambanis, Member

REFUGEE – protection visa – Kenya – particular social group – male homosexual – undermining the Kalenjin culture – fear of physical assault – attack on home by the Mungiki – killing of the applicant’s partner – tribal violence – state protection – delay in applying for protection – decision under review affirmed

[2312123](#) (Refugee) [2024] AATA 2265 (26 February 2024); J Ermert, Member

REFUGEE – protection visa – Fiji – police mistreatment and abuse – attacked without provocation – random attack – effective state protection – racial discrimination – indigenous Fijian (iTaukei) – abolition of the Great Council of Chiefs (GCC) – rejection for employment extension – political opinion – brother’s conviction and imprisonment for sedition – religion – Christian – decision under review affirmed

[2319880](#) (Refugee) [2024] AATA 2373 (15 March 2024); N Lamont, Member

REFUGEE – protection visa – Vietnam – sur place claims – whether to bolster claims for protection – member of Viet Tan – participation in protests in Australia – social media activities – decision under review remitted

[2401353](#) (Refugee) [2024] AATA 2227 (3 June 2024); A Faram, Member

REFUGEE – protection visa – East Timor – written claim of fear of harm from ex-boyfriend and uncle because of boyfriend’s debt to uncle – at hearing, claim acknowledged as incorrect at hearing and new claim of fear of harm from husband – application completed by acquaintance and no adverse inference drawn – customary marriage and young child – assaulted and isolated from family – husband’s senior occupation and ongoing interest in applicant’s return – country information – traditional gender roles, violence against women and no reasonably effective state protection – decision under review remitted

[2405430](#) (Refugee) [2024] AATA 2226 (23 May 2024); Kate Chapple, Member

REFUGEE – protection visa – Solomon Islands – membership of particular social group – woman in bride-price marriage and victim of domestic violence – arranged marriage with older man – bride price and emotional, physical and sexual abuse and violence – police safety notice and restraining order – no opportunity to relocate in small country with customary land ownership – supporting statements from relatives – consent to decision without hearing – vulnerable person – country information – gender inequality and gender-based violence – societal attitudes and under-resourcing and inaction by police – delay in applying for protection – learned about protection visa from friend – decision under review remitted

## Social Security

[Abboud and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 3049 (23 August 2024); A Poljak, Senior Member

SOCIAL SECURITY – parenting payment (single) – whether a member of a couple – whether debt owing to the Commonwealth – whether debt should be waived or written off – decision affirmed

[FTXB; Secretary, Department of Social Services and](#) (Social services second review) [2024] AATA 3021 (28 August 2024); Justice E Kyrou, President and M Kennedy, Senior Member and S Trotter, Senior Member

SOCIAL SECURITY – youth allowance – rate of a person's youth allowance – rate calculator – income test in method statement in module A, point 1067G-A1 of Social Security Act 1991 ('Act') – determination of reduction in youth allowance in accordance with method statement in module H, point 1067G-H1 of Act – requirement in point 1067G-H23 of Act that 'ordinary income is to be taken into account in the fortnight it is first earned, derived or received'.

SOCIAL SECURITY – meaning of 'ordinary income', 'first', 'earned', 'derived' and 'received' in point 1067G-H23 of Act – proper construction of point 1067G-H23 read as a whole.

SOCIAL SECURITY – respondent received youth allowance in fortnightly instalments while studying and working irregular shifts as casual employee – respondent paid according to hourly rate every Thursday for work performed in previous week from Monday to Sunday – respondent mistakenly underreported his gross income from wages for some fortnightly instalment periods – records available about amounts paid and dates of payment of wages for each instalment fortnight but no specific records of days worked in each instalment fortnight – common ground that respondent earned gross income from wages before receiving the income – how point 1067G-H23 of Act to be applied to take into account respondent's gross income from wages in determining his rate of youth allowance – whether respondent's underreporting of gross income has given rise to a debt to Commonwealth.

SOCIAL SECURITY – in present case, respondent first earned income each week on a Sunday and that is the relevant date for purposes of point 1067G-H23 of Act – respondent did not earn income every hour – respondent overpaid youth allowance and owes debt of \$806.16 to Commonwealth.

STATUTORY INTERPRETATION – general principles of statutory interpretation – relevance of taxation and employment cases to construction of point 1067G-H23 of Act – relevance of beneficial nature of Act to construction of point 1067G-H23 of Act – relevance of terms of contract of employment for purposes of point 1067G-H23 of Act – relevance of practical consequences of competing interpretations in construing point 1067G-H23 of Act

[Large and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 3181 (6 September 2024); D J Morris, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – family tax benefit – debts – was the applicant overpaid family tax benefit – do the overpayments constitute debts to the Commonwealth – should all or part of the debts be written-off or waived – errors by the agency – authorised review officer affirmed a debt decision – tribunal at first review waived a percentage of debt for special circumstances – authorised review officer affirmed separate debt decision – tribunal at first review affirmed separate debt decision – applicant sought review of both first review decisions by tribunal at second review – matters heard together – respondent concedes administrative error – respondent concedes poor administration amounts to special circumstances – extent to which applicant contributed to debts – decisions under review each set aside and a new decision is substituted with a direction

[Mangino and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 3022 (27 August 2024); L Benjamin, Member

SOCIAL SERVICES – Eligibility for Disability Support Pension – Appeal of decision of Social Services and Child Support Division – where purported impairments included lumber and cervical spinal disorder conditions – where no impairment points can be allocated – decision affirmed

[The Estate of Veronika Komaromi and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 3117 (30 August 2024); S Evans, Member

SOCIAL SECURITY – cancellation of age pension – value of assets exceeded allowable asset limit – death of Applicant after commencement of application – whether cancellation of Applicant’s age pension in error – whether property an unrealisable asset – hardship rules – AFFIRMED

[Van Duren and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 3156 (30 August 2024); R Cameron, Senior Member

SOCIAL SECURITY – Disability Support Pension – determination that the applicant was not eligible for pension – whether the applicant had a medical impairment rating of at least (20) points under the Impairment Tables – whether the applicant had a continuing inability to work – applicant had medical conditions with (10) impairment points under the Impairment Tables – 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>Hodgson and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 2608</a>
<b>Leo'o Olo and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 2774</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission</b>	<a href="#">[2023] AATA 2161</a>	<a href="#">[2024] FCAFC 115</a>
<b>FCSV v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3012</a>	<a href="#">[2024] FCA 963</a>
<b>RDYQ v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2738</a>	<a href="#">[2024] FCAFC 108</a> <a href="#">[2024] FCA 254</a>
<b>Rindeklev v Comcare</b>	<a href="#">[2023] AATA 2826</a>	<a href="#">[2024] FCA 1023</a>
<b>Scanes v Comcare</b>	<a href="#">[2023] AATA 3537</a>	<a href="#">[2024] FCA 961</a>
<b>Victorian Institute of Teaching v Rachele</b>	<a href="#">[2023] AATA 2722</a>	<a href="#">[2024] FCA 958</a>



# Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

## Notification of Investigations (where there is no existing Statement of Principles)

The AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

**Traumatic Brachial Plexopathy** - <https://www.legislation.gov.au/C2024G00525/latest/text>

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 24 September 2024:

**Ingrown nail (Balance of Probabilities) – No. 73 of 2024**

<https://www.legislation.gov.au/F2024L01052/latest/text>

**Ingrown nail (Reasonable Hypothesis) – No. 72 of 2024**

<https://www.legislation.gov.au/F2024L01051/latest/text>

## Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on **24 September 2024**:

**Ingrowing nail (Balance of Probabilities) – No. 107 of 2015**

<https://www.legislation.gov.au/F2015L01327/asmade/text>

**Ingrowing nail (Reasonable Hypothesis) – No. 106 of 2015**

<https://www.legislation.gov.au/F2015L01326/asmade/text>



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