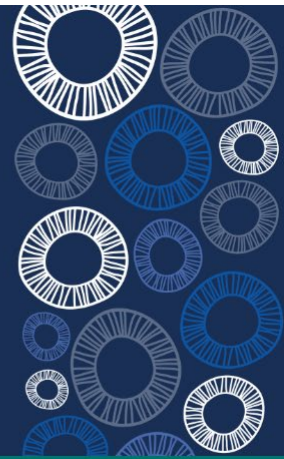




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 19/2023**

**25 September 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.

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

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Child Support.....	3
Citizenship .....	4
Compensation.....	5
Customs and Excise .....	5
Education and Research .....	5
Freedom of Information .....	6
Health .....	6
Migration .....	6
National Disability Insurance Scheme.....	11
Practice and Procedure .....	11
Privacy.....	14
Refugee.....	14
Social Security.....	16
Taxation .....	17
Veterans' Affairs .....	18
<b>Appeals.....</b>	<b>19</b>
Appeals lodged.....	19
Appeals finalised .....	19

# 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

[BDPK and Child Support Registrar](#) (Child support second review) [2023] AATA 2999 (19 September 2023); J Rau SC, Senior Member

CHILD SUPPORT – percentage of care – change in percentage of care – whether percentage of care changed – criteria to determine to what extent a parent has care of a child – decision under review is set aside

[KWQX and Child Support Registrar](#) (Child support second review) [2023] AATA 2960 (15 September 2023); S Evans, Member

CHILD SUPPORT – percentage care decision - Change of care — Actual care — Extent of care— where the Child removed from Other Party's care by Court Order – Where the child was in a state-run institution – Whether Other Party had any care of the Child during relevant period – Date of effect – Decision set aside and remitted with directions

[Annan and Annan](#) (Child support) [2023] AATA 2664 (3 July 2023); K Dordevic, Senior Member

CHILD SUPPORT – dismissal of application for review – particulars of the administrative assessment – no reasonable prospect of success – applications for review dismissed

[Herreira and Aguilar](#) (Child support) [2023] AATA 2658 (30 June 2023); P Jensen, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – both parents provided no care – decision under review affirmed

[Herreira and Aguilar](#) (Child support) [2023] AATA 2660 (30 June 2023); P Jensen, Member

CHILD SUPPORT – non-agency payment – prescribed payment – not a payer of an enforceable maintenance liability – decision under review set aside and substituted

[Lopez and Romer](#) (Child support) [2023] AATA 2934 (29 June 2023); D Tucker, Member

CHILD SUPPORT – departure determination – special needs – orthodontic treatment – a ground for departure established – decision to depart - decision under review set aside and substituted

[Rivera and Child Support Registrar](#) (Child support) [2023] AATA 2931 (3 July 2023); M Kennedy, Senior Member

CHILD SUPPORT – late payment penalty - whether there were grounds to remit – whether the liable parent took reasonable action – not fair and reasonable to remit - decision under review affirmed

[Skyles and Skyles](#) (Child support) [2023] AATA 2148 (29 June 2023); S Trotter, Senior Member

CHILD SUPPORT – departure determination – school fees for child – ground for departure established – decision under review varied

## Citizenship

[GDHF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2983 (18 September 2023); Senior Member D J Morris

CITIZENSHIP – applicant is a citizen of the Republic of the Union of Myanmar – applicant granted visa to reside in Australia – applicant applied for citizenship by conferral – delegate of respondent decided not satisfied of applicant's identity – citizenship application refused – applicant sought review by Tribunal – citizenship policy instructions – three pillars of identity – biometrics – documents – life story – paucity of overseas documents provided by applicant – documents provided during hearing – obligation on applicant to put their case forward – decision under review remitted with direction

[Haidari and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 2986 (18 September 2023); Senior Member D J Morris

CITIZENSHIP – applicant is a citizen of Afghanistan – applicant a permanent resident of Australia – applicant applied for Australian citizenship – delegate of minister decided not satisfied applicant was of good character – applicant applied to Tribunal for review – consideration of conduct of applicant – consideration of citizenship policy instruction – information and documents provided by applicant – four matters in dispute – the provision of a bogus taskera – the whereabouts of the applicant's father – the applicant's partner – the applicant's religious beliefs – importance of providing truthful and complete information to the Department – decision under review is affirmed

[Harton and Minister for Immigration, Citizenship and Multicultural Affairs](#) [2023] AATA 2897 (11 September 2023); Senior Member A George

CITIZENSHIP – applicant's application for citizenship by descent refused – whether the applicant's father was an Australian citizen at the time of the applicant's birth in accordance with subsection 16(2)(a) of the Australian Citizenship Act 2007 – decision under review affirmed

[Sfar and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA (22 September 2023); Senior Member Emeritus Professor P A Fairall

CITIZENSHIP – Australian Citizenship Act 2007 (Cth) – refusal of conferral of Australian citizenship – good character requirement – paragraph 21(2)(h) of the Citizenship Act – CPI 15 – enduring moral qualities – passage of time – decision under review set aside and remitted for reconsideration

## Compensation

[Pisaneschi and K&S Freighters Pty Ltd](#) (Compensation) [2023] AATA 2997 (19 September 2023); Senior Member Dr Stewart Fenwick

COMPENSATION – permanent impairment – accepted claim for hernia injuries – accepted claim for psychiatric injury – multiple prior claims for permanent impairment – whether all reasonable rehabilitative treatment undertaken – applicant not likely to undertake rehabilitative treatment for substantial period – decision set aside and substituted

[Smith and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 3021 (22 September 2023); Dr L Bygrave, Member

COMPENSATION – entitlement to incapacity payments – calculation of normal weekly earnings – where Applicant discharged from the Army in 1983 – increases of normal weekly earnings made by annual adjustments in accordance with the Wage Price Index – decision under review affirmed

## Customs and Excise

[Direct Fire Supplies Pty Ltd and Comptroller-General of Customs](#) [2023] AATA 2909 (13 September 2023); Deputy President P Britten-Jones

CUSTOMS – Tariff classification – whether imported pipes fall within the classification of ‘line pipe of a kind used for oil and gas pipelines’ – consideration of the phrase ‘of a kind used for’ – imported pipes do not fall within the genus of line pipe used for oil or gas pipelines – decision under review affirmed

## Education and Research

[Binns and Secretary, Department of Education](#) [2023] AATA 2988 (19 September 2023); Senior Member B J Illingworth

HIGHER EDUCATION SUPPORT – HECS-HELP loan – student assistance – HECS-HELP debt – Flinders University – special circumstances – 12-month application period – remission – re-credit – decision under review varied

[GHJF and Secretary, Department of Education](#) [2023] AATA 2914 (13 September 2023); Senior Member K Parker

HIGHER EDUCATION SUPPORT – application to re-credit FEE-HELP balance pursuant to s 104-25 of the Higher Education Support Act 2003 (Cth) – whether the Tribunal should waive the requirement for the application for remission of debt to be made within “application period” as defined under s 104-30 – whether “special circumstances” applied under Part 3 of the Higher Education Support (Administration) Guidelines 2022 (Cth) – decision set aside and substituted with decision to re-credit the Applicant’s HELP balance by amounts equivalent to the FEE-HELP assistance amounts in respect of the relevant units

## Freedom of Information

[Ridley and Chief Executive Officer, National Disability Insurance Agency](#) (Freedom of information) [2023] AATA 3729 (4 May 2023); Deputy President A G Melick AO SC

FREEDOM OF INFORMATION – whether practical refusal reason exists – whether requests may be treated as a single request – whether adequate searches for documents undertaken – public interest conditional exemptions – whether disclosure would have a substantial adverse effect on the proper and efficient conduct of the operations of an agency – whether documents subject to legal professional privilege – decisions affirmed

## Health

[Caring Home Care Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2023] AATA 2901 (12 September 2023); Senior Member A Poljak

HEALTH AND AGED CARE – refusal of application for approval as an approved provider of aged care – whether the Applicant has experience in providing aged care or other relevant forms of care – whether the Applicant demonstrated understanding of its responsibilities as a provider of home care – whether the Applicant has systems in place to meet its responsibilities as a provider of home care – whether the Applicant has sound financial management – decision under review affirmed

## Migration

[Ajak and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3023 (24 August 2023); Senior Member T Tavoularis and Senior Member W Pennell

MIGRATION – non-revocation of a mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – where the Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction 99 – index offending of rape – where risk of reoffending found to be moderate to high – where the best interests of minor children, links and ties to the Australian community weigh in favour of revocation – where legal consequences of the decision weigh strongly in favour of revocation – where Tribunal finds protection and expectations of the Australian community outweigh primary and other considerations in favour of revocation – the Tribunal finding there is no other reason to revoke the mandatory cancellation of the Applicant's visa – decision under review affirmed

[Chol and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2920 (14 September 2023); Deputy President P Britten-Jones

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record including violence whilst in prison and detention – whether there is 'another reason' to revoke mandatory cancellation decision - he 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 – decision under review is affirmed

[FCSV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3012 (21 September 2023); Senior Member Dr M Evans-Bonner

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include carry out sexual act with another without consent-T2, numerous possess prohibited drug offences and breaches of community correction orders – Applicant is a 56 year old citizen of Fiji who arrived in Australia as a 21 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 – no 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 Fiji – impact on victims – Reviewable Decision affirmed

[FVKL and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2880 (14 August 2023); Senior Member Dr N A Manetta

MIGRATION – refusal of protection visa under section 501(1) – Direction 99 – serious sexual crimes – trend of increasing seriousness – medium risk of reoffending – strength, nature and duration of ties to Australia – interests of minor child in Australia and of former partner in receiving support – best interests of child weigh significantly in applicant’s favour – expectations of Australian community weigh against applicant – ongoing detention and deprivation of liberty – applicant cannot be compulsorily removed to country of origin – low likelihood that applicant will be removed to a third country – prospect of indefinite detention weighs substantially in applicant’s favour – decision under review set aside

[JPPS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3022 (21 September 2023); Senior Member Dr Stewart Fenwick

MIGRATION – refusal to grant protection visa – whether serious reasons for considering that the applicant committed a serious non-political crime before entering Australia – citizen of Lebanon – sentence of death in absentia by Judicial Council of Lebanon – alleged involvement with Islamist terrorism – decision set aside and substituted

[Paewai and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2978 (13 September 2023); Senior Member S Burford

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 child – expectations of the Australian community – extent of impediments if removed — extent of impediments if returned to New Zealand – Non-Revocation Decision is affirmed

[PLQF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2982 (18 September 2023); Senior Member J C Kelly

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

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

(Migration) [2023] AATA 3001 (20 September 2023); Senior Member Kira Raif

Catchwords – MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – failure to pass character test – where Applicant engaged in serious violent and drug-related offending – whether there is another reason why visa cancellation should be revoked – protection of the Australian community – nature and seriousness of Applicant's conduct to date – strength, nature and duration of ties to Australia – best interests of minor children – expectation of the Australian community – legal consequences of decision – impediments to removal – decision under review set aside and substituted

**Sekhon and Minister for Immigration, Citizenship, and Multicultural Affairs**

(Migration) [2023] AATA 2916 (13 September 2023); Senior Member A Nikolic AM CSC

MIGRATION – Visa refusal – citizen of India – dependent Applicant on wife's Employer Nomination Scheme subclass 186 visa – request to join Applicant's wife as a party to proceeding – ss 30(1A) and 31 of Administrative Appeals Tribunal Act 1975 (Cth) considered – joinder application declined – does Applicant fail character test under s 501(6)(d)(i) of the Migration Act – conviction for indecent assault in April 2013 – failure to disclose offending in visa applications and Incoming Passenger Card – does Applicant constitute more than minimal or remote chance of engaging in further criminal conduct if allowed to remain in Australia – expert evidence considered – isolated offending – Applicant has lived law-abiding life in Australia since 2012 – Applicant's circumstances different from a decade ago – character references from friends and family – recidivism risk is minimal or remote – Applicant does not fail character test under s 501(6)(d)(i) of the Migration Act – reviewable decision set aside and substituted

**Simeon and Minister for Immigration, Citizenship and Multicultural Affairs**

(Migration) [2023] AATA 2998 (15 September 2023); Senior Member Emeritus Professor P A Fairall

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

**Sioni and Minister for Immigration, Citizenship and Multicultural Affairs**

(Migration) [2023] AATA 2987 (28 July 2023); Lee Benjamin, Member

MIGRATION – Mandatory visa cancellation – PNG citizen - Class BB Subclass 155 Five Year Resident Return visa – section 501CA of the Migration Act 1958 (Cth) – failure to pass good character test – substantial criminal record – where offending includes sexual offences, “revenge porn” offences and domestic violence offences – whether “another reason” exists for Tribunal to revoke mandatory cancellation of visa under section 501CA of the Migration Act 1958 (Cth) – Ministerial Direction No. 99 applied – Respondent's delegate's decision affirmed



[TJZG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2994 (19 September 2023); Deputy President Antoinette Younes

MIGRATION – refusal to grant visa – failure to pass the character test – impugning the conviction and sentence – whether to exercise discretion to refuse to grant the visa – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – strength nature and duration of ties to Australia – expectations of the Australian community – impediments to removal – decision set aside and remitted to the Respondent for reconsideration with the direction that the visa not be refused on character grounds under section 501 of the Migration Act 1958 (Cth)

[Tan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2917 (14 September 2023); Senior Member T Tavoularis

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa – where the Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction 99 – where criminal offending involved smuggling tobacco products in Australia leading to loss of revenue for the state – where the risk of re-offending found to be low – Tribunal finding that there is another reason to revoke the mandatory cancellation decision – decision under review set aside and substituted

[Tupou and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2879 (28 August 2023); R Reitano, Member

MIGRATION – mandatory cancellation of Class TY Subclass 464 Special Category (Temporary) visa under section 501(3A) – whether there is another reason to revoke the cancellation – presence in Australia during and since formative years – positive contribution to Australian community – best interest of minor children – consideration of Ministerial Direction No. 99 – prospect of indefinite detention – decision under review is set aside

[XKTK and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2963 (15 September 2023); R Reitano, Member

MIGRATION – mandatory cancellation of Class XE Subclass 790 Safe Haven Enterprise Visa under section 501(3A) – whether there is another reason to revoke the cancellation – Applicant engages in sexual offence against child – where protection finding made with no prospect of returning to country of origin – protection of Australian community – Strength, nature and duration of ties to Australia – Expectations of the Australian community – legal consequences of the decision – prospect of indefinite detention – decision under review set aside

[Vu and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 2989 (13 September 2023); S Evans, Member

MIGRATION – visa refused under subsection 501(1) 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 – Pearson affected – return to immigration detention – Direction no. 99 considered – reviewable decision affirmed

[ZHRS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 2918 (12 September 2023); Senior Member C J Furnell

MIGRATION – mandatory cancellation of Class XB Subclass 200 Refugee (Permanent) visa – Migration Act 1958 (Cth) s 501CA(4) – South Sudan – Applicant does not pass character test – substantial criminal record – whether there is another reason why mandatory cancellation should be revoked – Direction 99 – primary and other considerations – decision under review set aside and substituted

[2010052](#) (Migration) [2022] AATA 5268 (30 August 2022); D Crawshay, Member

MIGRATION – Other Family (Migrant) (Class BO) visa – Subclass 116 (Carer) – carer of the Australian relative – Autistic Spectrum Disorder – ADHD – assistance cannot reasonably be provided/obtained – other relatives – relevant services – NDIS – private nannying services – cost prohibitive – respite care – decision under review remitted

[2213893](#) (Migration) [2023] AATA 2554 (27 July 2023); D Crawshay, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – sponsored family stream – genuine temporary entrant – visiting family and nephew’s wedding – previous substantially compliant visits – long-term rental accommodation and recent, low-paying work – two children intending to travel but not applicants for review – other family members in Australia – real concern of application for protection visa – family violence by ex-husband – offer of security bond – decision under review affirmed

[2216347](#) (Migration) [2023] AATA 3003 (14 July 2023); S Conwell, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine temporary stay for purpose of visa – psychological counselling – evidence of treatment provided, departing flight booked and potential job offer in home country – previous visa cancelled and period as unlawful non-citizen – department aware that applicant had not received notification of cancellation – error of law and lack of procedural fairness – consequences for likely future visa applications – decision made without hearing necessary – decision under review remitted

[2300726](#) (Migration) [2023] AATA 2222 (1 February 2023); R Skaros, Senior Member

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – ground for cancellation – charged with an offence – unlawful assault – threat to kill – damage to property – assaulting a police officer – consideration of discretion – Direction No.63 – the government’s view – best interests of any children – impact on the family unit – degree of hardship – circumstances in which the non-compliance arose – possible consequences of cancellation – decision under review affirmed

[Kumar](#) (Migration) [2023] AATA 2087 (30 June 2023); W Banfield, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – false or misleading information or bogus documents provided in relation to visa application – bank statement and term deposit receipt – department’s checks showed bank account does not exist – father contacted local bank official to organise documents – evidence of property, assets and Australian account provided later – applicant responsible for documents, however obtained – indifference to father’s and official’s actions – no compassionate or compelling circumstances to waive requirements – decision under review affirmed

[Zhou](#) (Migration) [2023] AATA 2205 (28 June 2023); R Westaway, Senior Member

MIGRATION – cancellation – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – incorrect information in a previous visa application – undeclared previous marriage and child – applicant remained married at the time of his current marriage – mental health issues – financial hardship – best interest of the Australian children – decision under review set aside

## **National Disability Insurance Scheme**

[Desai and National Disability Insurance Agency](#) [2023] AATA 3004 (20 September 2023); Senior Member P J Clauson AM

NATIONAL DISABILITY INSURANCE SCHEME – request for access – disability criteria – early intervention requirement – chronic nociplastic pain – permanent impairment

[DLYS and National Disability Insurance Agency](#) [2023] AATA 2965 (28 August 2023); Senior Member K Buxton

NATIONAL DISABILITY INSURANCE SCHEME – Compensation – Compensation Reduction Amount – damages in respect of personal injury – special circumstances – set aside and remitted

[James and National Disability Insurance Agency](#) [2023] AATA 2991 (15 September 2023); Senior Member K Buxton

NATIONAL DISABILITY INSURANCE SCHEME – application for review of decision to approve statement of supports in participant plan – whether support is reasonable and necessary – maintenance for assistance dog – decision under review set aside and remitted

[LJWV and National Disability Insurance Agency](#) [2023] AATA 2992 (15 September 2023); Senior Member K Buxton

PRACTICE AND PROCEDURE – failure to appear – National Disability Insurance Scheme – application dismissed

[O’Hearn and National Disability Insurance Agency](#) [2023] AATA 2993 (18 September 2023); Senior Member K Buxton

Interlocutory Application – National Disability Insurance Scheme – Plan – Review of Supports in Plan – Statement of Participant Supports – Section 42D Remittal – Whether 42D remittal creates a new plan – Decision remitted for reconsideration – Whether question of law to be referred to the Federal Court of Australia – Question of law not referred

## **Practice and Procedure**

[Bakker and Australian Capital Territory](#) (Compensation) [2023] AATA 3002 (20 September 2023); S Webb, Member

PRACTICE AND PROCEDURE – review of decision refusing compensation claim in respect of alleged injury – psychological ailment – summons – medical treatment records – objections to grant of access – relevance – scope – legitimate forensic purpose – objections refused

[Bates and National Disability Insurance Agency](#) [2023] AATA 2977 (15 September 2023); Senior Member K Buxton

PRACTICE AND PROCEDURE – Jurisdiction – National Disability Insurance Scheme – no reviewable decision – application dismissed

[Brindabella Christian Education Limited and Minister for Education](#) [2023] AATA 3013 (20 September 2023); Senior Member O'Donovan

PRACTICE AND PROCEDURE – application for release from the implied undertaking – where application for release made for three purposes – consumer law claim against expert who provided evidence in support of reviewable decision – advice regarding possible defamation of the expert – to engage in public debate about merits of reviewable decision – consideration of applicable principles – where material confidential to the Commonwealth – where application resolved without disturbing original finding – release given in relation purposes associated with potential legal claims

[Dewar and National Disability Insurance Agency](#) [2023] AATA 2900 (11 September 2023); Senior Member J Collins

NATIONAL DISABILITY INSURANCE SCHEME – application for recusal – National Disability Insurance Scheme – recusal application refused

[Fastbet Investments Pty Ltd; Commissioner of Taxation and](#) (Freedom of information) [2023] AATA 2955 (12 September 2023); Senior Member R Cameron

PRACTICE AND PROCEDURE – stay application – freedom of information decision – applicant required to undertake searches of documents – applicant seeking to be excused from obligations – live issue – preservations of status quo – prejudice to parties – real possibility that application for review would be rendered nugatory – public interest considerations do not override importance of preserving status quo – procedural fairness not determinative or otherwise fatal to stay application – insufficient evidence regarding financial consequences for respondent – stay application granted

[McGavin and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2981(22 August 2023); Brigadier AG Warner, AM LVO (Retd), Member

PRACTICE AND PROCEDURE – extension of time application – substantive matter reduction of Family Tax Benefit part A on basis that immunisation requirements not met – significant length of delay – awareness of appeal rights and explanation for delay – merits of substantive application – prejudice – alternative avenues of relief – oral reasons given at the interlocutory hearing – Applicant made a request for written reasons – extension of time application refused

[Nganana Incorporated and National Disability Insurance Agency](#) [2023] AATA 2906 (11 September 2023); I Thompson, Member

PRACTICE AND PROCEDURE – jurisdiction – services provided to a participant when NDIS Plan funding depleted – whether respondent's decision to refuse to pay service provider's invoices is reviewable – decision is not reviewable – the Tribunal does not have jurisdiction

[Singh and Office of the Australian Information Commissioner](#) (Freedom of information) [2023] AATA 2948 (30 August 2023); Senior Member Emeritus Professor P A Fairall

PRACTICE AND PROCEDURE – interlocutory application – freedom of information – consolidation of applications – whether application should be heard with other applications – whether objectives of Tribunal served by consolidation – application refused

[Webeck and Comcare](#) (Compensation) [2023] AATA 2899 (12 September 2023); S Webb, Member

PRACTICE AND PROCEDURE – summons – production of medical records – objections to grant of access – relevant principles – adjectival relevance – right to privacy – reasonable opportunity to prepare case – objections refused

[Webeck and Comcare](#) (Compensation) [2023] AATA 2996 (19 September 2023); S Webb, Member

PRACTICE AND PROCEDURE – review of reconsideration decision – terms of reconsideration decision set out in writing – request for statement of reasons – entitlement to statement subject to entitlement to make request – reconsideration decision sets out factual findings, materials and reasons – dispute about findings made and terminology used – no entitlement to make request – request not made within 28 days or within a reasonable time – application refused

[YJDX and Child Support Registrar](#) (Child support second review) [2023] AATA 2979 (14 September 2023); Deputy President Boyle

PRACTICE AND PROCEDURE – child support – extension of time application – relevant considerations in *Hunter Valley Developments Pty Ltd v Cohen*, Minister for Home Affairs and Environment (1984) 3 FCR 344 – no prospect of success for substantive application – AAT 1 decision not to grant extension of time affirmed

## Privacy

[HYYL and Privacy Commissioner](#) [2023] AATA 2961 (13 September 2023); Deputy President Justice M Perry

HUMAN RIGHTS – privacy – data breach – where thousands of individuals in immigration detention had personal details inadvertently published online in an excel spreadsheet by the Department of Home Affairs – where majority of individuals subject to the data breach (class members) were people purporting to seek asylum in Australia – where Office of the Australian Information Commissioner (OAIC) found Department to be in breach of Information Privacy Principles 4 and 7 – where proceedings commenced under s 52 of the Privacy Act as in force at the date of the data breach – where Department issued notice to class members setting out the process by which class members who believed they had suffered loss or damage could establish their eligibility for compensation – finding that notice was inadequate and insufficiently clear to inform class members of the compensation process – finding that a new notice should be issued to class members to provide those with a reasonable explanation for not responding to the previous notice with another opportunity to participate in the compensation scheme

COMPENSATION – whether it is necessary for class members to establish that they have suffered loss or damage for the purposes of compensation under s 52 of the Privacy Act – whether there is power to award compensation merely on the assumption that class members have “objectively” experienced loss and damage as a result of the breach of privacy itself – finding that compensation requires class member to establish that they have suffered loss or damage and cannot be awarded simply by reason of the breach of the Privacy Act – finding that categories of non-economic loss are appropriate setting a range of amounts of compensation for each category save for the most extreme cases where compensation is uncapped

COMPENSATION – question of which law firm is the correct and preferable administrator of the compensation assessment scheme – whether the applicants’ lawyers (Slater & Gordon), Department’s lawyers (Clayton Utz) or an independent law firm should be scheme administrator – finding that scheme administrator should be an independent law firm with appropriate expertise in personal injury and privacy law – finding that scheme administrator should be selected by a procurement process from the Australian Government Legal Services Panel but not act for the Department or Minister for Immigration with respect to any matter arising from the data breach or in proceedings relating to visa applications and citizenship – where scheme should allow disputes over compensation assessments to be resolved by negotiation at first instance, and subsequently (if dispute is not resolved) be referred to expert determination – where Department is to pay for translation and interpretation assistance during operation of scheme

## Refugee

[1719952](#) (Refugee) [2023] AATA 2331 (23 April 2023); D Creedon, Member

REFUGEE – protection visa – Libya – political opinion – fear of kidnapping for ransom by militia groups – returnees perceived as wealthy and holding anti-Gaddafist opinions – political instability, lack of security, generalised violence and socio-economic conditions – generalised and unconvincing claims and evidence on refugee criteria – transit from any point of entry to applicant’s home city carries real risk of significant harm – complementary protection – members of family unit – decision under review remitted

[1721032](#) (Refugee) [2023] AATA 2582 (27 June 2023); R Da Costa, Member

REFUGEE – protection visa – China – religion – Christian – home church members – detention of family members – religious education of children – return visits to China – delay in applying for protection – decision under review affirmed

[1808567](#) (Refugee) [2023] AATA 2418 (8 May 2023); P Noonan, Member

REFUGEE – protection visa – Sri Lanka – first applicant wife/mother, second applicant son, third applicant husband/father and fourth applicant daughter – political opinion – mother and son's support for political party – low-level members, local campaigners and charity organisers – house and car attacked – son's relationship with daughter of powerful politician – vague claims and evidence – relationship ended many years ago – claims on political and relationship grounds not accepted – economic conditions and availability of medical treatment – mother and father's ages, physical and mental health, son's serious traffic accident and extensive injuries – country information – conditions apply generally – members of family unit – daughter's late claim as woman with dependent male family members with severe health problems – perceived inadequacy and prejudice of protection measures – claim not accepted on refugee criteria, accepted on complementary criteria – decision under review remitted

[1919689](#) (Refugee) [2023] AATA 2345 (24 April 2023); W Pennell, Senior Member

REFUGEE – protection visa – Fiji – particular social group – women – victims of family violence – court ordered custody of children – breaches of protection orders in Australia – fear of killing – physical assault – former partner's extended family network in Fiji – state protection – decision under review remitted

[2001193](#) (Refugee) [2023] AATA 2547 (2 June 2023); A Murphy, Member

REFUGEE – protection visa – Saudi Arabia – particular social group – women – family violence – gender-based violence – guardianship system – child born outside of marriage – forced marriage – restricted movements – state protection – decision under review remitted

[2106218](#) (Refugee) [2023] AATA 2527 (7 June 2023); M Sripathy, Member

REFUGEE – protection visa – India – particular social group – young girls in India – vulnerable child – religion – Christian – backward class – gender-based harm – sexual abuse – identity documents – Indian citizenship for a child born overseas – stateless children – country of former habitual residence – access to education and healthcare – decision under review remitted

[2109837](#) (Refugee) [2023] AATA 2324 (21 March 2023); K Millar, Senior Member

REFUGEE – protection visa – Albania – Federal Court remittal – revenge killing – Kanun law – blood feud – no government connections – internal relocation – political opinion – involvement in the Christian Democratic Party – bogus document – false passports – Australian citizen child – request for Ministerial referral declined – decision under review affirmed

[2114731](#) (Refugee) [2023] AATA 2558 (1 June 2023); D Dragovic, Deputy President

REFUGEE – Protection Visa – Stateless – race – a stateless Rohingya – religion – Muslim – citizenship – applicants have some form of right to access citizenship or have existing citizenship in Myanmar – applicant doesn't have a right to enter and reside in a third country – applicant has a well-founded fear of persecution for reason of religion – decision under review remitted

[2211582](#) (Refugee) [2023] AATA 2378 (16 May 2023); S Burford, Senior Member

REFUGEE – protection visa – Philippines – fear of harm from COVID pandemic and economic hardship – consent to decision without hearing and request for referral for ministerial consideration – claimed fears not a convention reason – applicant’s partner an Indigenous Australian and Australian citizen children identify as Indigenous – domestic violence and visa status used as control – partner’s imprisonment and death – best interests of children – as citizens, they cannot meet criteria – possible separation not significant harm as defined – strong support through school, community and church – referred for ministerial consideration – decision under review affirmed

[2303182](#) (Refugee) [2023] AATA 2421 (3 May 2023); J Marquard, Member

REFUGEE – protection visa – Turkey – race – Kurdish ethnicity – political opinion – religion – genuine and continuing relationship – member of the family unit – relationship ceased – decision under review affirmed

## Social Security

[Ferguson and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3011 (21 September 2023); D Mitchell, Member

SOCIAL SECURITY – Essential Medical Equipment Payment (EMEP) – date of effect of granting of claim for EMEP where previous payment cancelled

PRACTICE AND PROCEDURE – role of the Tribunal – application for dismissal of application for review – frivolous or vexatious or no prospects for success – no utility in review – favourable decision would have no practical benefit for the Applicant – application dismissed

[Gallo and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2913 (11 September 2023); Senior Member D J Morris

SOCIAL SECURITY – where the Applicant applied for child care subsidy and family tax benefit for three dependent children – where the Applicant then applied for JobSeeker Payment and Disability Support Pension – where the Applicant then applied for parenting payment single – where it is not in contest that the Applicant has sole care for three minor children – where authorised review officer decided claim for JobSeeker Payment should have been claim for parenting payment single – where Applicant sought First Review of that decision – where First Review decided Applicant’s start date for parenting payment single should be from when he applied for family tax benefit – where Applicant sought Second Review – family tax benefit plainly not a social security payment or ‘similar in nature’ to a social security payment – decision under review set aside and new decision substituted

[McGrath and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2990 (19 September 2023); Senior Member A Poljak

SOCIAL SECURITY – family tax benefit – claim for lump sum payment for past period – late lodgement of claim – late lodgement of taxation returns – whether an extension of time should be granted – whether special circumstances prevented lodgement by due date - decision affirmed



[Mounir and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3000 (29 August 2023); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – whether medical conditions are fully diagnosed, fully treated and fully stabilised – whether the Applicant's impairments attract 20 points or more under the Impairments Tables – whether the Applicant has a continuing inability to work – decision under review affirmed

[Qiu and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2911 (14 September 2023); Senior Member A Poljak

SOCIAL SECURITY – parenting payment (single) – family tax benefit – coronavirus supplement – payments made at the single rate – whether a member of a couple – whether debt owing to the Commonwealth – whether debt should be waived or written off – decision affirmed

[VHMP and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3007 (15 September 2023); Senior Member Emeritus Professor P A Fairall

SOCIAL SECURITY – age pension – testamentary trust – whether applicant an attributable stakeholder – income attribution percentage rate – whether trust invalid – where applicant is sole trustee and beneficiary – decision under review set aside and remitted for reconsideration

[Watts and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 2912 (14 September 2023); Dr L Bygrave, Member

SOCIAL SECURITY – disability support pension – start date of claim – where two previous unsuccessful applications for disability support pension were finalised – where Applicant contacted the Department before lodging successful disability support pension claim – whether Applicant is included in a class of persons in the Social Security (Administration) (Class of Persons – Intent to Claim) Determination 2018 – decision under review affirmed

## **Taxation**

[Assad and Commissioner of Taxation](#) (Taxation) [2023] AATA 2995 (15 September 2023); Senior Member G Lazanas

TAXATION – goods and services tax – cancellation of ABN and GST registrations – whether taxpayer carrying on an enterprise – whether GST assessments excessive – insufficient reliable evidence – decision to cancel ABN and GST registrations affirmed – decision in respect to GST assessments affirmed

[Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust and Commissioner of Taxation](#) (Taxation) [2023] AATA 3005 (20 September 2023); Deputy President F D O'Loughlin KC

TAXATION – whether dividends were part of a dividend stripping operation within the meaning of s 207-155 of the 1997 Assessment Act – whether dividends were paid as part of a scheme entered for a tax avoidance purpose – decision set aside and substituted

[PQBZ and Commissioner of Taxation](#) (Taxation) [2023] AATA (10 August 2023); Senior Member D K Grigg

TAX – assessment of foreign citizen’s income tax – whether Applicant was a resident of Australia in the relevant income tax years – asset betterment calculation – burden of proof – extent of corroborating evidence required – decisions under review set aside

[Wang and Commissioner of Taxation](#) (Taxation) [2023] AATA 2962 (7 September 2023); Senior Member G Lazanas

TAXATION – income tax default assessments – whether the taxpayer could satisfy the onus of proof by establishing errors in assets betterment methodology adopted by the Commissioner – no agreement to confine the issues in dispute – failure to adduce sufficiently reliable evidence – whether administrative penalties correctly imposed for failure to lodge tax returns – objection decision affirmed

## **Veterans’ Affairs**

[Callander and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 2919 (7 September 2023); Senior Member D O'Donovan

COMPENSATION – veterans' and military compensation – section 24 of the Veterans' Entitlements Act 1986 – whether the applicant meets the requirements for the special rate of pension – where the applicant has war-caused injuries – where the applicant ceased work – whether the applicant ceased to engage in remunerative work for reasons other than his incapacity caused by war-caused injuries – 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>JYVT and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 1135</a>
<b>Harris and Military Rehabilitation and Compensation Commission</b>	<a href="#">[2023] AATA 483</a>
<b>RCWV and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 2862</a>
<b>RWHZ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 139</a>
<b>Varley and Minister for Home Affairs</b>	<a href="#">[2019] AATA 376</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Afamiliona v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 131</a>	<a href="#">[2023] FCA 1100</a>
<b>Afegogo v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4448</a>	<a href="#">[2023] FCA 1128</a>
<b>Child Support Registrar v BKCZ</b>	<a href="#">[2022] AATA 725</a>	<a href="#">[2023] FCA 1109</a>
<b>DXJL v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3809</a>	<a href="#">[2023] FCA 1124</a>
<b>King v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 4391</a>	<a href="#">[2023] FCAFC 152</a> <a href="#">[2022] FCA 1319</a>
<b>LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs &amp; Anor</b>	<a href="#">[2021] AATA 2224</a>	<a href="#">[2023] HCATrans 117</a> <a href="#">[2023] FCAFC 64</a> <a href="#">[2022] FCA 810</a>
<b>Mamatta v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 133</a>	<a href="#">[2023] FCA 1077</a>

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<b>Reid v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2023] AATA 79</a>	<a href="#">[2023] FCA 1076</a>
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<b>RNSQ v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4712</a>	<a href="#">[2023] FCA 1111</a>
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