



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 2/2023

30 January 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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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

[XQTJ and Child Support Registrar](#) (Child support second review) [2023] AATA 50 (24 January 2023); C J Furnell, Senior Member

CHILD SUPPORT – percentage of care – care period – whether there has been a change in the pattern of care – what is the correct percentage of care – hours of care basis for calculating actual care – determination of care during school day – decision under review set aside and substituted

[Dawson and Loomis](#) (Child support) [2022] AATA 4003 (1 November 2022); P Jensen, Member

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

[Feasey and Riggs](#) (Child support) [2022] AATA 4303 (30 November 2022); K Synon, Deputy President and K Dordevic, Senior Member

CHILD SUPPORT – jurisdiction – section 42D Administrative Appeals Tribunal Act 1975 – no power to remit from AAT2 to AAT1 – care – late application to AAT – no 95N determination made in original AAT1 review – decision under review not reconsidered

[Forstater and Thwaites](#) (Child support) [2022] AATA 3965 (21 October 2022); D Lambden, Member

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

CHILD SUPPORT – date of effect of the tribunal's decision – late application for review – no special circumstances exist that prevented the application for review being lodged in time – tribunal declines to make a determination under subsection 95N(2)

[Nickens and Nickens](#) (Child support) [2022] AATA 3683 (6 September 2022); R Anderson, Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart – decision under review set aside and substituted

[Rowell and Rowell](#) (Child support) [2022] AATA 4014 (29 September 2022); S Letch, Member

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

Citizenship

[Natalwala and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 41 (23 January 2023); D J Morris, Senior Member

CITIZENSHIP – applicant is a citizen of the Republic of India – applicant applied for Australian citizenship by conferral – permanent resident – delegate found general residence requirement not met – pandemic travel restrictions prevented applicant returning to Australia – what discretion is exercisable – no discretion relevant in this circumstance to allow partial exemption of general residence requirement – decision under review is affirmed

[Tink and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 55 (27 January 2023); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether Tribunal is satisfied of Applicant's identity – lost documents – limited material before the Tribunal – discrepancies not adequately explained – Reviewable Decision affirmed

Compensation

[Butt and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 4690 (23 December 2022); Dr L Kirk, Senior Member

MILITARY REHABILITATION AND COMPENSATION – defence-related claims – whether Tribunal has jurisdiction to consider claims not specified in original claim form – whether employment contributed to a material or significant degree to the injury – solar keratoses (skin cancers) – where onset of cancers may be after significant latency – history of sun exposure over lifetime considered – decision set aside and substituted

[Contreras and Australian Postal Corporation](#) (Compensation) [2023] AATA 24 (17 January 2023); J C Kelly, Senior Member

COMPENSATION – whether Respondent has present liability to pay compensation for the Applicant's medical conditions – initially accepted liability for bilateral lateral epicondylitis – whether the bilateral lateral epicondylitis caused chronic pain syndrome in the period specified and contributed to a significant degree to major depression – whether major depression was caused by the claims process – whether the Respondent has present liability to pay compensation for bilateral lateral epicondylitis, C5-6 disc bulge and canal stenosis with cord compression, and bilateral shoulder pain -- reviewable decisions affirmed

[Marshall and Comcare](#) (Compensation) [2023] AATA 34 (20 January 2023); A Maryniak KC, Member

WORKERS' COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) – Two applications – Where Respondent accepts Applicant suffered from a condition which was significantly contributed to by his employment – Where Respondent accepts certain events contributed to aggravation of adjustment disorder – Whether Applicant's condition resulted from reasonable administrative action taken in a reasonable manner – decisions affirmed

[Roe and K & S Freighters Pty Ltd](#) (Compensation) [2023] AATA 52 (13 January 2023); The Hon. J Pascoe AC CVO, Deputy President

COMPENSATION – workers compensation – liability for an employee's death arising from injury in the course of employment – whether the employee had any dependants at the time of his death – whether his child was a prescribed child – whether he was in a de facto relationship – whether the dependants were wholly dependent – whether the dependants were partly dependent – where there is a prescribed child – where the applicant is the primary caregiver to the child – whether the applicant and the deceased lived together at the time of his death – no de facto relationship – decision under review varied

[Yates and Comcare](#) (Compensation) [2023] AATA 32 (19 January 2023); Dr I Alexander, Senior Member

COMPENSATION – workers compensation – whether Comcare is liable to pay compensation for injuries resulting in permanent impairment pursuant to sections 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – relevant law, policy and evidence considered – decisions under review affirmed

Freedom of Information

[Shafran and Secretary, Department of Veterans' Affairs](#) (Freedom of information) [2023] AATA 39 (19 January 2023); Dr M Evans-Bonner, Senior Member

FREEDOM OF INFORMATION – Applicant made two separate freedom of information requests seeking evidence relevant to a report (first request) and a guideline document (second request) from the Department – report prepared under s 137 of the Veterans' Entitlements Act 1986 (Cth) (VEA) provided to the Applicant in full prior to the first FOI request and in part after the first FOI request – Applicant contended a reasonable search was not undertaken because he should have been provided with less pages of this document or nothing – Applicant's second request was for a guideline or policy as to what constitutes "evidence" for the purpose of compiling reports under s 137 of the VEA – after searching for the guideline or policy the Department advised no such document existed – draft guideline was subsequently developed and provided to the Applicant – other related documents provided to the Applicant to assist him – whether a reasonable search undertaken in response to the first and second FOI requests – both Reviewable Decisions affirmed

Migration

[Ahmetaj and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4662 (8 December 2022); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BS Subclass 801 Partner visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – drug trafficking – decision under review affirmed

[Barkho and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4711 (14 December 2022); S Boyle, Deputy President

MIGRATION – s 501CA(4) of the Migration Act – decision of delegate of Minister not to revoke cancellation of applicant’s visa – whether there is “another reason” to revoke cancellation of applicant’s visa – Ministerial Direction No. 90 – applicant is a 22-year-old citizen of Syria – post-traumatic stress disorder – violent offending – indefinite detention – two primary considerations weigh moderately against revocation of cancellation – three other considerations weigh in favour of revocation of cancellation – application of Direction 90 para 7(2) – primary considerations should generally be given greater weight than the other considerations – there is not another reason to revoke the cancellation of the applicant’s visa – reviewable decision affirmed

[Henry and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4572 (20 December 2022); G Lazanas, Senior Member

MIGRATION – mandatory visa cancellation – Applicant does not pass the character test – whether there is another reason why the visa cancellation should be revoked – consideration of Ministerial Direction No. 90 – nature and seriousness of offending conduct – resist or hinder police officer – assault police officer – intimidate police officer – family violence – risk of re-offending – protection of the Australian community – expectations of the Australian community – the best interests of minor children – strength, nature and duration of ties to Australia – impediments to removal – decision under review set aside and substituted

[Iloa and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 48 (16 January 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – visa refusal – citizen of Samoa – Subclass 100 Partner (Migrant) (Class BC) visa – failure to pass character test – substantial criminal record – *Pearson v Minister for Home Affairs* [2022] FCAFC 203 – where applicant has made a partner visa application – decision set aside and remitted

[Kuruppu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 53 (27 January 2023); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class - BB Subclass 155 Five Year Resident Return visa under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 - decision under review is affirmed

[MLLL and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4708 (20 December 2022); B W Rayment OAM KC, Deputy President

MIGRATION – visa refusal – substantial criminal record – stalk/intimidation convictions – mental health conditions – use of prohibited drugs – no violent offending – humanitarian concerns – decision under review set aside and remitted

[Pera and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4582 (19 December 2022); D J Morris, Senior Member

MIGRATION – applicant held Special Category (Class TY)(Subclass 444) temporary visa – visa cancelled owing to substantial criminal record – representations made to Department – delegate declined to revoke mandatory cancellation – review by Tribunal – what is country of reference – applicant is from the Cook Islands and thereby a New Zealand citizen – ministerial Direction No. 90 – primary considerations – protection of Australian community – violent crimes and crime of family violence – other considerations – applicant came to Australia aged 10 – applicant found to have mild intellectual disability – decision under review is affirmed

[Rewha and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 19 (13 January 2023); Brigadier A G Warner, AM LVO (Retd), Member

MIGRATION – s 501CA(4) of the Migration Act – decision of delegate of Minister not to revoke cancellation of the Applicant’s visa – character test – Applicant sentenced to two years imprisonment – whether there is “another reason” to revoke cancellation of the Applicant’s visa – Ministerial Direction No. 90 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to Australian community – best interests of minor children in Australia – expectations of Australian community – extent of impediments if removed – strength, nature and duration of ties to Australia – impact on Australian business interests – reviewable decision affirmed

[TJHG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 22 (17 January 2023); B W Rayment OAM KC, Deputy President

MIGRATION – mandatory visa cancellation due to substantial criminal record – refusal to revoke mandatory cancellation – importation of commercial quantities of drugs – availability of diabetes medication in Nigeria – limited contact with family in Australia – decision under review affirmed

[Toma and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 23 (17 January 2023); Dr L Bygrave, Member

MIGRATION – Migration Act 1958 (Cth) – refusal of Partner (Class UK) visa under s 501(1) because Applicant did not pass character test – Direction No. 90 – primary considerations – protection of the Australian community – best interests of minor children – expectations of the Australian community – other considerations – effect of impediments – links to the Australian community – decision set aside and remitted

[Wong and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 54 (25 January 2023); D J Morris, Senior Member

MIGRATION – where applicant born in British Dependent Territory of Hong Kong so is citizen of People’s Republic of China – where applicant applied for Bridging E (Class WE) visa – where applicant refused visa under s 501 of Act by Minister’s delegate on basis not passing character test by virtue of being sentenced to prison sentence of 12 months or more and thereby having a ‘substantial criminal record’ – where applicant was sentenced for two offences with an aggregate sentence of 12 months – implications of Full Court decision in *Pearson v Minister for Home Affairs* – where basis of delegate’s reasoning has now gone away – task of Tribunal in such a case – questions for resolution – does applicant pass character test – if not should discretion be exercised to refuse visa – Commonwealth Customs offences – defrauding the revenue – period of offending – applicant does not pass character test – ministerial direction – risk of reoffending – are domestic animals members of the Australian community – additional consideration relating to applicant’s partner – effect on welfare of large number of domestic animals – nature of visa refused – tribunal satisfied discretion should not be exercised to refuse short-term visa – decision under review set aside and new decision substituted

[YBVL and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4741 (21 December 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XA Subclass 866 Protection Visa – Short form decision published with written reasons to follow – Application of *Pearson v the Minister for Home Affairs* [2022] FCAFC 203 – Decision set-aside

[YFXS and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023]
AATA 36 (19 January 2023); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – protection visa refusal – refusal under s 501(1) of the Migration Act 1958 – where the applicant does not pass the character test – whether the discretion to refuse the visa should be exercised – consideration of Direction No. 90 – protection of the Australian community – expectations of the Australian community – protection obligations – impediments to removal – links to the Australian community – indefinite detention – decision set aside and remitted

[ZCGS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4660 (22 December 2022); Dr C Huntly, Member

MIGRATION – Migration Act s 501CA(4) – decision of a delegate of the Minister not to revoke the mandatory cancellation of the Applicant’s visa – Direction 90 - whether there is “another reason” to revoke the cancellation of the Applicant’s visa – Applicant is a 38-year-old-male citizen of Iraq – sexual intercourse without consent – best interests of minor children – non-refoulement obligations – legal consequences of indefinite detention – Tribunal determined there is “another reason” – reviewable decision set aside and substituted with decision to revoke visa cancellation

[1822388](#) (Migration) [2022] AATA 4346 (15 December 2022); J L Redfern PSM, Deputy President

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – carer of an Australian ‘relative’ – carer to assist sponsor in the care of her daughter – aunt of sponsor – 18q deletion syndrome – circumstances where the carer visa assessment certificate is two or more years old – whether assistance cannot be reasonably be provided by another Australian relative or obtained from welfare, hospital, nursing or community services – whether the applicant is willing and able to provide the substantial and continuing care of the kind needed – applicant found to be the carer of the Australian relative sponsor – decision under review remitted with direction

[1833015](#) (Migration) [2022] AATA 4243 (29 November 2022); J L Redfern PSM, Deputy President

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – whether a genuine spousal relationship exists – joint financial commitments – child to the relationship – joint responsibility for the care and support of a child – joint household responsibilities – relationship represented to others – evidence of ongoing commitment – criminal convictions – decision under review remitted with direction

[2213870](#) (Migration) [2022] AATA 4285 (23 November 2022); M Bourke, Member

MIGRATION – cancellation – Partner (Migrant) (Class BC) – Subclass 100 (Spouse) – incorrect information provided in visa applications – correct name, date of birth and visa history not declared – application for further student visa refused, period as unlawful non-citizen and grant of Bridging E visa – paid municipal council to obtain new citizenship card – new passport a bogus document – discretion to cancel visa – previous partner visa application may have been granted if correct information had been provided – previous relationship ceased and incorrect information repeated in current application – consequential cancellation of wife’s visa – combined hearing of both reviews – one child an Australian citizen – wife not complicit in provision of incorrect information and cancellation of her visa set aside – decision under review affirmed

[2214195](#) (Migration) [2022] AATA 4282 (21 November 2022); M Bourke, Member

MIGRATION – cancellation – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – consequential cancellation – husband’s visa cancelled for provision of incorrect information in visa applications – combined hearing of both reviews – discretion to cancel visa – not complicit in provision of incorrect information – work until births of children – one child an Australian citizen – best interests of children – cancellation of husband’s visa affirmed – decision under review set aside

[Blue Wren Holdings Pty Ltd](#) (Migration) [2022] AATA 4501 (18 October 2022); T Baxter, Member

MIGRATION – Employer Nomination – approval of nominated position – Temporary Residence Transition stream – Carpenter – adverse information – sponsorship bar – breaches of sponsorship obligations – whether reasonable to disregard – Procedures Advice Manual (PAM3) – nature of the adverse information – underpayment of a worker – cancellation of sponsorship – lapse of time since the breaches – subsequent compliance – steps taken to ensure the adverse conduct does not recur – decision under review set aside

[Liu](#) (Migration) [2022] AATA 4290 (2 December 2022); M Sheargold, Member

MIGRATION – Business Skills (Residence) (Class DF) visa – Subclass 890 (Business Owner) – police clearance from home country revoked – untested allegation of fraud – clearance obtained by lawful means and later revocation does not make it bogus – earlier clearance not revoked – false or misleading information provided in visa application – no outstanding charges at time of visa application – summonsed to appear before procuratorate but not formally charged – decision under review remitted

[Mashot](#) (Migration) [2022] AATA 4322 (2 September 2022); D Crawshay, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – sponsorship requirements – sponsorship undertakings – legal capacity to understand – intellectual disability – decision under review remitted

National Disability Insurance Scheme

[Geard and National Disability Insurance Agency](#) [2023] AATA 30 (19 January 2023); A George, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Reasonable and necessary supports – comparable supports – value for money – decision affirmed

[Larkings and National Disability Insurance Agency](#) [2023] AATA 44 (24 January 2023); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – plantar fasciitis – osteoarthritis – lower back pain – anxiety and depression – obsessive compulsive disorder – hoarding disorder – permanence – whether substantially reduced functional capacity – whether best funded by the NDIS – decision under review affirmed

[PYQJ and National Disability Insurance Agency](#) [2023] AATA 37 (19 January 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of internal review decision by the National Disability Insurance Agency (NDIA) regarding decision to approve a statement of participant supports (SOPS) for the Applicant – the Applicant is child participant in the National Disability Insurance Scheme (NDIS) – the Applicant’s parents seek funding for Applicant to attend Little Learners program at Autism Partnership where she will receive Applied Behaviour Analysis (ABA) therapy and associated services – whether requested supports are “reasonable and necessary supports” under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – consideration of the type and level of supports which are “reasonable and necessary supports” and should be included in Applicant’s SOPS – Tribunal satisfied that that centre-based ABA therapy and some other associated services, including weekly speech therapy, should be funded but not as requested – decision under review set aside and remitted with directions to facilitate the making of a new SOPS for Applicant including some, but not all of, the Requested Supports

[Toltz and National Disability Insurance Agency](#) [2023] AATA 49 (27 January 2023); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – bilateral keratoconus – whether impairment results in substantially reduced functional capacity – generalised anxiety disorder – whether impairment is permanent – factors to be taken into account when considering whether a person is likely to require support – decision under review is set aside

Practice and Procedure

[Azevedo and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 45 (25 January 2023); R Cameron, Senior Member

MIGRATION – mandatory cancellation of visa in respect of aggregate sentence – decision not to revoke cancellation – effect of *Pearson v Minister for Home Affairs* [2022] FCAFC 203 – decision to cancel visa not legally valid – decision not reviewable by the Tribunal – application dismissed

[Bongiovanni and National Disability Insurance Agency](#) [2023] AATA 25 (16 January 2023); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – objection to inspection of summonsed material – reasons for objection – where documents of a private and personal nature – whether documents contain information of apparent relevance to the issues before the Tribunal – objection partially upheld

[BYKP and Secretary, Department of Employment and Workplace Relations](#) (Social services) [2023] AATA 21 (12 January 2023); A Nikolic, AM CSC, Senior Member

PRACTICE AND PROCEDURE – Cancellation of JobSeeker payment – application for second review by General Division of Tribunal – where no Authorised Review Officer decision by Respondent or first review by Social Services and Child Support Division at time of application – where Authorised Review Officer of Respondent subsequently decided to affirm cancellation of payment – no jurisdiction for second review – application dismissed

[Digital Cinema Network and Screen Australia](#) [2023] AATA 40 (23 January 2023); R West, Member

JURISDICTION – Supporting Cinemas Retention, Endurance and Enhancement of Neighbourhoods Fund (SCREEN Fund) – decision of Screen Australia to refuse grants under the SCREEN Fund – jurisdiction – whether decision is reviewable by the Tribunal – no jurisdiction under s 25 AAT Act – application dismissed

[First Gen Healthcare Solutions Pty Ltd and National Disability Insurance Agency](#) [2023] AATA 31 (18 January 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – application for review lodged by a service provider delivering supports under the National Disability Insurance Scheme (NDIS) – decision made by the National Disability Insurance Agency (NDIA) to cancel claims by the service provider for 57 payments totalling \$186,045.31 and intention to raise debt for this amount – whether NDIA has the power to review this type of decision – Tribunal is satisfied this type of decision not a “reviewable decision” under s 99 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) – even if it was a reviewable decision, no request was made by the Applicant for review by NDIA “reviewer” under s 100(6) of the NDIS Act – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth) because the Tribunal is satisfied that the decision is not reviewable by the Tribunal

[Gautam and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023] AATA 47 (27 January 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – application for an extension of time – application for citizenship by conferral refused – where the application is five years out of time – whether there is any adequate explanation for the delay – whether the grant of the extension of time would prejudice the respondent – application for extension of time is refused

[Ismail and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4689 (23 December 2022); Dr L Kirk, Senior Member

MIGRATION – jurisdiction – whether decision is a Part 5 Reviewable Decision – whether requirements for making application have been met – whether application needs to be capable of being made 'in fact' – no jurisdiction found

[Landberg and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4664 (16 December 2022); R Cameron, Senior Member

EXTENSION OF TIME – principles to be applied – Hunter Valley Developments Pty Ltd v Cohen (1984) 3 FCR 344 – length of delay – no acceptable explanation for delay – prejudice to the respondent and general public – merits of substantive matter – extension of time refused

[Nohmen and National Disability Insurance Agency](#) [2023] AATA 20 (16 January 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – decision not to grant access to the National Disability Insurance Scheme (NDIS) – Applicant previously a participant in the NDIS – ceased to be a participant when she entered a residential care service on a permanent basis after she had turned 65 years of age – Applicant to cease living in residential care facility – request made to have Applicant’s previous status as an NDIS participant “reinstated”, or to be granted access to the NDIS pursuant to a new access request – Applicant aged over 65 at the time the new access request was made – NDIA did not grant access because “age requirements” under s 22 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) were not met – consideration of s 29(1)(b) of the NDIS Act and whether there is any discretion to exclude the Applicant from the operation of that provision – Tribunal found there was no such discretion – no provision under NDIS Act allowing Applicant’s previous status as an NDIS participant, or NDIS plan, to be reinstated – Tribunal found “age requirements” were not met – Tribunal satisfied application has no reasonable prospect of success – application dismissed under s 42B(1)(b) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Phillips and Secretary, Department of Defence](#) [2023] AATA 43 (11 January 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – Applicant seeking review of decision by a delegate of the Chief Medical Officer, Defence Force Recruiting Headquarters, to affirm an earlier decision made to refuse an application by the Applicant to join the Australian Defence Force on the basis that he remains “Class 4, Unfit for Military Service” – Tribunal satisfied the decision is not a reviewable decision – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Ramoran and Minister for Immigration, Citizenship, and Multicultural Affairs](#) [2023] AATA 46 (25 January 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – application for an extension of time – application for citizenship by conferral refused – where the application is two years out of time – whether there is any adequate explanation for the delay – whether the grant of the extension of time would prejudice the respondent – where the applicant states he did not receive the decision at the time it was made – application for extension of time is refused

[RCLN and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 35 (20 January 2023); S Webb, Member

MIGRATION – mandatory cancellation of visa in respect of aggregate sentence – representations – decision not to revoke cancellation – effect of *Pearson v Minister for Home Affairs* – jurisdictional error – materiality of error – factual assessment of what the decision maker did – essential factual preconditions to mandatory cancellation – previous sentence to a term of imprisonment exceeding 12 months in 2012 not expressly referred to by decision maker – failure to take account of relevant consideration not established – satisfaction based on totality of relevant known facts – consideration of Migration Amendment (Character and General Visa Cancellation) Act 2014 and statutory construction – decision to cancel visa not legally effective – visa taken to be not cancelled – no authority to consider revocation – decision subject to review a nullity – no current jurisdiction – application dismissed

[Simmons and National Disability Insurance Agency](#) [2023] AATA 27 (6 January 2023); P Smith, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – Jurisdiction of the Tribunal – Whether there is a reviewable decision that can be reviewed by the Tribunal within the meaning of sections 99, 100 and 103 of the National Disability Insurance Scheme Act 2013 (Cth) – Sections 160 and 163 of the Evidence Act 1995 (Cth)

Refugee

[1726816](#) (Refugee) [2022] AATA 4742 (21 November 2022); N Goetz, Member

REFUGEE – protection visa – Lebanon – imputed political opinion – opposition to Hezbollah – fear of drug lords – attempted kidnappings – refusal to transport drugs – applicant refused entry into Syria – fear of killing – police informer – return visits to Lebanon – delay in applying for protection – decision under review affirmed

[1730424](#) (Refugee) [2022] AATA 4213 (11 October 2022); D McCulloch, Member

REFUGEE – protection visa – Sri Lanka – race – Tamil – imputed political opinion – particular social group – suspected of involvement in an LTTE bomb blast – failed to continue to report to the army as required – torture and ill-treatment of those detained by authorities – decision under review remitted

[2008596](#) (Refugee) [2022] AATA 4366 (27 September 2022); D Dragovic, Deputy President

REFUGEE – cancellation – protection visa – Iran – Federal Circuit Court remittal – incorrect information provided in visa application – citizenship – not stateless Faili Kurd but Iranian citizen – return travel on Iranian passport – claim that precursor documents fraudulently obtained – country information – requirements for precursor documents and security checks – some incorrect information conceded – best interests of children – older child's sport and education, younger child an Australian citizen – possibility of immigration or community detention or departure with family – non-refoulement and international obligations – joint hearing with wife's – decision under review set aside

[2202883](#) (Refugee) [2022] AATA 4149 (28 September 2022); B Darcy, Member

REFUGEE – Protection visa – Sri Lanka – political opinion – long-term involvement with the United National Party – a witness to a historic serious crime – applicant had voluntarily returned to Sri Lanka – extensive criminal record – psychological health complications – past addiction and substance abuse – imputed with being an informant or spy on behalf of the Sri Lankan authorities – applicant had provided conflicting, inconsistent and contradictory information over time – Tribunal is not satisfied that the applicant is at risk of serious harm – credibility concerns – decision under review affirmed

[2202886](#) (Refugee) [2022] AATA 4195 (29 September 2022); N Goetz, Member

REFUGEE – protection visa – China – Federal Circuit Court remittal – non-attendance at hearing – father one of elected candidates for village head – father’s fight against bribery – assault by police – father’s imprisonment – credibility issues – decision under review affirmed

Social Services

[Campbell and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 38 (23 January 2023); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – statutory construction – whether liquid assets test waiting period correctly applied – whether applicant’s superannuation benefit considered as a liquid asset – whether liquid assets test waiting period can be shortened – where maximum liquid assets test waiting period applied – where decision under review affirmed

[Chi and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 26 (12 January 2023); S Evans, Member

SOCIAL SECURITY – Low income healthcare card – Qualification – Ascertained income – worker’s compensation – Allowable income – Disability Support Pension – whether Disability Support Pension allows extended access to Low income healthcare card – whether applicant made contributions to workers compensation – decision under review affirmed

[Cutugno and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4659 (23 December 2022); B Cullen, Senior Member

SOCIAL SECURITY – Disability Support Pension – where Applicant does not meet the 20-point impairment rating – decision under review affirmed

[Davis and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 28 (18 January 2023); Dr I Alexander, Senior Member

SOCIAL SECURITY – family tax benefit – effective claim – whether the Applicant faced special circumstances preventing the lodgement of income tax return before requisite deadline – circumstances are not unusual, uncommon, or exceptional – family tax benefit payments deemed not payable – reviewable decision affirmed

[DKYM and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 33 (20 January 2023); J C Kelly, Senior Member

SOCIAL SECURITY – whether the Applicant was subject to a preclusion period as a consequence of settling legal proceedings – whether the decision to recover a compensation charge was correct – whether there are special circumstances that make it appropriate to treat some or all of the lump sum compensation payment as not having been made – whether the compensation charge can be written-off or waived – reviewable decision affirmed

[DTMV and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 29 (17 January 2023); S Evans, Member

SOCIAL SECURITY – where an income maintenance period was applied as a result of applicant receiving a redundancy payment and ex-gratia payment – whether ex gratia payment would have been paid if there was no dismissal – whether ex-gratia payment was a payment connected with the termination of a person’s employment – decision set aside and remitted

[FNPQ and LFHF; Secretary, Department of Social Services and](#) (Social services second review) [2023] AATA 42 (24 January 2023); K Millar, Senior Member

SOCIAL SECURITY – pensions – age pension – application of s 1073A of the Social Security Act 1991– decisions under review affirmed

[Hinton and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 51 (4 January 2023); L Benjamin, Member

SOCIAL SECURITY – Disability Support Pension – Social Security Act – section 94 – whether there is a continuing inability to work – whether 20 points can be attracted under the impairment tables – decision under review set aside and substituted

[KGLC; Secretary, Department of Social Services and](#) (Social services second review) [2023] AATA 17 (16 January 2023); Dr C Huntly, Member

SOCIAL SECURITY – DSP – residency requirements – application under s 179 of the Social Security (Administration) Act 1999 – review of AAT1 decision - Respondent is a dual citizen of Australia and United States – whether Respondent was eligible for DSP – Respondent came to Australia as a 10-year-old child – Respondent’s father is US citizen in receipt of US disability benefit – International Agreements Act – reciprocal benefits – totalisation – reviewable decision affirmed

[Lonie and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4658 (16 December 2022); B Cullen, Senior Member

SOCIAL SECURITY – Disability Support Pension – where Applicant does not meet the 20-point impairment rating – decision under review affirmed

Taxation

[Auckram and Commissioner of Taxation](#) (Taxation) [2022] AATA 4691 (23 December 2022); Dr L Kirk, Senior Member

TAXATION – income tax – objection to assessment of assessable income – franked dividends – franking credits – where Applicant sole director and shareholder – whether company had ceased to exist at relevant time – where prior decision of AAT has attributed value of a company's assets to the Applicant for the purposes of the Social Security Act 1991 (Cth) – whether Social Security Act 1991 (Cth) transfers ownership of a company's assets to an individual – whether allegations of fraud or misconduct sufficient to discharge burden of proof – reviewable decision 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
Afegogo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 4448
Asad and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4321
LPDT and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2224

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
FSKY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 2037	[2023] FCAFC 2 ; [2022] FCA 541
Pearson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3527	[2023] FCAFC 4 ; [2022] FCAFC 203 ; [2021] FCA 825 ;



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