



Administrative
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Bulletin

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

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

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AAT Recent Decisions

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

Bankruptcy

[Jack and Inspector-General in Bankruptcy](#) [2022] AATA 3176 (29 September 2022); S Boyle, Deputy President

BANKRUPTCY – s 149N of the Bankruptcy Act 1966 (Cth) – trustee's objection to discharge – special ground of objection – whether there is sufficient evidence to support the special ground – whether Applicant failed to provide any reasonable excuse for conduct constituting special ground – Applicant's salary paid into wife's account – family home owned by company controlled by Applicant's wife – Applicant's income paid into wife's account used partially to repay mortgage over property – Applicant failed to provide reasonable excuse – prohibition under s 149N(1A) of the Bankruptcy Act applies – reviewable decision affirmed

Child Support

[Bostridge and Dansie](#) (Child Support) [2022] AATA 3053 (22 June 2022); H Moreland, 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 – interim care period does not apply – decision under review set aside and substituted

[Marson and Marson](#) (Child support) [2022] AATA 3060 (22 June 2022); A Schiwy, Member

CHILD SUPPORT – particulars of the administrative assessment – application to extend the child support assessment beyond the child's eighteenth birthday – whether the child was in full-time secondary education on eighteenth birthday – application should be accepted – decision under review set aside and substituted

[McLennan and Calladine](#) (Child support) [2022] AATA 3063 (5 July 2022); C Breheny, 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

[Monagahn and Monagahn](#) (Child support) [2022] AATA 3064 (15 June 2022); E Kidston, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – special circumstances exist – decisions under review affirmed

[Rigby and Batson](#) (Child support) [2022] AATA 3062 (21 July 2022); S Trotter, Senior Member

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

Citizenship

[Ali and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3155 (27 September 2022); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether Tribunal is satisfied of Applicant’s good character – criminal conviction – failure to declare – Reviewable Decision affirmed

[Davey and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 3154 (3 August 2022); A Maryniak KC, Member

CITIZENSHIP – citizenship by conferral application – section 24(3) of the Australian Citizenship Act 2007 (Cth) – Identity – no allegation that identity documents fraudulent – consistent life story evidence – identity requirements satisfied – decision under review set aside and remitted to the Respondent

[Gulamy and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3099 (23 September 2022); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicant’s identity – whether Tribunal satisfied of good character – where Minister made incomplete assessment of character due to identity not being satisfied – three pillars of identity – inconsistencies in Applicant’s life story and in documentation submitted to the Department – Respondent sought to rely upon heavily redacted IDBS Identity Analysis Report – Applicant found to be an honest and credible witness – Applicant’s evidence corroborated by the evidence of other witnesses – Tribunal is satisfied of Applicant’s identity and good character based on the material before it subject to the Department obtaining and assessing any overseas penal clearances – Reviewable Decision set aside and remitted

[NTFK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3184 (30 September 2022); Dr S Fenwick, Senior Member

CITIZENSHIP – applications for Australian citizenship by conferral – first and third applicants nationals of Myanmar – second applicant minor child born in India – current citizenship of all applicants in doubt – adoption of family name after arrival in Australia – absence of documentation linking first and third applicants to Myanmar – whether second applicant faces significant hardship or disadvantage – whether second applicant stateless – best interests of the child – reviewable decisions set aside and remitted

[QJJY and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2022] AATA 3180 (30 September 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – whether the Tribunal is satisfied of the Applicant’s good character – Australian Citizenship Act 2007 (Cth) – violent offence – Tribunal is not satisfied Applicant is currently of good character – decision affirmed

Compensation

[Coghlan and Comcare](#) (Compensation) [2022] AATA 3101 (8 August 2022); B J Illingworth, Senior Member

WORKERS’ COMPENSATION – Dismissal under s 42B(1) of the Administrative Appeals Tribunal Act 1975 – no reasonable prospects of success – Application for permanent impairment and non-economic loss pursuant to sections 24 and 27 of the Safety, Rehabilitation and Compensation Act 1988 – Application is dismissed

[Farrow-Smith and Comcare](#) (Compensation) [2022] AATA 3157 (26 September 2022); J Sosso, Deputy President and L Benjamin, Member

COMPENSATION – Ross River Virus – self-reporting of symptoms – conflicting medical opinion – credibility of witnesses – ailment was not contributed to, to a significant degree, by her employment – decision under review affirmed

[Iselin and Comcare](#) (Compensation) [2022] AATA 3178 (29 September 2022); B Cullen, Senior Member

COMPENSATION – entitlement to compensation under Safety, Rehabilitation and Compensation Act 1988 (Cth) – meaning of full time employment where the applicant engaged in work on a transient basis – calculation of net weekly earnings

[Moradi and Comcare](#) (Compensation) [2022] AATA 3168 (28 September 2022); R Cameron, Senior Member

COMPENSATION – three applications – issues for determination – whether condition suffered resulted from reasonable administrative action – accepted that claimed condition outside boundaries of normal mental functioning – accepted that claimed condition was contributed to by employment – whether condition suffered is permanent – if permanent, to what degree – deployment to Nauru – working as a translator – deployment terminated on 12 January 2018 – claimed condition found to be adjustment disorder, mixed anxiety and depressive reaction – found to be reasonable administrative action – decision affirmed

Migration

[Garam and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3190 (19 August 2022); The Hon. D Cowdroy AO QC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – expectations of the Australian community – non-refoulement obligations – strength, nature and duration of ties to Australia – impediments to removal – decision under review set aside and substituted

[GJRR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3104 (15 September 2022); W Frost, Member

MIGRATION – mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) – failure by Applicant to pass the character test – violent offences – Direction 90 – primary and other considerations – protection of the Australian community – whether the conduct engaged in constituted family violence – expectations of the Australian community – consideration of the interests of minor children – weight to be given to the primary and other considerations – decision under review affirmed

[Hammond and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3175 (29 September 2022); A Poljak, Senior Member

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

Harper and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 3148 (26 September 2022); The Hon. D Cowdroy AO KC, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – best interests of minor child – expectations of the Australian community – strength, nature and duration of ties – decision set aside and substituted

HSFF and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022]

AATA 3100 (31 August 2022); Dr N A Manetta, Senior Member

MIGRATION – refusal of protection visa on character grounds – applicant most recently commits serious offence of manslaughter – applicant may not be lawfully refouled to his birth country of Sierra Leone – applicant facing prospect of indefinite immigration detention – applicant has already been in detention for some years after making application for protection visa – WKMZ applied – decision under review set aside and substituted

LLYW and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022]

AATA 3174 (29 September 2022); K Raif, Senior Member

MIGRATION – mandatory cancellation of Class XD Subclass 785 Temporary Protection visa – where visa was mandatorily cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – aggravated sexual intercourse – indecent assault – Ministerial Direction No. 90 – other reasons why original decision should be revoked – protection of the Australian community – whether conduct engaged in constituted family violence – best interests of minor children in Australia – expectations of the Australian community – other considerations - international non-refoulement obligations – extent of impediments if removed – impact on victims – links to Australian community – other factors – possibility of indefinite detention – decision under review set aside and substituted – mandatory cancellation of the temporary protection visa revoked

Lucas and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 3151 (23 September 2022); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category Temporary visa - where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – breach of domestic violence orders – decision under review affirmed

LVSF and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3092 (30 August 2022); B W Rayment OAM KC, Deputy President

MIGRATION – where the applicant's visa has been cancelled pursuant to subsection 501(2) of the Migration Act 1958 (Cth) – whether the applicant passes the character test or whether there is another reason to revoke the decision to cancel the applicant's visa – consideration of the primary and other considerations contained in Direction 90 – relevant law, policy and facts considered – decision under review set aside and substituted

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3169 (28 September 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether there is another reason to revoke mandatory cancellation decision – the primary considerations of the protection and expectations of the Australian community and family violence outweigh the countervailing considerations – the decision under review is affirmed

[Okoh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3183 (29 August 2022); S Evans, Member

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – risk of reoffending low - best interests of minor children – impediments if removed – contribution to the Australian community - Direction no. 90 considered

[Ornelas and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3182 (30 September 2022); S Webb, Member

MIGRATION – mandatory cancellation of visa – representations – decision not to revoke cancellation – substantial criminal record – visa applicant fails character test – consideration whether another reason for revocation – Ministerial Direction No. 90 – primary and other relevant considerations – protection of Australian community from criminal or other serious conduct – expectations of the Australian community – mental illness – extent of impediments if removed – links to the Australian community – balance of considerations weigh in favour of revocation – decision set aside and substituted

[PMYR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3103 (25 August 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – applicant most recently commits serious physical assault – entrenched anti-social behaviour – applicant a national of South Sudan – impediments on removal – extreme impediments – decision under review set aside and substituted

[Rogers and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 3095 (21 September 2022); K Millar, Senior Member

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

SJPZ and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022]

AATA 3156 (26 August 2022); A George, Senior Member

MIGRATION – Cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – offending very serious – decision under review affirmed

TKCC and Minister for Immigration, Citizenship, and Multicultural Affairs (Migration) [2022]

AATA 3149 (17 August 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – Bhutanese applicant most recently commits serious sexual offence against mother – primary considerations all favour affirming decision under review – applicant unlikely to be returned to Bhutan as applicant is of Lhotshampa ethnicity – prospect of indefinite immigration detention – Federal Court authority of WKMZ referred to and applied – decision under review set aside

TCDF and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3186 (30 September 2022); S Boyle, Deputy President

MIGRATION – Migration Act s 501CA(4) – 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 – alcohol use disorder – applicant a 36-year-old South Sudanese man who arrived in Australia as an 18-year-old – impact on minor children weighs heavily in favour of revocation of cancellation – extent of impediments if removed weighs heavily in favour of revocation of cancellation – links to Australian community weigh moderately in favour of revocation of cancellation – there is another reason to revoke the cancellation of the applicant’s visa – reviewable decision set aside and substituted

TPMP and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022]

AATA 3087 (19 September 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – serious drug trafficking offences – Applicant is a 42-year-old man who arrived in Australia from Vietnam when he was a 14-year-old child as the holder of a Class XB Subclass 202 Refugee (permanent) visa – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – best interests of minor nieces and nephew – minimal information about minor children – expectations of the Australian community – Australia’s international non-refoulement obligations – whether a protection finding has been made – Applicant found by differently constituted AAT to be a refugee – links to the Australian community – strength, nature and duration of ties to Australia – prospect of indefinite or prolonged detention – Reviewable Decision set aside and substituted

[WMDG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3153 (20 September 2022); D J Morris, Senior Member

MIGRATION – cancellation of a visa – applicant is citizen of Samoa and of New Zealand – applicant held Class TY Subclass 444 Special Category (Temporary) visa – visa cancelled under s 501(2) of Migration Act – sexual offending – consideration of whether applicant fails character test – applicant fails character test – ministerial direction No. 90 – primary considerations – protection of Australian community – best interests of minor children in Australia – expectations of Australian community – extent of impediments if removed to New Zealand – links to Australian community – decision under review set aside and new decision substituted

[1808089](#) (Migration) [2022] AATA 2861 (9 July 2022); H Claringbold, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – genuine and continuing partner relationship – bogus document – divorce certificate – de facto relationship – joint financial commitments – family and friends recognise the relationship – applicant still legally married at date of previous student application – paternity of the children – compassionate circumstances – decision under review remitted

[Lam](#) (Migration) [2022] AATA 2919 (11 July 2022); J Owen, Deputy President

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – residing together in Vietnam on occasions – foreign resident registrations – multiple statutory declarations regarding social recognition – length of the relationship – familiarity with each other's activities – decision under review remitted

[Tran](#) (Migration) [2022] AATA 2959 (15 July 2022); S Conwell, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 101 (Child) – visa applicant over 18 years – full-time course of study – gap in studies – reasonable time – lengthy period studying for English tests – leading to the award of a professional, trade or vocational qualification – decision under review affirmed

[Aron](#) (Migration) [2022] AATA 2958 (20 July 2022); D Crawshay, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – no work condition on previous visa – lengthy period of unlawful residence – lengthy unlawful employment period – managing property portfolio while in Australia – assistance with childcare – decision under review affirmed

[Duvergey](#) (Migration) [2022] AATA 2931 (24 August 2022); K Malyon, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – post-study work stream – Australian study requirements – qualification at bachelor degree level or higher required – applicant completed advanced diploma – department requested additional documentation when application was certain to be unsuccessful – opportunity to apply for another subclass visa lost – unique or exceptional circumstances – exceptional cultural or economic benefit – applicant’s strong contribution to film industry and strong potential – public information and professional and personal references – referred for ministerial consideration – decision under review affirmed

National Disability Insurance Scheme

[Kupara and National Disability Insurance Agency](#) [2022] AATA 3091 (16 September 2022); P Smith, Member

National Disability Insurance Scheme – The Tribunal’s power under section 42D – Reasonable and necessary supports – Agreed supports – Agreed supports should be Remitted – Remittal – Purpose of Respondent’s Statement of Issues – Admissibility of Statement of Issues – Inadmissibility of Statement of Issues – Alternative Dispute Resolution – ADR – Part IV Division 3 – Section 34E – Section 34A – Duplicated supports – Narrowing the issues in dispute – Without Prejudice

National Security

[KFDJ and Director General of Security](#) [2022] AATA 3185 (22 August 2022); B McCabe, Deputy President, D O’Donovan, Senior Member, and S Webb, Member

NATIONAL SECURITY – adverse security assessment – requirements of security – prescribed administrative action – recommendation for cancellation of Australian passport – approach to fact-finding – correctness of information – justification for opinions or recommendations – protection of Australia and Australians from politically motivated violence and communal violence – decision varied

Practice and Procedure

[Bebek and Australian Capital Territory](#) (Compensation) [2022] AATA 3181 (30 September 2022); S Webb, Member

PRACTICE & PROCEDURE – application for review of reconsideration decision denying liability in respect of a workers’ compensation claim – prescribed time for making application – notice of decision sent by email – when decision is given to the applicant – decision given when it was capable of being retrieved by the applicant – application within prescribed time

Professions and Trades

[Nandacumaran and Victorian Building Authority](#) [2022] AATA 3150 (26 September 2022); R Cameron, Senior Member

BUILDING AUTHORITY – Mutual Recognition Act 1992 (Cth) – applicant lodged notice seeking registration as a Building Practitioner in Victoria – registration cancelled in Victoria and in New South Wales due to disciplinary action – section 19(2)(e) – notice must state that registration in any State is not cancelled as a result of disciplinary action – applicant therefore cannot be registered as a Building Practitioner in another state – decision affirmed

Refugee

[1818811](#) (Refugee) [2022] AATA 2817 (28 June 2022); T Hamilton-Noy, Member

REFUGEE – protection visa – Iran – ethnicity and religion – stateless Faili Kurd and Sunni Muslim – leaked confidential military information to Kurdish political party – detained and beaten – extended family members’ political activities in Iran and brother-in-law’s in Australia – applicant’s participation in demonstrations and social media activity – mental health and treatment – credibility – inconsistent claims and evidence – citizenship, passport and departure – initial claim of statelessness made on advice of people smugglers – sister’s returns despite brother-in-law’s claimed profile – country information – decision under review affirmed

[1729912](#) (Refugee) [2022] AATA 2848 (30 June 2022); B Darcy, Member

REFUGEE – protection visa – Stateless – Rohingya from Myanmar – land confiscated by Myanmar officials – lived in Bangladesh prior to seeking asylum in Australia – credibility issues – significant discrepancies in claims – sister’s previous travel to Australia as Bangladeshi national – site visit by officials from Australia to the family residence in Dhaka – wealthy family with properties in Bangladesh – attendance at prestigious high school – siblings’ post-secondary qualifications – father’s claim that applicant had held a Bangladeshi passport in the past – decision under review affirmed

[1821732](#) (Refugee) [2022] AATA 2847 (30 June 2022); B Cullen, Senior Member

REFUGEE – Protection Visa – Ethiopia – imputed political opinion – supporter of Oromo Liberation Front – race – Oromo ethnicity – particular social group – able-bodied Oromo Man at risk of recruitment by the Ethiopian Army or other armed groups – conscientious objector who does not believe that military or armed conflict is the solution to conflict – detention of applicant’s family members – state protection not available – decision under review remitted

[1821648](#) (Refugee) [2022] AATA 2852 (6 July 2022); M McAdam, Member

REFUGEE – protection visa – Cameroon – Federal Court remittal – member of particular social group – homosexual man – harassment and threats by family and community – forced to marry by family, but continued gay relationship – partner killed and applicant injured in group attack – inaction by police against perpetrators and arrest warrants for applicant – business forced to close – physical and mental health and treatment – credibility – inconsistent and contradictory claims and evidence – genuineness of documents – uncooperative attitude and unimpressive oral evidence at tribunal hearing – extensive supporting evidence from professionals, church and community groups and friends – country information – laws and societal attitudes – no treaty right to enter neighbouring countries – decision under review remitted

[1817431](#) (Refugee) [2022] AATA 2981 (7 July 2022); J Marquard, Member

REFUGEE – protection visa – Fiji – Federal Circuit Court remittal – ethnicity – Indo-Fijian – discrimination and harassment – no real chance of serious harm – particular social group – women in Fiji – culture and attitudes towards women in Fiji – husband’s lack of acknowledgement of own behaviour – no effective police protection – real chance of serious harm in the form of family or domestic violence – decision under review remitted

[1820514](#) (Refugee) [2022] AATA 3110 (15 July 2022); R Da Costa, Member

REFUGEE – protection visa – Ghana – religion – Christian convert – declined chieftaincy of hometown after conversion to Christianity – royal lineage – particular social group – people who have undergone the customary and traditional rites to be made chief and have a direct rival who has also undergone the customary and traditional rites to be made chief in respect of the same skin or stool – people who have refused chieftaincies in Ghana – intended tribal chiefs who are opposed to enskinment on the basis of their religion – chieftaincy dispute – threats of harm by clan and community – Economic Community of West African States (ECOWAS) – decision under review remitted

[2201443](#) (Refugee) [2022] AATA 2851 (29 July 2022); S Burford, Senior Member

REFUGEE – protection visa – Zambia – fear of harm from members of extended family because of inheritance dispute – raids on family home, attacks on applicant and suspicious death of brother – returnee with criminal record in Australia – separation from Australian citizen wife and children or harm to them if they travel with him – credibility – extended voluntary returns – delay in applying for protection – permanent partner visa refused and tribunal reviews, court appeals and requests for ministerial intervention unsuccessful – no fear of harm expressed in any of those proceedings – inconsistent claims and evidence and no corroborative evidence provided – some claims discontinued – decision under review affirmed

Social Services

[The Executor of the estate of the late Peter Sweeney; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 3152 (26 September 2022); J C Kelly, Senior Member

SOCIAL SECURITY – Age Pension cancellation – whether assets hardship test applicable – whether assets exceeded Pension Assets Test limit – whether shareholder loans were assets – whether there was intention that loans be repaid – whether Tribunal has jurisdiction after death of Respondent – decision under review set aside and substituted

[Falaniko and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3093 (21 September 2022); Dr P McDermott RFD, Deputy President

SOCIAL SECURITY – Disability support pension – Eligibility – Whether applicant entitled to disability support pension under Agreement on Social Security between Australia and New Zealand – Where applicant is untruthful with treatment providers – Where significant functional improvement a possibility – Where applicant is not compliant with treatment recommendations – Where decision under review affirmed

[Hodges-Fong and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3102 (23 September 2022); S Evans, Member

Social Security – Age Pension – appeal from the Administrative Appeals Tribunal, Social Security and Child Support Division – accepted claims – whether earlier date of payment possible – section 107 – no appeal within 13 weeks – decision under review affirmed

[Lockett and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3187 (29 September 2022); Dr P McDermott RF, Deputy President

Application for Disability Support Pension – Where applicant has received compensation – whether application medically qualified – Where start date of claim in contention – Where multiple claims for Disability Support Pension – Where applicant not medically qualified – Where decision under review affirmed in part – Where decision under review set aside and substituted in part

[Windsor and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3179 (30 September 2022); B Cullen, Senior Member

SOCIAL SECURITY – claim for Disability Support Pension payments to be backdated from date of first application lodged with Centrelink – date of claim outside of claim period (more than 14 days, but not more than 13 weeks) in accordance with subsection 13(3A) of the Social Security (Administration) Act 1999 (Cth) – decision under review affirmed

Taxation

[Dowsing and Commissioner of Taxation](#) (Taxation) [2022] AATA (29 September 2022); Dr M Evans-Bonner, Senior Member

TAXATION – application for review of an objection decision – Applicant failed to provide outstanding tax return despite numerous attempts by the Respondent to contact him – administrative penalty imposed – Respondent remitted 75% of penalty – Applicant seeking full remission – whether circumstances beyond the Applicant’s control affected his ability to lodge his tax return for the financial year ending 30 June 2017 – Applicant had addiction issues with drugs and gambling – Applicant has not discharged onus under s 14ZZK(b) of the Taxation Administration Act 1953 (Cth) – Reviewable Decision affirmed

[Rizkallah and Commissioner of Taxation](#) (Taxation) [2022] AATA 3081 (16 September 2022); Dr L Kirk, Senior Member

TAXATION – Income Tax – review of objection decision – deductions – whether outgoings of rental property eligible for deduction under s 8-1 of Income Tax Assessment Act 1997 (Cth) – where property leased to husband – expenses not incurred in the course of producing assessable income – where losses or outgoings are of a private or domestic nature – whether administrative penalty should be imposed – where conduct amounts to recklessness as to operation of taxation law – whether discretion should be exercised to remit any part of the penalties – objection decisions for assessment of income affirmed – objection decisions as to penalties varied to partially remit penalties

[Wulf and Commissioner of Taxation](#) (Taxation) [2022] AATA 3094 (21 September 2022); K James, Senior Member

TAXATION – whether expenditure deductible as repairs – improvement to property – deductible capital works – water damage to property – degree of works completed – revenue and capital accounts – increased value of property – repairs and refittings to bathrooms, kitchen and laundry – decision set aside and remitted

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
BKTS and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2733
BLBY and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2282
JZQQ and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2998
King and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2907
LJSS and Child Support Registrar	[2022] AATA 1319
LRMM and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2731
Moananu and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2869
Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 358
NRWQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2879
Pewhairangi and Minister for Immigration, Citizenship, and Multicultural Affairs	[2022] AATA 2596
RDYQ and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2738
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Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Holloway v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 833	[2022] FCA 1126
Mukiza v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2021] AATA 1488	[2022] HCASL 168 [2022] FCAFC 89 [2021] FCA 1503
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