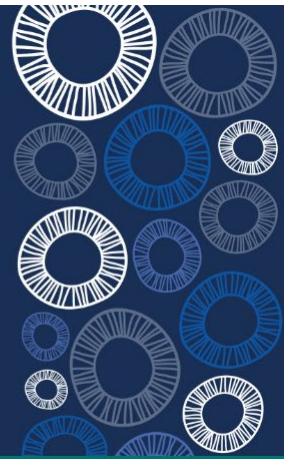




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 20/2023

9 October 2023

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

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

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

Enquiries regarding this publication may be directed to LPExtFeedback@aat.gov.au.

Contents

AAT Recent Decisions	3
Child Support.....	3
Citizenship.....	4
Compensation	4
Migration	5
National Disability Insurance Scheme	9
Practice and Procedure	10
Refugee.....	12
Social Security.....	14
Taxation	15
Veterans' Affairs	15
Appeals.....	16
Appeals lodged.....	16
Appeals finalised	16

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

[Rodgers and Donelan](#) (Child support) [2023] AATA 2957 (19 July 2023); E Kidston, Member

CHILD SUPPORT – departure determination – school fees – a ground for departure established – decision to depart – decision under review set aside and substituted

[Neilson and Neilson](#) (Child support) [2023] AATA 2951 (25 July 2023); C Breheny, 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

[Jessop and Wilmut](#) (Child support) [2023] AATA 2933 (26 July 2023); E Kidston, 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 – decisions under review affirmed

[Tuckey and Elwes](#) (Child support) [2023] AATA 2940 (7 August 2023); M Baulch, Member

CHILD SUPPORT – percentage of care – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review set aside and substituted

[Rowell and Gowland](#) (Child support) [2023] AATA 2927 (22 August 2023); P Jensen, 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

Citizenship

[Jamishi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3094 (7 September 2023); C J Furnell, Senior Member

CITIZENSHIP – cancellation of approval of applicant becoming Australian citizen – Australian Citizenship Act 2007 (Cth), s 25(1) – whether the Tribunal can be satisfied that applicant is not of good character – application of Citizenship Procedural Instruction 15 – provision of false information to the respondent – where intervention orders had been made against the applicant – Tribunal not satisfied Applicant is not of good character – decision set aside and substituted

[Lowery and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3087 (24 August 2023); Dr N A Manetta, Senior Member

CITIZENSHIP – application for Australian citizenship refused – whether applicant is of “good character” under section 21(2) of the Australian Citizenship Act 2007 (Cth) – applicant’s criminal history considered – serious offending but person’s character can change over time – majority of offending very old – last serious offending in 2014 – alcohol misuse reflected in traffic offences – applicant gave up alcohol in 1996 – applicant’s childhood and family background considered – applicant has stable marital relationship and four children in Australia – applicant has provided substantial economic and emotional support to his children and continues to provide substantial support to his two oldest children – applicant has been self-reliant – decision under review set aside

Compensation

[Chiswell and Australian Capital Territory](#) (Compensation) [2023] AATA 3101 (29 September 2023); D O'Donovan, Senior Member

WORKERS' COMPENSATION - whether the applicant was employed as a firefighter - whether firefighting made up a substantial portion of the applicant's duties - whether the provision is a limiting provision or a deeming provision - decision set aside and remitted

[Nguyen and Comcare](#) (Compensation) [2023] AATA 3099 (29 September 2023); G Hallwood, Member

COMPENSATION – SRC Act s 14 – determination of liability to pay compensation – claim for “ganglion of dorsal scapholunate (right)” –whether applicant suffered a physical injury – whether a disease - whether condition contributed to, to significant degree, by applicant’s employment with ATO (SRC Act s 5B) – reviewable decision set aside

COMPENSATION – SRC Act s 14 – determination denied liability to pay compensation –claim for “Triangular Fibrocartilage Complex tear with ulnar abutment (right)” - whether applicant suffered a physical injury – whether an injury (other than a disease) (SRC Act s 5A) – reviewable decision affirmed

PROCEDURE – whether Tribunal should exercise its discretion to award costs (SRC Act s67(8) – Tribunal declines to exercise discretion to make costs order

Migration

[BQWM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3108 (4 October 2023); R Skaros, Senior Member

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether this is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – links to the Australian community – expectations of the Australian community – legal consequences of decision – where applicant has been refused a protection visa - extent of impediments to removal – reviewable decision affirmed

[CJDM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3092 (29 September 2023); B W Rayment OAM KC, Deputy President

MIGRATION – refusal to revoke mandatory cancellation – citizen of the Republic of Ireland – decision under review set aside and substituted

[CLMF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3109 (6 September 2023); Dr N A Manetta, Senior Member

MIGRATION – refusal of protection visa under section 501(1) – applicant does not satisfy the character test – aggregate sentence – serious violent crime – whether to exercise statutory discretion to refuse visa – sentencing remarks closely considered – applicant is owed non-refoulement obligations – Direction no. 99 — frequency of applicant’s offending – trend of increasing seriousness – cumulative effect of offending on the community – serious risk to the community should the applicant reoffend – low risk of reoffending – sufficient protective factors – strength, nature and duration of ties to Australia weighs in favour of not refusing visa - applicant has resided in Australia for a significant length of time – applicant’s brother and extended family reside in Australia – expectations of the Australian community weigh against applicant – legal consequences of decision – applicant cannot mandatorily be refouled to South Sudan – prospect of indefinite detention weighs substantially in applicant’s favour – decision under review set aside

[HSCK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3095 (28 September 2023); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – other considerations – protection finding - legal consequences of the decision – extent of impediments if removed – decision affirmed

[LRMM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3162 (6 October 2023); T Tavoularis, Senior Member

MIGRATION- matter before the Tribunal for a third time - non-revocation of a mandatory cancellation of Class XB Subclass 200 Refugee 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 risk of reoffending found to be low subject to ongoing counselling requirements being met -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 and extent of impediments if removed from Australia weigh strongly in favour of revocation- where claims about indefinite detention breaching Australia’s compliance with International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights raised- Tribunal finding protection and expectations of the Australian community outweigh primary and other considerations in favour of revocation– Tribunal finding there is no other reason to revoke the mandatory cancellation of the Applicant’s visa- decision under review affirmed

[Luko and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3024 (19 September 2023); L M Gallagher, Member

MIGRATION – decision of Delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – whether the Applicant has engaged in conduct constituting family violence – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – legal consequences of the decision – Applicant is a 30 year old man who arrived in Australia as a 14 year old – extent of impediments if returned to Sudan – Non-Revocation Decision is affirmed

[Mahata and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3070 (27 September 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – applicant is a citizen of India – visa cancelled was Bridging C visa that expired in 2022 after substantive visa refused – direction 99 considered - assault – family violence – legal consequences of “reinstating” expired temporary visa limited – considerations of protection of the Australian community, family violence and expectations of the Australian community weigh against revocation of the cancellation – considerations of strength, nature and duration of applicant’s ties to Australia, best interests of minor children and legal consequences of decision very limited and only weigh marginally in favour or do not weigh in favour of revocation – considerations against revocation of the cancellation of the applicant’s Bridging C visa significantly outweigh those in favour of revocation of cancellation – weighing and balancing exercise – reviewable decision affirmed

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

(Migration) [2023] AATA 3113 (3 October 2023); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if removed – extent of impediments if returned to United Kingdom – Non-Revocation Decision is affirmed

Poloi and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2023]

AATA 3100 (12 September 2023); 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. 99 – decision under review affirmed

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

(Migration) [2023] AATA 3063 (25 September 2023); R Reitano, Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) Visa under section 501(3A) – whether there is another reason to revoke the cancellation – sexual offence against child – seriousness of offence – low risk of re-offending – unacceptable risk of re-offending – protection of Australian community – best interests of minor children – strength, nature and duration of ties to Australia – Expectations of the Australian community – decision under review set aside

Tkatschenko and Minister for Immigration, Citizenship and Multicultural Affairs (Migration)

[2023] AATA 3066 (27 September 2023); J C Kelly, Senior Member

MIGRATION – visa was mandatorily cancelled previously and then revoked by a differently constituted Tribunal – applicant reoffended – 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 – reviewable decision affirmed

[TQYD and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 3025 (22 September 2023); J Owen, Deputy President

MIGRATION – Cancellation of Class BB Subclass 155 Five Year Resident Return visa under section 501(2) of the Migration Act 1958 (Cth) – where Applicant does not pass the character test – where Applicant has substantial criminal record – consideration of the nature and seriousness of offending – consideration of the risk to the Australian Community – consideration of the strength, nature and duration of the Applicant’s ties to Australia – consideration of the expectations of the Australian community – consideration of the extent of impediments if Applicant is removed from Australia – consideration on the impact of Australian business interests – whether the power to cancel should be exercised under section 501(2) of the Migration Act 1958 (Cth) – consideration of Ministerial Direction No. 99 – decision under review affirmed

[VLPW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3102 (4 September 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant does not satisfy character test – substantial criminal record – whether another reason for the cancellation decision to be revoked – Direction no. 99 – violent crime – drug use – frequency in the applicant’s offending – trend of increasing seriousness – cumulative effect of repeated offending – strength, nature and duration of ties to Australia – applicant has spent part of his formative years in Australia – applicant has a mother and siblings in Australia – applicant would face serious impediments were he removed to South Sudan – ongoing political instability and serious poverty – applicant has not lived in Sudan since a very young age – decision under review set aside

[XLFM and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 3045 (22 September 2023); D O’Donovan, Senior Member

MIGRATION – mandatory cancellation of applicant’s Class AH Subclass 101 Child visa – applicant is a citizen of Kenya – attempted sexual intercourse without consent – robbery armed with an offensive weapon – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction no. 99 – protection of the Australian community – family violence – is sister of ex-partner a ‘family member’ – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties – extent of impediments if removed – standard of medical care in Kenya – legal consequences of decision where non-refoulement duty owed and no protection finding – decision under review set aside

[Serocki](#) (Migration) [2023] AATA 2607 (31 July 2023); N Findson, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 Employer Nomination Scheme – Temporary Residence Transition stream – position of Welder (First Class) – competent English – Australian citizen family members – support for the applicant’s grandchildren – skills shortage occupation – referral for Ministerial Intervention – decision under review affirmed

[NGUYEN](#) (Migration) [2023] AATA 2641 (9 August 2023); K Raif, Senior Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – separate bank accounts with minimal transactions – joint utilities accounts – applicant’s minimal responsibility for the sponsor’s children – joint social activities – plans for family – credibility issues – decision under review affirmed

[Ajani](#) (Migration) [2023] AATA 2712 (10 August 2023); N Schmitz, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – updated financial and property ownership details – visa applicant returning to care for elderly husband – balance of family in Nigeria – security situation in Nigeria – decision under review remitted

[Yau](#) (Migration) [2023] AATA 2747 (14 August 2023); K McNamara, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – Medium-term stream – occupation of Accountant (General) – worked in the nominated occupation for at least 2 years – relevant qualifications – additional work details provided upon review – remuneration by trust distributions – decision under review remitted

[Begam](#) (Migration) [2023] AATA 2751 (17 August 2023); J Francis, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 838 (Aged Dependent Relative) – aged dependent relative of an Australian relative – substantial period of dependency – money transfers – financial support in Bangladesh and Australia – age qualification – decision under review remitted

National Disability Insurance Scheme

[Abdelmalek and National Disability Insurance Agency](#) [2023] AATA 3072 (20 September 2023); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – impairments resulting from rheumatoid arthritis, sensorineural hearing loss, Meniere’s disease and osteoporosis – whether impairments resulting from Meniere’s disease are permanent when the Applicant’s vertigo symptoms are intermittent and managed by medication – whether hearing loss is an impairment resulting from Meniere’s disease - whether there is substantially reduced functional capacity – decision affirmed

[Donohue and National Disability Insurance Agency](#) [2023] AATA 3071 (27 September 2023); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – reasonable and necessary supports – applicant sought review of statement of participant supports – request for Surface Pro and keyboard – decision affirmed

[Warwick and National Disability Insurance Agency](#) [2023] AATA 3093 (28 September 2023); The Hon P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME (NDIS) – jurisdiction – reasonable and necessary supports – relocation costs – value for money – effective and beneficial – home modification – retrospective – prospective-reimbursement – decision affirmed

Practice and Procedure

[BCNW and Child Support Registrar](#) (Child support second review) [2023] AATA 3091 (29 September 2023); L Benjamin, Member

PRACTICES AND PROCEDURES – Extension of time to lodge review application – whether prejudice to Respondent and Other Party exists – reasonable explanation for delay found – extension of time application granted

[Betalli and Australian Securities and Investments Commission](#) [2023] AATA 3073 (25 September 2023); B J McCabe, Deputy President

Adjectival relevance – de novo review – procedural fairness

[Bringans and Australian Securities and Investments Commission](#) [2023] AATA 3096 (5 July 2023); B J McCabe, Deputy President

Practice and procedure - order of filing of evidence - three applicants from the same business - whether agreed statement of facts beneficial

[Bringans and Australian Securities and Investments Commission](#) [2023] AATA 3103 (26 September 2023); B J McCabe, Deputy President

Banning Orders – Case Management

[Covin and Secretary, Department of Employment and Workplace Relations](#) [2023] AATA 3144 (4 October 2023); K Millar, Senior Member

PRACTICE AND PROCEDURE – Higher Education – application for extension of time to apply for review - inappropriate conduct of registered training provider – excessive amount of the loan - contention that the Applicant did not sign a request for Commonwealth assistance and the consequences of the Commonwealth providing a not within the jurisdiction of the Tribunal – application for extension of time refused s 29(7)

[Dalby and Commissioner of Taxation](#) (Taxation) [2023] AATA 3069 (31 August 2023); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – correct division for application to proceed in – whether small business assessed at time of decision or financial year in review

[Fragogianis and Tax Practitioners Board](#) [2023] AATA 3145 (5 October 2023); D Mitchell, Member

TAX AGENT REGISTRATION – application for a stay of the decision under review – consent stay order in operation – cancellation of tax agent registration – application for stay of the decision under review refused

[Groves and National Disability Insurance Agency](#) [2023] AATA 3143 (25 July 2023); I Thompson, Member

PRACTICE AND PROCEDURE – jurisdiction - whether Respondent's decision to limit communications with a Plan Nominee is reviewable – decision is not reviewable – the Tribunal does not have jurisdiction

[Hawk and Linfox Armaguard Pty Limited](#) (Compensation) [2023] AATA 3068 (27 September 2023); B W Rayment OAM KC, Deputy President

PRACTICE AND PROCEDURE – application for reinstatement of withdrawn application – application for reinstatement made in 2021 – whether there was an error – application granted

[Iqbal and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3062 (27 September 2023); D Mitchell, Member

EXTENSION OF TIME – Application for Review of Decision filed out of time – Application for Extension of Time considered – Extension of Time Refused

[Issa and Commissioner of Taxation](#) (Taxation) [2023] AATA 3067 (11 August 2023); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – Application for Extension of Time – Objection Decision – Income Tax Assessment Penalty – Delay – Application for Extension of Time not granted

[Lee and Decision Maker](#) [2023] AATA 3158 (2 October 2023); A Nikolic AM CSC, Senior Member

PRACTICE AND PROCEDURE – jurisdiction – application for review of a decision by the Graduate Entry Medical Program Application and Selection Service – whether Tribunal has jurisdiction to review decision – Tribunal does not have jurisdiction – application dismissed

[SSPR and Australian Information Commissioner](#) [2023] AATA 3098 (19 September 2023); C J Furnell, Senior Member

PRACTICE AND PROCEDURE – application for Tribunal to require lodgement of certain documents pursuant to s 37(2) of the Administrative Appeals Tribunal Act 1975 (Cth) – whether Tribunal is of opinion that the documents may be relevant to the review of the decision under review – where Applicant submitted the decision-maker relied on or used the documents in making the decision under review – Tribunal not of opinion that the documents may be relevant – application refused

[YJSB and Commissioner of Taxation](#) (Taxation) [2023] AATA 3142 (5 October 2023); B J McCabe, Deputy President

PRACTICE AND PROCEDURE – Taxation - application for dismissal of application for review – where applicant has been deregistered as a company - consideration of the impact of deregistration – proceedings dismissed

Refugee

[2000491](#) (Refugee) [2023] AATA 2736 (6 April 2023); S Burford, Senior Member

REFUGEE – protection visa – South Africa – race – Afrikaner – imputed political opinion – white person perceived to have supported or benefited from previous apartheid government – particular social group – single white woman with no male children or relatives to support her – victim of crime – fear of harm by black people – effect of medical condition on inconsistency of evidence and claims – mental condition renders applicant vulnerable to environment of generalised crime – complementary protection – state protection – decision under review remitted

[2008603](#) (Refugee) [2023] AATA 2679 (20 April 2023); D James, Senior Member

REFUGEE – protection visa – Iran – religion – atheist – ex-Muslim – apostasy – modification of behaviour – secondary applicant’s new claims and evidence – political opinion – opposition to the Iranian regime’s strict interpretation of Sharia Law and the oppression of women – anti-Iranian government demonstrations and internet posted statements in Australia – purpose other than for strengthening claims – fear of primary applicant’s brother – particular social group – oppose and criticise the Iranian regime’s oppression and treatment of woman – failed asylum seeker – decision under review remitted

[1934769](#) (Refugee) [2023] AATA 2760 (3 May 2023); J Pennell, Senior Member

REFUGEE – protection visa – Nigeria – particular social group – females in Nigeria – victim of rape – persecution by politically well-connected father – religion – second applicant’s conversion to Christianity – fear of persecution from Muslims – interfaith marriage – decision under review remitted

[1723509](#) (Refugee) [2023] AATA 2546 (9 May 2023); M McAdam, Member

REFUGEE – protection visa – Colombia – primary applicant wife/mother deceased – secondary applicants husband/father and children – mother approached by criminals/armed insurgents to sell drugs in public park – general economic, security and social conditions – country information – mother threatened but not father or children – elapse of time – father’s second marriage to Australian citizen and possibility of applying for partner visa – children’s education and significant social connections – delay in constituting review – referred for ministerial consideration – decision under review affirmed

[1836965](#) (Refugee) [2023] AATA 2537 (31 May 2023); T Flood, Member

REFUGEE – protection visa – Bangladesh – political opinion – supporter of opposition party fearing harm from members and supporters of governing party – businessman producing products for candidates’ campaigns and candidate for local elections – attempt to re-open investigation into death of wife’s relative – extortion, threats, attacks and raids of business – detailed knowledge of party policies and activities and generally consistent account of incidents – political activities in Australia not for purpose of strengthening claims – extensive documentation and supporting statements provided – country information – members of family unit – wife’s mental health – decision under review remitted

[2117816](#) (Refugee) [2023] AATA 2637 (1 June 2023); D Dragovic, Senior Member

REFUGEE – cancellation – protection visa – Stateless – ground for cancellation – convicted of an offence – domestic violence – intentionally cause injury – make threat to kill – consideration of discretion – degree of hardship – immigration detention – mental health condition – mandatory legal consequences – new process for removal – extended immigration detention – best interests of the child – family unity – circumstances of the conviction – wife’s request for the applicant’s visa not to be cancelled – factors mitigating risk of reoffending – decision under review set aside

[2001195](#) (Refugee) [2023] AATA 2550 (2 June 2023); A Murphy, Member

REFUGEE – protection visa – Saudi Arabia – particular social group – women – victim of family violence – victim of sexual assault – honour killing – guardianship system – forced marriage – mental health issues – restricted movements – effective state protection – decision under review remitted

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

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

[1821619](#) (Refugee) [2023] AATA 2528 (30 June 2023); C Packer, Member

REFUGEE – protection visa – India – Federal Circuit Court remittal – particular social group – love marriage – marriage without family approval – inter gotra marriage – religion – Sikh – mental health issues – internal relocation – false legal proceedings – state protection – decision under review affirmed

[1934989](#) (Refugee) [2023] AATA 2534 (30 June 2023); W Banfield, Member

REFUGEE – protection visa – South Africa – race – white South Africans – particular social group – older woman – farm employment – Black Economic Empowerment policies – attempted murder – land resumption without compensation – racially motivated crime – mental health issues – effective state protection – decision under review affirmed

Social Security

[The Estate of the late Gertrude Mills and Secretary, Department of Health and Aged Care](#)

(Social services) [2023] AATA 3140 (5 October 2023); J Rau SC, Senior Member

AGED CARE - Exclusion of residence for the purpose of asset assessment - “occupation” of the home considered - “carer” considered - decision under review is affirmed

[Zych and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3141 (5 October 2023); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – disability support pension – qualification – whether applicant has impairment rating of 20 points under the Impairment Tables – where applicant claimed functional impairment – where applicant claimed physical and mental health conditions – decision under review affirmed

Taxation

[Bendel and Commissioner of Taxation](#) (Taxation) [2023] AATA 3074 (28 September 2023); F D O'Loughlin KC, Deputy President and K James, Senior Member

TAXATION – income tax – whether an unpaid present entitlement to income or capital of a trust estate is a loan for the purpose of s 109D(3) of the Income tax Assessment Act 1936 (Cth) – whether the Applicant made a loan within the meaning of s 109D(3) on account of its unpaid present entitlements – role of Subdivision EA of division 7A of the Income tax assessment act in construction to be given to s 109D(3) – if a loan is made, whether s 6-25 of the Income tax Assessment Act 1997 (Cth) prevents the remaining deemed dividends from being included in the Applicants' assessable incomes – objection decisions set aside

[Quirky Mama Productions Pty Ltd \(Subject to Deed of Company Arrangement\) and Screen Australia](#) (Taxation) [2023] AATA 3089 (29 September 2023); B J McCabe, Deputy President

Income Tax Assessment – Tax Offset – Producer Tax Offset – Production Expenditure – Qualifying Australian Production Expenditure – Australian Feature Film – When Relevant Expense was Incurred – Set Aside and Varied

[Smith and Commissioner of Taxation](#) (Taxation) [2023] AATA 3090 (12 September 2023); L Benjamin, Member

TAXATION – Income tax deductions – whether applicant substantiated expenses claimed– where applicant sought to claim work-related expenses that included travel, accommodation and meal expenses – whether applicant has satisfied the onus of proof in establishing that Commissioner's assessment was excessive or otherwise incorrect – where applicant had failed to retain receipts for expenses and otherwise did not sufficiently substantiate expenses – statutory requirements to discharge onus of proof not satisfied – decision affirmed

Veterans' Affairs

[Sullivan and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 3044 (26 September 2023); A McLean Williams, Member

VETERANS' AFFAIRS – Defence-related claims – whether the Applicant suffered an injury or disease – clinical onset – Statement of Principles – 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
CIJ23 and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2717
EMJ18 and Secretary, Department of Home Affairs	[2023] AATA 2551
James and Comcare	[2023] AATA 2826
Miglani and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2719
PQBZ and Commissioner of Taxation	[2023] AATA 2984
Rusanova and Commissioner of Taxation	[2023] AATA 2782
Shapkin and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2823
Sioni and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2987

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Cortes v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 284	[2023] FCA 1136
Kamal v Minister for Immigration, Citizenship and Multicultural Affairs	[2020] AATA 959	[2023] FCAFC 159 [2023] FCA 200
Ngatoko v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1039	[2023] FCA 1165
NHBK v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 364	[2023] FCA 1175
Moananu v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2869	[2023] FCA 1146

Ngatoko v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1039	[2023] FCA 1165
NHBK v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 364	[2023] FCA 1175
Rukuwai v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2201	[2023] FCAFC 157 [2023] FCA 67
VZWF v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 1876	[2023] FCA 1160

© Commonwealth of Australia 2023



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

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

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

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

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