



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

**Issue No. 21/2022**

**17 October 2022**

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 [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

# Contents

<b>AAT Recent Decisions .....</b>	<b>3</b>
Child Support.....	3
Citizenship.....	4
Compensation .....	5
Migration.....	6
National Disability Insurance Scheme.....	11
Practice and Procedure.....	12
Refugee.....	14
Social Services.....	15
Taxation.....	16
Veterans' Affairs .....	16
<b>Appeals.....</b>	<b>17</b>
Appeals lodged.....	17
Appeals finalised .....	17

# 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

[PFPS and Child Support Registrar](#) (Child support second review) [2022] AATA 3263 (11 October 2022); Dr M Evans-Bonner, Senior Member

CHILD SUPPORT – percentage of care decision – Child Support Agency decided change in care with insufficient evidence of any change in care – both Social Services and Child Support (AAT1) and General Division (AAT2) of this Tribunal not satisfied on the evidence that there was a change in care – whether special circumstances prevented the Applicant from lodging her objection and her application to the AAT1 in time – date of effect – recommendations made for Department to investigate how the decision, which caused distress and hardship to the Mother, was made based on insufficient evidence – recommendations made regarding Respondent's neutral position before this Tribunal – Reviewable Decision set aside and substituted

[TKFR and Child Support Registrar](#) (Child support second review) [2022] AATA 3341 (13 October 2022); Dr M Evans-Bonner, Senior Member

CHILD SUPPORT – percentage of care decision – whether there was a change in care – dispute about percentage of care – Tribunal satisfied there was a change in care – existing care determination revoked – new care determinations made – Mother notified Agency more than 28 days after the date of the change of care – date of effect of revocation – practical effect of this decision is that the Objection Decision is upheld – AAT1 decision set aside and substituted

[Siddly and Oringe](#) (Child support) [2022] AATA 3061 (20 July 2022); M Baulch, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether estimate of income correctly accepted – decision under review affirmed

[Yeary-Eaton and Eaton](#) (Child support) [2022] AATA 3055 (21 July 2022); J Leonard, 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

[Twentyman and Twentyman](#) (Child support) [2022] AATA 3067 (28 July 2022); R King, 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

[Reiner and Heaton](#) (Child support) [2022] AATA 3069 (2 August 2022); 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

CHILD SUPPORT – percentage of care – date of effect provisions – date of effect provisions does not apply – decision under review set aside and substituted

[Dashwood and Dashwood](#) (Child support) [2022] AATA 3052 (4 August 2022); A Byers, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – court orders not complied with – whether reasonable action taken by parent with reduced care – whether reasonable action taken by parent with increased care – interim period applied for 14 weeks – decision under review affirmed

## **Citizenship**

[Ajang and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3226 (6 October 2022); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – application for citizenship by conferral – eligibility – decision to refuse citizenship – whether Tribunal satisfied of Applicant's identity – where Applicant provided fraudulent United Nations High Commissioner for Refugees letter to the Department – Applicant has not attempted to contact any Kenyan authorities or the UNHCR to seek identity documents – Reviewable Decision affirmed

[Alam and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 3213 (6 October 2022); A Poljak, Senior Member

CITIZENSHIP – application for citizenship by conferral – whether the applicant is of good character for the purposes of conferral of Australian citizenship – relevant law, policy and material considered – decision under review affirmed

**[Alsafi and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)**

(Citizenship) [2022] AATA 3230 (6 October 2022); The Hon. M Groom, Senior Member

CITIZENSHIP – s 24(3) of the Australian Citizenship Act – refusal to approve the applicant becoming an Australian citizen – consistent identity while living in Australia insufficient – evidence of timing of applicant’s claimed fleeing from Iraq to Iran unreliable – evidence of claim not to have access to Iraqi identity documents while in Australia unreliable – explanation for inconsistencies with respect to wife’s Iranian citizenship status unreliable – Tribunal not satisfied of the applicant’s identity – decision under review affirmed

**[Li and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Citizenship) [2022] AATA 3211 (6 October 2022); A Poljak, Senior Member

CITIZENSHIP – application for citizenship by conferral – whether the applicant is likely to reside or continue to reside in Australia, or maintain a close and continuing association with Australia – relevant law, policy and material considered – decision under review affirmed

**[Singh and Minister for Immigration, Citizenship and Multicultural Affairs](#)** (Citizenship) [2022] AATA 3340 (13 October 2022); Dr L Bygrave, Member

CITIZENSHIP – application for Australian citizenship by conferral – whether Applicant is a person of good character pursuant to paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – Australian Citizenship [Policy Statement] – Citizenship Procedural Instruction 15 – decision under review affirmed

**[XJNM and Minister for Immigration, Citizenship, and Multicultural Affairs](#)** (Citizenship) [2022] AATA 3225 (6 October 2022); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – whether the discretionary power to refuse an application for citizenship should be exercised – s 24(2) Australian Citizenship Act 2007 (Cth) – Australian Citizenship Policy Statement – Revised Citizenship Procedural Instructions – United Nations Convention on the Rights of the Child – whether Applicant covered by policy guidelines – decision affirmed

## **Compensation**

**[Tsoumbris and Pacific National Services Pty Ltd](#)** (Compensation) [2022] AATA 3249 (10 October 2022); A Ward, Member

WORKERS COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 (Cth) hearing loss claim accepted – Section 24 – hearing loss impairment – impairment compensation not payable if binaural hearing loss suffered by employee is less than 5% - employer became licenced under the Safety, Rehabilitation and Compensation Act 1988 (Cth) – difficulty of factual finding regarding causation as to incapacity – employer did not arrange hearing tests before or during employment – decision under review set aside and substituted

## Migration

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

AATA 3208 (12 August 2022); Dr L Kirk, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Iran – Class WE Subclass 050 Bridging (General) visa – failure to pass character test – substantial criminal record – whether there is 'another reason' to revoke mandatory cancellation decision – Ministerial Direction 90 – nature and seriousness of offending – sexual offences against a minor – best interests of minor child – ties to the Australian community – impediments to return – where applicant has made protection visa application – decision set aside and substituted

### [Chu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA

3248 (11 October 2022); B W Rayment OAM KC, Deputy President

MIGRATION – application for partner visa (Class UK) – dealing with property reasonably suspected of being proceeds of crime – academic misconduct – police suspicion of misconduct – passenger card failure to disclose conviction – whether discretion should be exercised to refuse visa under s 501(1) of the Migration Act 1958 (Cth) – decision under review set aside and substituted

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

AATA 3199 (19 August 2022); A G Melick AO SC, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of a Partner (Subclass 801) (Residence) visa – where Applicant does not pass the character test – whether the discretion to refuse to grant the visa should be exercised – consideration of Ministerial Direction No. 90 – tobacco importation offence – decision under review affirmed

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

AATA 3229 (5 October 2022); D J Morris, Senior Member and D Dragovic, Deputy President

MIGRATION – applicant born in Egypt but entitled to citizenship of South Sudan – applicant held Class XB subclass 202 global special humanitarian visa – visa cancelled because of substantial criminal record – delegate refused to revoke mandatory cancellation – consideration by Tribunal – preliminary questions – is youth detention 'imprisonment' – youth detention fulfils definition of imprisonment – is Thornton decision on treatment of offending by a minor relevant – Thornton distinguished when no offending in Queensland – ministerial direction No 90 – primary considerations – protection of the Australian community – offending all committed as a child – best interests of minor children in Australia – expectations of Australian community – other considerations – international non-refoulement obligations – extent of impediments if removed – impact on victims – links to the Australian community – prospect of prolonged detention – decision under review set aside and new decision substituted

[Edmonds and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3191 (28 September 2022); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 90 – protection of the Australian community – best interests of minor children – expectations of the Australian community – links to the Australian community – decision under review affirmed

[Hancox and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3241 (6 September 2022); C Puplick AM, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – impediments to removal – impact on victims – links to the Australian community – decision set aside and substituted

[Johnson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3193 (30 September 2022); Dr M Evans-Bonner, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include aggravated burglary, property offences, dishonesty offences, numerous breaches of court imposed orders and traffic offences – methamphetamine addiction – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – domestic violence against former partner – minimal information concerning minor children – expectations of the Australian community – extent of impediments in circumstances where Applicant voluntarily returned to New Zealand – links to the Australian community – Applicant is a 30-year-old man who has resided in Australia for seven years – strength, nature and duration of ties to Australia – there is not another reason to revoke the Cancellation Decision – Reviewable Decision affirmed

[KMZF and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]  
AATA 3251 (13 September 2022); A George, Senior Member

MIGRATION – Cancellation of a Class BF transitional (permanent) visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – offending very serious – decision under review affirmed

[Lai and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3214 (6 October 2022); A Poljak, Senior Member

MIGRATION – business visa cancellation – whether the applicant’s visa should be cancelled pursuant to subsection 134(1) of the Migration Act 1958 (Cth) – whether the residual discretion to cancel the applicant’s visa should be exercised – whether the dependent applicants would experience extreme hardship – relevant law, policy and material considered – decisions under review affirmed

[LYVD and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3200 (1 September 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – entrenched anti-social behaviour – applicant a national of New Zealand – prior cancellation of visa – interests of minor children – risk profile tending towards low – decision under review set aside and substituted

[McGlone and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3202 (12 September 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special 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 – decision under review affirmed

[MQGT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3228 (6 October 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 – applicant has strong links to the Australian community and would face significant impediments and serious risk of harm if removed to South Sudan – the primary considerations of the protection and expectations of the Australian community outweigh the countervailing considerations – the decision under review is affirmed

[PBDF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3204 (5 October 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 – applicant has strong links to the Australian community and would face significant impediments and serious risk of harm if removed to South Sudan – the primary considerations of the protection and expectations of the Australian community – the likely consequence of non-revocation is indefinite detention – the decision under review is set aside



[QDST and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3347 (13 September 2022); Dr N A Manetta, Senior Member

MIGRATION – cancellation of applicant’s bridging visa – applicant does not pass character test – primary considerations weigh against applicant – serious offending – low to medium risk of reoffending – Tribunal not tasked with assessing risk to Australia of applicant’s presence on an ongoing basis – relevance of bridging visa – relevance of ongoing detention – Federal Court decision of WKMZ considered – decision under review set aside

[Richey and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3338 (12 October 2022); M East, Member

MIGRATION – Migration Act s 501CA(4) – decision of delegate of Minister not to revoke cancellation of applicant’s visa – character test – whether there is ‘another reason’ to revoke cancellation of applicant’s visa – Ministerial Direction No. 90 – alcohol abuse – domestic violence – first primary consideration protection of Australian community weighs heavily in favour of cancellation – second primary consideration family violence weighs heavily in favour of cancellation – there is not another reason to revoke the cancellation of the applicant’s visa – reviewable decision affirmed

[Ripley and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3250 (7 September 2022); Mr 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 – where the Applicant appears having taken drugs on the day of hearing – where drugs are available in immigration detention - family violence – links to the Australian community – impediments to removal – Direction no. 90 considered – decision under review affirmed

[Ristevski and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]  
AATA 3240 (31 August 2022); C Puplick AM, Senior Member

MIGRATION – discretionary visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction 90 – protection of the Australian community – nature and seriousness of offending conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – impediments to removal – impact on victims – links to the Australian community – decision set aside and substituted

[RPQB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3192 (3 October 2022); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record – convictions for domestic violence – whether there is 'another reason' to revoke mandatory cancellation decision – applicant has strong links to the Australian community and would face significant impediments and serious risk of harm if removed to Somalia – the primary considerations of the protection and expectations of the Australian community outweigh the countervailing considerations – the decision under review is affirmed

[Sarimsaklio and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 3194 (30 September 2022); Dr L Bygrave, Member

MIGRATION – remittal application by consent – mandatory cancellation of visa – resident return (subclass 155) visa – where visa cancelled under s 501(3A) because applicant did not pass character test – substantial criminal record – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – seriousness of offending and future risk – family violence – best interests of minor children – expectations of the Australian community – other considerations – extent of impediments if removed from Australia – strengths, nature and duration of ties to Australia – Australian international obligations not enlivened – decision under review affirmed

[Singh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 3210 (6 October 2022); J Rau SC, Senior Member

MIGRATION – refusal to grant Bridging E (Class WE) Visa under section 501(1) – application of the character test – whether the discretion to refuse to grant the visa under section 501 (1) should be exercised – consideration of Ministerial Direction No. 90 – decision under review is set aside and remitted to the Department with a direction that the visa not be refused under s 501(1) of the Act

[Tsang and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 3206 (31 August 2022); Dr L Kirk, Senior Member

MIGRATION – mandatory cancellation of applicant's visa – non-revocation of cancellation by delegate – applicant has substantial criminal record – whether there is another reason to revoke the mandatory cancellation decision – Ministerial Direction No. 90 – Protection of the Australian Community – Family violence – Expectations of the Australian Community – Extent of impediments to removal – Links to the Australian Community – Decision set aside and substituted

[O'Brien](#) (Migration) [2022] AATA 3020 (1 August 2022); J Meyer, Member

MIGRATION – New Zealand Citizen Family Relationship (Temporary) (Class UP) visa – Subclass 461 (New Zealand Citizen Family Relationship (Temporary)) – application made more than 12 months after last substantive visa held – child applicant born in Australia to visa holder father has never held substantive visa – not eligible for citizenship of either of father's countries of citizenship – not eligible to join mother and sibling's visa application because of lack of passport – no discretion to waive criterion – unintended consequences of legislation and exceptional circumstances – referred for ministerial consideration – decision under review affirmed

[OTTOWAY ENGINEERING PTY LTD](#) (Migration) [2022] AATA 3113 (12 August 2022); J Meyer, Member

MIGRATION – nomination of a position (employer nomination) – Temporary Residents Transition Nomination stream – financial capacity to maintain the employment for at least 2 years – training benchmarks – applicant went into administration and was purchased – new owner not a party to the nomination – transfer of nominator's rights and obligations – decision under review affirmed

[Monga](#) (Migration) [2022] AATA 2971 (2 September 2022); W Stooke AM, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – graduate work stream – Australian study requirement – qualification closely related to nominated occupation – qualification in international community development and occupation of early childhood teacher – comparison of units of course and tasks of occupation – whole of qualification and whole of occupation – limitations of ANZSCO – members of family unit – decision under review remitted

[M Cenfi & A.M Cenfi](#) (Migration) [2022] AATA 3130 (8 September 2022); S Witts, Member

MIGRATION – application for approval of nomination of position – direct entry nomination stream – corporate general manager – four small businesses at same location with only owners, nominee and casual staff – tasks of position – oral and documentary evidence – ANZSCO description – role integral in business – decision under review set aside

[Ahmed](#) (Migration) [2022] AATA 2976 (12 September 2022); J.L Redfern PSM, Deputy President

MIGRATION – Child (Migrant) (Class AH) (Subclass 117) (Orphan Relative) visa – orphan relative of Australian citizen – aunt of the visa applicants living in Ethiopia – whether parents of visa applicants dead or of unknown whereabouts — grandparent in poor health – evidence that the sponsor has been providing financial support to the visa applicants for a number of years – court document of legal guardianship in home country – examination of documents – credible witnesses – decision under review remitted

## **National Disability Insurance Scheme**

[Dyson and National Disability Insurance Agency](#) [2022] AATA 3252 (11 October 2022); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – early intervention requirements – consideration of medical history – decision affirmed

[JFXZ and National Disability Insurance Agency](#) [2022] AATA 3196 (3 October 2022); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision to approve statement of participant supports – child participant with a disability arising from Ehlers Danlos Syndrome (Type 3) (EDS) and idiopathic scoliosis – whether dynamic SpineCor Comfort spinal brace and dynamic movement orthotic suit meet the “reasonable and necessary supports” criteria under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – consideration of whether requested supports are likely to cause harm to the participant – consideration of whether the requested supports are, or likely to be, effective and beneficial – consideration of whether the requested supports represent value for money – lack of evidence showing that requested supports, or the use of a dynamic bracing system as opposed to a rigid-type brace, were endorsed by a medical practitioner as being medically appropriate for the Applicant given her significant scoliosis and comorbidity of EDS – Tribunal concluded requested supports do not meet the mandatory criteria under subsections 34(1)(c) and (d) – requested supports not “reasonable and necessary supports” and should not be included in Applicant’s statement of participant supports – Decision Under Review affirmed

[Renouf and National Disability Insurance Agency](#) [2022] AATA 3207 (5 October 2022); T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – participant supports – far infrared sauna – whether supports are reasonable and necessary – whether supports are value for money – whether supports are effective and beneficial – decision set aside and remitted for reconsideration

## Practice and Procedure

[Deacon and National Disability Insurance Agency](#) [2022] AATA 3209 (6 October 2022); K Parker, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – Applicant is the brother, primary carer and medical decision-maker of an adult NDIS participant – participant requires 24/7 care – Victorian Civil and Administrative Tribunal (VCAT) appointed independent guardian and two joint administrators one year ago – no plan nominee appointed by the NDIA – guardian requested internal review under s 100 of the NDIS Act regarding decision to approve a statement of participant supports – “reviewer” did not accept that Applicant and his sister should be paid to provide personal care support to participant – guardian informed Applicant that she did not intend to seek further review by the Tribunal – whether Applicant has standing under s 27(1) of the Administrative Appeals Tribunal Act 1975 (Cth) to lodge an application in his own right – whether Applicant is a person whose interests are affected by the decision under review – consideration of the subject, scope and purpose of the NDIS Act – consideration of NDIS plan review processes under the NDIS Act – consideration of who is to be provided with notice under the NDIS Act of the original decision and internal review decision – consideration of internal review decision and reference to Applicant and his sister by name – internal review decision indirectly impacts, but does not directly affect the Applicant – Tribunal considers “ripple of affection” insufficient to constitute an affected interest under s 27(1) – decision that Applicant is not a person whose interests are affected by the internal review decision – Applicant does not have standing – no valid application before the Tribunal – not necessary to address request for extension of time for lodgement

[Dowey and Telstra Corporation Limited](#) (Compensation) [2022] AATA 3242 (7 October 2022); R Cameron, Senior Member

COMPENSATION – applicant seeks compensation for permanent impairment and non-economic loss – consideration of medical reports – effects of injury passed – level of impairment found to be 8% - findings not challenged by the applicant – lower than 10% threshold – application dismissed as it has no reasonable prospect of success

[MMMY and National Disability Insurance Agency](#) [2022] AATA 3236 (6 July 2022); D Connolly, Senior Member

PRACTICE AND PROCEDURE – objection to inspection of summonsed material – where documents of a private medical nature – whether documents are of apparent relevance – some documents released for inspection

[MRWL and Australian Securities and Investments Commission](#) [2022] AATA 3366 (13 October 2022); D K Grigg, Senior Member

PRACTICE AND PROCEDURE – STAY APPLICATION - BANNING ORDER – Banning order under s 920A of the Corporations Act – whether stay necessary to secure effectiveness of hearing and determination of the application for review – prospects of success – prejudice to parties – public interest – whether the review application would be rendered nugatory – applicant banned by ASIC from providing financial services for 12 months – relevance of impact on third parties – stay applications granted – application for non-publication and confidentiality order – confidentiality orders granted – power of Tribunal to make order restraining ASIC from complying with statutory obligations to publish decision on ASIC register

[QVLL and Military Rehabilitation and Compensation Commission](#) (Compensation) [2022] AATA 3203 (4 October 2022); R Cameron, Senior Member

INTERLOCUTORY APPLICATION – claims lodged in relation to psychiatric/psychological diseases and insomnia and bruxism – additional report in evidence – application permitted under section 322 of the Military Rehabilitation and Compensation Act 2004 – discretion should not be exercised

[Russell and Australian Postal Corporation](#) (Compensation) [2022] AATA 3227 (6 October 2022); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – Workers' Compensation – dismissal application brought by the Respondent – whether Applicant attempting to re-litigate issues from earlier proceedings resolved by consent decisions in 1997 and 2007 – re-litigation – res judicata – issue estoppel – policy considerations – Tribunal satisfied that application is an abuse of process of the Tribunal – objective of the Tribunal in s 2A of the Administrative Appeals Tribunal Act 1975 (Cth) applied – application for review dismissed pursuant to s 42B(1)(c) of the Administrative Appeals Tribunal Act 1975 (Cth)

## Refugee

[2108296](#) (Refugee) [2022] AATA 3106 (28 July 2022); P Haag, Member

REFUGEE – Protection Visa – Ethiopia – political opinion – involvement with opposition parties – unjust confiscation of family’s land – an anti-government activist – a similar risk profile to the TPLF, their allies and the Tigray State government – Welkayit Tegede origin – applicant has a well-founded fear of persecution – decision under review remitted

[2203985](#) (Refugee) [2022] AATA 3090 (2 August 2022); A Younes, Senior Member

REFUGEE – protection Visa – New Zealand – religion – Christian – applicant has a substantial criminal history – involved in organisations in the underworld – delay in lodging the application for a protection visa – applicant has never been involved in any activities relating to the Mongrel Mob – fabricated claims – credibility concerns – decision under review affirmed

[1828254](#) (Refugee) [2022] AATA 3001 (4 August 2022); R Shanahan, Member

REFUGEE – protection visa – Iran – race – Faili Kurd – nationality – stateless – religion – rejecting Islam – detention – unpaid wages – health care – mental health issues – illegal departure – Iraqi or Iranian citizenship – returned asylum seekers – decision under review affirmed

[2001420](#) (Refugee) [2022] AATA 3344 (18 August 2022); A Murphy, Member

REFUGEE – cancellation – protection visa – Iran – incorrect answers given in visa application – not stateless Faili Kurds but Iranian citizens – identity documents provided with citizenship application – reviews for father’s Five Year Resident Return visa and mother’s and children’s protection visas heard and decided together – discretion to cancel visas – advice of people smugglers and other asylum seekers – elapse of time and strong community ties – father’s study and work in critical skills sector – mother’s mental health – parents now separated – best interests of children – age and education – non-refoulement – protection finding not quashed or set aside – new claims of political opinion and employment history and mother’s Christianity – possibility of prolonged detention – decision under review set aside

[1701570](#) (Refugee) [2022] AATA 3262 (26 August 2022); D O'Donovan, Senior Member

REFUGEE – protection visa – Sri Lanka – ethnicity and imputed political opinion – Tamil who provided assistance to LTTE – harassed, detained and tortured – returning failed asylum seeker – credibility – inconsistent evidence of passport and departure – new claims of membership and active service – unfavourable inference for late claims – fear of identification as security risk and inhibition in presence of female representative and interpreter – explanations not reasonable and documentary evidence consistent with original claims – new claims rejected and decision made on original grounds – particular social group – Tamils with a historical family link to the LTTE – decision under review remitted

## Social Services

[Dickson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3345 (13 October 2022); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – decision under review is affirmed

[Lazarov and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3238 (6 October 2022); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – preclusion period – whether applicant received 'compensation' – whether preclusion period correctly calculated – discretion under s 1184K – whether special circumstances exist – decision affirmed

[Lipohar and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3266 (11 October 2022); A McLean Williams, Member

SOCIAL SECURITY – Newstart allowance – overpayment – debt due to the Commonwealth – where conceded debt attributable solely to administrative error and recovery of debt waived – previous Tribunal decision set aside – Meaning of “setting aside” of a decision – question as to whether the setting aside of a decision extends to include the elimination of prior facts used in the formulation of the decision set aside – Question as to whether a subsequent decision maker can reconsider the same set of prior facts – Tribunal answer in the affirmative Decision under review affirmed

[Liu and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3237 (5 September 2022); C Puplick AM, Senior Member

SOCIAL SECURITY – age pension – whether applicant has qualifying Australian residence – nature of accommodation – nature of family relationships – employment, business or financial ties – nature and extent of assets – frequency and duration of travel outside Australia – other matters – decision affirmed

[Ryan and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3212 (6 October 2022); A Poljak, Senior Member

SOCIAL SECURITY – compensation preclusion period – whether a lump sum preclusion period applies – whether it is appropriate in the special circumstances of the case to treat whole or part of the compensation as having not been made (therefore reducing the length of the lump sum preclusion period) – relevant law and material considered – decision under review set aside and substituted

[Wicker and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 3337 (11 October 2022); D Cremean, Senior Member

SOCIAL SECURITY – Disability Support Pension – several conditions including lumbar conditions – whether fully diagnosed, treated and stabilised – degree of impairment – corroboration – Job Capacity Assessment Report – decision under review set aside and substituted

## **Taxation**

[Oxby and Commissioner of Taxation](#) (Taxation) [2022] AATA 3239 (7 October 2022); Dr M Evans-Bonner, Senior Member

TAXATION – application for review of an objection decision – Applicant attended a seminar run by an organisation that presented misinformation and conspiracy-type theories about the Australian legal and taxation systems – Applicant was advised at the seminar that the payment of taxation was voluntary and that he could claim all his living expenses as a tax deduction – Applicant acted on that advice when submitting his income tax return for the 2019 income year – administrative shortfall penalty imposed on the basis Applicant made a false or misleading statement to the Commissioner – Applicant seeking remission of part of penalty – whether the Applicant was reckless or lacked reasonable care – Applicant found to have made a false or misleading statement to the Commissioner that was reckless – Applicant has not discharged onus under s 14ZZK(b) of the Taxation Administration Act 1953 (Cth) – Reviewable Decision affirmed

## **Veterans' Affairs**

[McAndrew and Repatriation Commission](#) (Veterans' entitlements) [2022] AATA 3205 (30 September 2022); J Sosso, Deputy President

VETERANS' AFFAIRS – qualifying service – allotted for duty – warlike service – decision under review affirmed



# Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Small Business Taxation, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

## Appeals lodged

CASE NAME	AAT REFERENCE
<b>Climo and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 38</a>
<b>JVGD and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2830</a>
<b>QXZB and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2060</a>
<b>Ripley and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3250</a>
<b>Simeoni and Comcare</b>	<a href="#">[2022] AATA 2856</a>
<b>WWXF and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2868</a>
<b>YFLK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 2891</a>
<b>ZXXZ and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2910</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>KQHR v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 795</a>	<a href="#">[2022] FCA 1205</a>
<b>SDCV v Director-General of Security</b>	<a href="#">[2019] AATA 6112</a>	<a href="#">[2022] HCA 32</a> <a href="#">[2022] HCATrans 20</a> <a href="#">[2021] FCAFC 51</a>
<b>Secretary, Attorney-General's Department v O'Dwyer</b>	<a href="#">[2021] AATA 2346</a>	<a href="#">[2022] FCA 1183</a>
<b>XFZC v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2021] AATA 3385</a>	<a href="#">[2022] FCA 1162</a>



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](mailto: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](#).