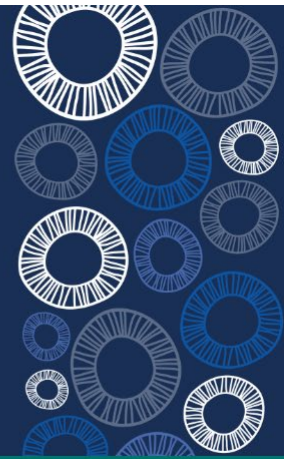




Administrative
Appeals Tribunal

AAT Bulletin



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

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AAT Recent Decisions

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

Child Support

[Hanbury and Horler](#) (Child support) [2023] AATA 3292 (24 August 2023); Y Webb, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate should be refused – decision under review set aside and substituted

[Jent and Child Support Registrar](#) (Child support) [2023] AATA 3308 (28 August 2023); P Jensen, Member

CHILD SUPPORT – refusal to grant an extension of time to object – decision as to particulars of assessment – replacement of derived incomes with actual taxable incomes – no prospect of success – decision under review affirmed

[Rakestraw and Nordin](#) (Child support) [2023] AATA 3300 (22 August 2023); C Breheny, Member

CHILD SUPPORT – percentage of care – whether there was a change to the care of the child – date of change – existing percentage of care determinations revoked and new determinations made – decision under review affirmed

[Ridgway and Ridgway](#) (Child support) [2023] AATA 3307 (31 August 2023); S De Bono, Senior Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – costs of special needs significantly affect the cost of maintaining the children – income and financial resources of both parents – decision under review set aside and substituted

[Tebbutt and Benstock](#) (Child support) [2023] AATA 3303 (23 August 2023); M Martellotta, Member

CHILD SUPPORT – non-agency payment – whether payment was prescribed payment for payee's share of amount payable for utilities – decision under review affirmed

Citizenship

[GJDB and Minister for Immigration, Citizenship and Multicultural Affairs v \(Citizenship\) \[2023\]](#) AATA 3245 (11 October 2023); The Hon Justice Kyrou, President

CITIZENSHIP – concept of ‘identity’ for purposes of s 24(3) of Australian Citizenship Act 2007 – relevant legal principles – concept bound up with sameness of a human being – individual indicia of identity such as name, appearance and documents must not be conflated with identity itself – BQG21 v Minister for Immigration, Citizenship and Multicultural Affairs [2023] FCA 865 applied

CITIZENSHIP – state of being ‘satisfied’ of a person’s identity for purposes of s 24(3) of Australian Citizenship Act 2007 – relevant legal principles

MINISTERIAL POLICY – citizenship policy instructions promulgated by Minister on assessing identity – whether policy instructions should be applied by Tribunal unless good reasons exist – policy instructions directed at process of reasoning for forming a statutory state of satisfaction – policy instructions not those of the kind referred to in *Drake v Minister for Immigration and Ethnic Affairs* (No 2) (1979) 2 ALD 634 – policy instructions do not bind Tribunal but can be adopted by Tribunal if considered helpful – *Green v Daniels* (1977) 13 ALR 1 applied

CITIZENSHIP – citizenship by conferral – delegate not satisfied of applicant’s identity – applicant claimed to be an Afghan national who had fled to Pakistan – applicant held Pakistani identity documents in a different name – Pakistani identity documents found to have been obtained fraudulently – strong evidence of continuum in applicant’s claimed identity – delegate’s decision set aside and matter remitted to respondent for reconsideration with a direction that prohibition in s 24(3) of Australian Citizenship Act 2007 does not apply to applicant

[Ibrahim and Minister for Immigration, Citizenship and Multicultural Affairs \(Citizenship\) \[2023\]](#) AATA 3381 (22 September 2023); Dr N A Manetta, Senior Member

CITIZENSHIP – application for citizenship refused – whether applicant fulfils eligibility requirement under section 21(3)(d) of the Australian Citizenship Act 2007 (Cth) – permanent or enduring physical or mental incapacity – statutory construction – meaning of “enduring” – “physical or mental incapacity” to be read as a whole – does not exclude an incapacity that may be partly physical and partly mental – mental incapacity includes intellectual impairment – applicant has experienced significant trauma – applicant diagnosed with post-traumatic stress disorder and depression – severe hearing loss – cognitive difficulties – multiple physical disorders – applicant lacks capacity to learn English – applicant lacks capacity to understand the nature of the citizenship application – applicant lacks capacity to acquire and demonstrate a knowledge of Australia and of the responsibilities and privileges of Australian citizenship – decision under review set aside

Compensation

[Johnson and Commonwealth Bank of Australia \(Compensation\) \[2023\]](#) AATA 3250 (13 October 2023); A E Burke AO, Member

WORKER’S COMPENSATION – bank employee – denial of ongoing liability – injury to right knee – whether Applicant continues to suffer from work-related injury – significant contribution by employment – decision set aside

[McNaught and K & S Freighters Pty Ltd](#) (Compensation) [2023] AATA 3183 (9 October 2023); W Frost, Member

WORKERS' COMPENSATION – section 14 of the Safety, Rehabilitation and Compensation Act 1988 – where liability denied – psychological injury – Adjustment Disorder – where evidence of one expert more compelling – where prior history not taken into account – no 'injury' or 'disease' suffered – decision under review affirmed

[Shulten and Comcare](#) (Compensation) [2023] AATA 3249 (10 October 2023); A Ward, Member

WORKERS COMPENSATION – Commonwealth employee – significant delay in alleged onset of injury (mid 1980s) and hearing – whether Comcare liable for applicant's depression, generalised anxiety disorder and schizophrenia – issues with self-represented applicants – issues with applicants/witnesses with diagnosed psychiatric illnesses – application of s 42B of the Administrative Appeals Tribunal Act 1975 – where there is no reasonable prospects of success – decision under review affirmed

[Yawari and Australian Postal Corporation](#) (Compensation) [2023] AATA 3208 (11 October 2023); A E Burke AO, Member

WORKER'S COMPENSATION – postal worker – denial of liability – claims of bullying and harassment – adjustment disorder – employment contributed to the cause of her injury to a significant degree – new evidence of symptoms raised during the hearing process – decision set aside and substituted

Corporations

[Grubisa and Australian Securities and Investments Commission](#) [2023] AATA 3328 (10 October 2023); B J McCabe, Deputy President

CORPORATIONS – banning order – whether applicant should be banned from providing financial services – whether applicant should be banned from engaging in credit activities – whether discretion to ban enlivened – where applicant holding out to have financial services license – where applicant holding out to have credit license – where applicant not providing financial services – where applicant not engaged in credit activities – decision under review set aside – in substitution applicant not banned

Freedom of Information

[Ocampo Alvarez and Australian Criminal Intelligence Commission](#) (Freedom of information) [2023] AATA 3257 (13 October 2023); R I Hanger, Deputy President

FREEDOM OF INFORMATION – request for access – whether document is irrelevant – whether document is exempt from disclosure – whether disclosure would be contrary to the public interest – whether documents disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of breaches or evasions of the law – unreasonable disclosure of personal information – legal professional privilege

Migration

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

(Migration) [2023] AATA 3213 (12 October 2023); K Raif, Senior Member

MIGRATION – Mandatory cancellation of Class TY Special Category visa – Where Applicant has extensive criminal record – Where Applicant fails character test – Whether another reason to revoke the cancellation – Protection of the Australian community – Whether conduct engaged in constituted family violence – Strength, nature and duration of ties to Australia – Best interests of minor children – Expectations of the Australian community – Legal consequences of the decision – Decision under review affirmed

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

[2023] AATA 3211 (11 October 2023); R Reitano, Member

MIGRATION – mandatory cancellation of Class BS Sub-class 801 Partner visa under section 501(3A) – whether there is another reason to revoke the cancellation – drug related offences – seriousness of offences – low 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

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

AATA 3352 (18 October 2023); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where Applicant does not pass the character test – whether there 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 – impediments to removal – reviewable decision affirmed

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

AATA 3247 (25 September 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BA Subclass 200 Refugee (Permanent) 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

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

AATA 3193 (9 October 2023); D J Morris, Senior Member

MIGRATION – cancellation of applicant’s Class BF Transitional (permanent) visa – applicant’s birthplace was in Germany and is now in Poland - applicant is a citizen of the Federal Republic of Germany – applicant does not pass character test because of substantial criminal record – applicant sentenced to death – applicant sentenced to life imprisonment – applicant sentenced to prison sentence of 12 months or more – applicant serving full-time sentence on date visa cancelled – delegate of minister cancelled applicant’s visa – applicant made representations to a different delegate for mandatory cancellation to be revoked – delegate refused – applicant sought review by Tribunal – ministerial direction – primary considerations – other considerations – applicant has very serious criminal history in Australia – applicant now aged 83 – applicant has significant health conditions and a recent decline – decision under review set aside and new decision substituted

PRACTICE AND PROCEDURE – applicant became distressed during hearing and refused to give further evidence – applicant’s representatives indicated matter could be determined on the evidence heard and the papers submitted – respondent consented – Tribunal said it would not be satisfied to make that determination until one further witness was heard – witness heard – Tribunal decided hearing would conclude – parties given leave to make written closing submissions

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

AATA 3210 (11 October 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – Applicant is potentially stateless, may be entitled to apply for Cambodian citizenship – long criminal history – violence, drug, alcohol and psychological conditions – Applicant claims Aboriginality - Direction 99 considered – strength, nature and duration of Applicant’s ties to Australia – accepted as part of the Noongar community – Aboriginal step-children – Applicant’s links to Australia and best interests of minor children weigh in favour of revocation – there is another reason to revoke the visa cancellation decision – reviewable decision set aside and substituted

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

AATA 3279 (16 October 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 – 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 38 year old citizen of New Zealand – Non-Revocation Decision is Affirmed

[Kim and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA

3212 (12 October 2023); A Younes, 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. 99 – nature and seriousness of offending conduct – protection of the Australian community – conduct engaged in family violence – strength nature and duration of ties to Australia – best interest of minor children in Australia – expectations of the Australian community – impediments to removal – impact on victims – impact on Australian business interests – decision affirmed

[Kumar and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3246 (9 October 2023); T Tavoularis, Senior Member

MIGRATION – refusal of a Partner (Temporary) (Class UK) and Partner (Residence) (Class BS) visa under s 501(1) of the Migration Act 1958 (Cth) – where the Applicant does not pass the character test- whether discretion to refuse the visa under s 501(1) of the Migration Act 1958 (Cth) should be exercised – consideration of Ministerial Direction No. 99 – where interests of minor children and ties to Australia outweigh other primary considerations in favour of refusing the visa – Tribunal finding that the discretion under 501(1) of the Migration Act 1958 (Cth) should not be exercised to refuse the visa – decision under review set aside and substitute

[LSCF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3363 (18 October 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has been convicted of rape – whether there is ‘another reason’ to revoke mandatory cancellation decision – the likely consequence of an affirmation decision is indefinite detention and it would have a devastating impact on his wife – the primary considerations of the protection and expectations of the Australian community outweigh the countervailing considerations – decision under review is affirmed

[Li and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3354 (18 October 2023); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class SI Subclass 189 Skilled Independent visa, under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside

[Mao and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 3182 (9 October 2023); A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – Chinese-born citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – fraudulent offending against Australian banks failure to pass good character test – substantial criminal record – whether there is another reason to revoke the mandatory cancellation – Ministerial Direction no. 99 applied – decision affirmed

[McGlone and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 3375 (19 October 2023); Hon J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – consideration of Applicant’s assertion of indigeneity – Application of Tripartite test – consideration of asserted indigeneity by association in the context of links to the Australian community – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is revoked

[Peremai and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3181 (4 October 2023); S Evans, Member

MIGRATION – visa cancelled under subsection 501CA(4) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there a reason why the visa should not be refused on character grounds – Direction no. 99 considered – reviewable decision set aside and substituted

[Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 3365 (19 September 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – Indian citizen – Class WC Subclass 030 Bridging C visa – failure to pass good character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate's decision not to revoke is affirmed

[VXXG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3362 (5 September 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – Class WC Subclass 030 Bridging C visa – failure to pass character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – decision under review affirmed

[Waghorn and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3180 (26 September 2023); A Julian-Armitage, Member

MIGRATION – Cancellation of a Class TY Subclass 444 Special Category (Temporary) visa under section 501(2) of the Migration Act 1958 (Cth) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – decision under review affirmed

[XSHM and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3364 (19 October 2023); R Cameron, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Class WE Subclass 050 Bridging General (Temporary) visa – substantial criminal record – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction no. 99 – frequent offending in short space of time – repeated breaches of community correction orders – convictions for carrying of knives and resisting or hindering police officers in the execution of their duties – drug addiction and limited capacity to cope and limited insight – protection of Australian community – strength, nature and duration of ties to Australia – expectations of Australian community – extent of impediments if removed – health problems – difficulty of procuring employment in Egypt – emotional hardship – reviewable decision affirmed

[2114259](#) (Migration) [2023] AATA 1164 (14 April 2023); K Millar, Senior Member

MIGRATION – Cancellation – Skilled (Residence) (Class VB) visa – Subclass 887 (Skilled - Regional) – incorrect information in application – mental health of child – history of self-harm – bests interest of the children – children spent the majority of their lives in Australia – police clearances showing no other obvious character concerns – emotional impact and hardship – contributions to the community – decision under review set aside

[2216044](#) (Migration) [2023] AATA 3348 (18 August 2023); M McAdam, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – false or misleading information in visa application – two adult children who had applied for protection visas not declared – review applicant named as contact, with no requirement to list all family members – other children’s names previously provided to department – no element of fraud or deception – property, relatives, church and community in home country – applicant’s compliant travel to Australia and other countries and children’s lawful migration – consequences of non-compliance for parent visa in progress – decision under review remitted

[Euro Car Parts Pty Ltd](#) (Migration) [2023] AATA 2850 (3 August 2023); K McNamara, Member

MIGRATION – nomination – Regional Sponsored Migration Direct Entry stream – Marketing Specialist – applicant failed to provide the requested information within the prescribed period – applicant has not provided current information about the genuine need to employ the nominee to work in the nominated position – decision under review affirmed

[Jepkemoi](#) (Migration) [2023] AATA 2753 (11 August 2023); M Biviano, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – genuine access to funds – no support from family – no current enrolment – seeking to return to study and raising funds – no documentary evidence provided – decision under review affirmed

[Sargent](#) (Migration) [2023] AATA 2819 (22 August 2023); A Mendes Da Costa, Member

MIGRATION – cancellation – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – employment commenced within 90 days – COVID-19 travel restrictions into Western Australia – applicant attended a pre-employment training program – sponsor offered no formal notice of termination – relationship with an Australian citizen – decision under review set aside

National Disability Insurance Scheme

[BDRY and National Disability Insurance Agency](#) [2023] AATA 3379 (19 October 2023); D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – home repairs more appropriately funded by NSW Department of Communities and Justice Housing – consumables covered by assistive technology funding – capacity to add consumables funding with a s 47A variation – decision affirmed

[McLeod and National Disability Insurance Agency](#) [2023] AATA 3380 (20 October 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – Application to review a decision made by the National Disability Insurance Agency under subsection 20(1)(a) of the National Disability Insurance Scheme Act 2013 (Cth) that a person does not meet the access criteria as set out in section 21 of the NDIS Act to become a participant in the National Disability Insurance Scheme (NDIS) – whether the Applicant is a person who meets the access criteria as set out in section 21 of the NDIS Act to become a participant in the NDIS – where the Applicant seeks to become a participant in the NDIS on the basis of four diagnosed conditions, namely, Post Phlebitis Syndrome, recurring cellulitis, chronic asthma, and obesity – whether the Applicant is a person who meets either the disability requirements in section 24 of the NDIS Act or the early intervention requirements in section 25 of the NDIS Act – whether the Applicant’s chronic asthma is a disability within the meaning of subsection 24(1)(a) of the NDIS Act – consideration of the term ‘remedy’ in the context of rule 5.4 of the National Disability Insurance Scheme (Becoming a Participant) Rules 2016 – hearing dispensed with under section 34J of the Administrative Appeals Tribunal Act 1975 (Cth) on the basis that the issues for determination on the review of the Respondent’s decision can be adequately determined by the Tribunal in the absence of the parties by considering the documents or other material lodged with or provided to the Tribunal and without holding a hearing – decision under review affirmed

[MORGAN and NATIONAL DISABILITY INSURANCE AGENCY](#) [2023] AATA 3311 (29 September 2023); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE AGENCY – access criteria – impairment – permanent impairment – whether impairment results in substantially reduced functional capacity – decision under review set aside

[Power and National Disability Insurance Agency](#) [2023] AATA 3357 (18 October 2023); P Goward, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – substantially reduced functional capacity – early intervention requirements – disability requirements – functional capacity – mobility – self-care – social interaction – whether the Applicant is likely to require lifetime support under the National Disability Insurance Scheme – decision under review affirmed

[VXDY and National Disability Insurance Agency](#) [2023] AATA 3209 (9 October 2023); Dr S Fenwick, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – mental health conditions – other health conditions – sex worker and various allied health supports – relationship of supports to disability considered – consideration of best practice – decision set aside and substituted

[WJCG and National Disability Insurance Agency](#) [2023] AATA 3310 (17 October 2023); D O’Donovan, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – Osteogenesis imperfecta – Hydrotherapy pool – Hydrotherapy – Reasonable and Necessary Support – purchase and installation of domestic hydrotherapy pool not value for money – NDIA is not the appropriate source of funding for provision of rehabilitation

Practice and Procedure

[Atahee and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3278 (16 October 2023); L Benjamin, Member

PRACTICES AND PROCEDURES – Extension of time to lodge review application – whether prejudice to respondent exists – reasonable explanation for delay not found – alternative avenue of relief present – extension of time application refused

[BHRR and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 3199 (10 October 2023); R Bellamy, Senior Member

PRACTICE AND PROCEDURE – Jurisdiction to review decision under 501CA(4) of the Migration Act 1958 – whether relevant decision given to applicant in the prescribed manner – whether removal of authority to act as migration agent also removal authority to receive documents – whether locked bag is a post office box for the purposes of the reg 2.55 Migration Regulation 1994 (Cth) – operation of reg 2.55 as notice of decision was in fact received

[Beath and Comcare](#) (Compensation) [2023] AATA 3361 (3 August 2023); S Webb, Member

PRACTICE AND PROCEDURE – request for confidentiality orders in respect of past decisions – discretionary power to make orders – factors relevant to exercise of discretion in respect of a witness – alleged prejudice and reputational harm from publication of identity – procedural fairness – allegations made but not put to witness – evidence given in public – public hearing – no adverse findings – embarrassment and distress – request for confidentiality orders not made out – application refused

[Haywood and Comcare](#) (Compensation) [2023] AATA 3360 (3 August 2023); S Webb, Member

PRACTICE AND PROCEDURE – request for confidentiality orders in respect of past decisions – discretionary power to make orders – factors relevant to exercise of discretion – alleged harm from publication of decisions – alleged abuse of power and bias – requirement for logically probative material – procedural fairness – adverse findings based on evidence put to applicant – public hearing – opportunity to be heard – failure to comply with direction – request for confidentiality orders not made out – application refused

[HGLS and National Disability Insurance Agency](#) [2023] AATA 3192 (10 October 2023); M Mischin, Deputy President

PRACTICE AND PROCEDURE – Interlocutory application – application for ‘confidential non-disclosure’ pursuant to s35(3) and s35(4) of the Administrative Appeals Tribunal Act 1975 – whether an independent medical assessment and report should be suppressed – whether Tribunal direction to file and disclose reports ultra vires – whether consent freely given to the independent medical assessment – whether to grant a confidentiality order – application refused

[McDonald and National Disability Insurance Agency](#) [2023] AATA 3251 (13 October 2023); D Connolly, Senior Member

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – cancellation of appointment as nominee – the CEO must decide whether to cancel the appointment within a prescribed period - whether the Tribunal has jurisdiction when the CEO cancelled the Applicant’s appointment as a nominee more than 14 days (the prescribed period) after the participant’s request – the Tribunal has jurisdiction

Professions and Trades

[Springside Holdings Pty Ltd and Tax Practitioners Board](#) [2023] AATA 3367 (18 August 2023); D Grigg, Senior Member

Tax agent registration – standing – non-publication – application for dismissal – failure to appear – trust – trustee – liquidator

[Wilcox and Registrar of Marriage Celebrants](#) [2023] AATA 3252 (13 October 2023); A Nikolic AM CSC, Senior Member

MARRIAGE CELEBRANTS – 2022 application to become registered as a marriage celebrant – 2014 application refused on character grounds – whether applicant is a fit and proper person pursuant to s 39C of the Marriage Act 1961 (Cth) – continued criminal offending – Applicant did not fully disclose convictions since 2014 in 2022 application – Applicant not a fit and proper person to be registered as marriage celebrant – Applicant not entitled to registration as a marriage celebrant – reviewable decision affirmed

Refugee

[1709238](#) (Refugee) [2023] AATA 2840 (16 May 2023); L Mojsin, Member

REFUGEE – protection visa – Colombia – evidence of human rights abuses – Mapiripan massacre – threatened by paramilitary groups – United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia / AUC) – Black Eagles – delay in applying for protection – decision under review affirmed

[1712656](#) (Refugee) [2023] AATA 2758 (26 May 2023); M McAdam, Member

REFUGEE – protection visa – Philippines – interfaith marriage – religious marriage to Muslim husband – expecting child – fear of father – father's connections to officials – unable to relocate in Philippines – referred for ministerial intervention – decision under review affirmed

[1915304](#) (Refugee) [2023] AATA 3202 (3 July 2023); D James, Senior Member

REFUGEE – protection visa – Papua New Guinea – political opinion – election violence – family of party supporters – tribal violence – payback system – fear of killing – family home destroyed – delay in applying for protection – internal relocation – state protection – decision under review remitted

[2008366](#) (Refugee) [2023] AATA 2878 (20 June 2023); W Pennell, Senior Member

REFUGEE – Protection Visa – Pakistan – religion – Sunni Muslim – attempted recruitment by extremist group – threatened by extremist group – gender-based recruitment – best interests of children – delay in applying for protection – decision under review remitted

[2201062](#) (Refugee) [2023] AATA 2886 (22 June 2023); D Dragovic, Deputy President

REFUGEE – cancellation – protection visa – Pakistan – ground for cancellation – incorrect information in visa application – name – date of birth – place of birth – citizenship at birth – claimed profile and fears – Pakistani citizenship – Computerised National Identity Card of Pakistan (CNIC) – consideration of discretion – grant of visa based on incorrect information – circumstances giving rise to the non-compliance – desperation and fear – advice of people smugglers – present circumstances of the visa holder – mental health challenges – family’s safety and wellbeing – other instances of non-compliance – length of time spent in Australia – extended period of immigration detention – genuineness of remorse – element of futility – Hazara Shia in Pakistan – non-refoulement obligations – lengthy delays in each of the decision making stages – decision under review set aside

[2210361](#) (Refugee) [2023] AATA 3313 (17 July 2023); D Dragovic, Deputy President

REFUGEE – cancellation – protection visa – stateless – applicant convicted and imprisoned – continued threat to wife and family – separation from family – consequential family visa cancellations – indefinite detention – non-refoulement obligations – best interests of the children – decision under review affirmed

[2210184](#) (Refugee) [2023] AATA 3288 (18 July 2023); D Dragovic, Deputy President

REFUGEE – cancellation – protection visa – Iran – applicant convicted of family violence – separation from family – financial hardship – indefinite detention – non-refoulement obligations – best interests of the children – adversely impacted by unintended consequences – decision under review set aside

Social Security

[Beltsos-Russo and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3189 (10 October 2023); Dr L Bygrave, Member

SOCIAL SECURITY – parenting payment (partnered) – whether Applicant entitled to parenting payment (partnered) at a date prior to date of claim – whether deeming provisions applicable – no deeming provisions apply – decision under review affirmed

[DYPJ and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3242 (12 October 2023); D J Morris, Senior Member

SOCIAL SECURITY – where joined party came to Australia and was subsequently granted contributory parent visa – where respondent recommended joined party find a person to lodge an assurance of support – where applicant lodged an assurance of support – where applicant lodged bank guarantee – where joined party later lodged claim for special benefit – where respondent granted special benefit – where applicant asked authorised review officer to review decision to grant special benefit – where authorised review officer affirmed decision and decided joined party not receiving adequate support – where applicant lodged application for First Review with Tribunal of this decision – where First Review decided applicant had no standing – where applicant sought review by General Division of Tribunal – where General Division of Tribunal decided applicant had standing – where break-down occurred in relationship between applicant and joined party – where joined party ceased to receive overseas pension before claim for special benefit – where not apparent joined party had any funds for personal discretionary expenditure – what is an adequate level of support – government policy on assessing what is adequate support – where Tribunal satisfied joined party did not have adequate level of support before claim for special benefit – where Tribunal satisfied there was a change in circumstances of joined party that could not be prevented – where applicant conceded he was unable to provide support to joined party from a particular date – where applicant disputes earlier date of grant of special benefit – where source of income of joined party materially changed prior to her claim for special benefit – Tribunal satisfied of date claim accepted – decision under review affirmed

PRACTICE AND PROCEDURE – where application for review brought by applicant relating to grant of a social security payment to another person – where a potential outcome of Tribunal’s review is cancellation or variation of start date of social security payment to the other person – where respondent submits that Tribunal consider whether interests of special benefit recipient potentially affected by Tribunal’s deliberations – where applicant agrees other person’s interests potentially affected – where Tribunal determines recipient’s interests directly affected – where Tribunal joins recipient as a party to proceedings

[Lyll and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3356 (17 October 2023); K Millar, Senior Member

SOCIAL SECURITY – parenting payment – whether applicant overpaid parenting payment – whether overpayments calculated correctly – s 1073B of the Social Security Act 1991 - whether overpayments are a debt due to the Commonwealth – whether debts should be waived – consideration of special circumstances - amount of debt waived – decision under review affirmed

[Roos and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3309 (17 October 2023); B Pola, Senior Member

SOCIAL SERVICES – Eligibility for Disability Support Pension – Appeal of decision of Social Services and Child Support Division – whether applicant had impairments during the Qualification Period that were fully diagnosed, stabilised and treated – where submissions included self-diagnosis not corroborated by medical evidence – where reasonable treatment measures not followed in their entirety – section 94(1)(b) of Social Security Act 1991 (Cth) not satisfied – decision affirmed

[Yainu and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 3382 (20 October 2023); K Millar, Senior Member

SOCIAL SECURITY – family tax benefit – parenting payment

Veterans' Affairs

[Parker and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 3179 (5 October 2023); A George, Senior Member

VETERANS AFFAIRS – pension bonus scheme – service pension – whether assets double counted – set-off – decision under review set-aside

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
FCSV and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3012
Luko and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3024
Mao and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3182
MCVN and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2426
Mizen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2023] AATA 3113
Michael John Hayes Trading Pty Ltd as trustee of the MJH Trading Trust and Commissioner of Taxation	[2023] AATA 3005
Pearson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3527
Peek and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2861
Rachelle and Victorian Institute of Teaching	[2023] AATA 2722
Vu and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2989

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
DMQ20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 1967	[2023] HCASL 159 [2023] FCAFC 84 [2022] FCA 514
DSL B v Comcare	[2022] AATA 1369	[2023] FCA 1222

Hanna v Secretary, Department of Social Services	[2022] AATA 3772	[2023] FCA 1255
JVGD v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2830	[2023] FCA 1253
JZQQ v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2998	[2023] FCAFC 168
Motufoaki v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs & Anor	[2020] AATA 3719	[2023] HCASL 141 [2023] FCAFC 74 [2022] FCA 601
Minister for Home Affairs & Anor v Pearson & Anor	[2020] AATA 3527	[2023] HCATrans 105 [2022] FCAFC 203
Okafor v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4347	[2023] FCA 936
Tonga v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2484	[2023] FCA 1179



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