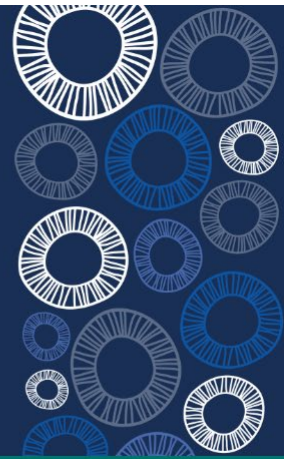




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 22/2023**

**6 November 2023**

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

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

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Enquiries regarding this publication may be directed to [LPExtFeedback@aat.gov.au](mailto: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.

## Aviation

[Nam and Civil Aviation Safety Authority](#) [2023] AATA 3574 (2 November 2023); C J Furnell, Senior Member and Dr S Lewinsky, Member

CIVIL AVIATION - Class 1 and Class 2 medical certificates - applicant diagnosed with ADHD and treated with Ritalin - whether the applicant meets the medical standard for medical certificates - safety relevant condition criterion - medication criterion - consideration of "side effects likely to affect the person" - decision set aside and remitted with a direction

## Child Support

[Jepson and Jepson](#) (Child support) [2023] AATA 3394 (29 September 2023)

CHILD SUPPORT – dismissal of application for review – particulars of the administrative assessment – no reasonable prospect of success – application for review dismissed

[Gaskin and Auster](#) (Child support) [2023] AATA 3403 (29 September 2023)

CHILD SUPPORT – dismissal of application for review – particulars of the administrative assessment – non-agency payments – no reasonable prospect of success – application for review dismissed

[Ellington and Ellington](#) (Child support) [2023] AATA 3406 (14 September 2023)

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – refusal to revoke the existing percentage of care determinations – decision under review set aside and substituted

[Engleman and Lygon](#) (Child support) [2023] AATA 3396 (6 September 2023)

CHILD SUPPORT – non-agency payment – whether payment made to payee in lieu of child support - decision under review set aside and substituted

[Storey and Storey](#) (Child support) [2023] AATA 3391 (14 September 2023)

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

## Citizenship

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

(Citizenship) [2023] AATA 3420 (10 October 2023); A Poljak, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – whether the applicant is a person of good character under paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – where the applicant possessed prohibited drug - where the applicant supplied prohibited drug – consideration of relevant material, law and policy – decision under review set aside and remitted

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

(Citizenship) [2023] AATA 3486 (26 October 2023); T Tavoularis, Senior Member

CITIZENSHIP– decision to refuse Australian citizenship by descent – where Applicant is found to be not of good character – where the Applicant has a lengthy criminal offending history in Australia – where the Applicant arrived in Australia from Papua New Guinea (PNG) as a child – where PNG authorities unable to locate any record of Applicant being a PNG citizen – consideration of relevant sections of PNG constitution- Tribunal finding Applicant is likely to be a citizen of PNG - Tribunal finding Applicant is not a person of good character- decision under review affirmed

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

(Citizenship) [2023] AATA 3531 (1 November 2023); T Tavoularis, Senior Member

CITIZENSHIP– decision to refuse Australian citizenship by conferral – where Applicant did not pass the citizenship test – where multiple opportunities afforded to the Applicant to sit the test – application and consideration of Citizenship Procedural Instructions (CPI) -decision under review affirmed

## Compensation

### [Scanes and Comcare](#)

(Compensation) [2023] AATA 3537 (31 October 2023); W Frost, Member

WORKERS' COMPENSATION – Safety, Rehabilitation and Compensation Act 1988 – historical compensable condition – aggravation of ischaemic heart disease – resultant myocardial infarction in 1993 – whether the 1993 incident resulted in death in 2020 – claim pursuant to sections 17 and 18 – payment of death benefit to spouse – payment of funeral expenses to spouse – where there are risk factors – high cholesterol – increased stress – smoking – collateral supply – where the Tribunal is not satisfied that the 1993 incident resulted in death in 2020 – decision under review affirmed

## Corporations

### [Babbage and Australian Securities and Investments Commission](#)

[2023] AATA 3487 (25 October 2023); D O'Donovan, Senior Member

TAXATION AND COMMERCIAL DIVISION – whether to make an order banning a person from providing financial services – whether to make an order banning a person from engaging in credit activities – where the applicant has engaged in serious dishonesty – where the applicant misled public officials – where the applicant fraudulently altered documents – where the applicant made false declarations – whether actions in a private capacity relevant to banning orders – where a ban will have significant personal impact – decisions varied to impose a shorter ban

## Customs and Excise

[Alstom Transport Australia Pty Ltd and Comptroller-General of Customs](#) [2023] AATA 3498 (27 October 2023); The Hon. J Pascoe AC CVO, Deputy President

CUSTOMS – Tariff Concession Order – good subject of application described as driverless trains – substitutable goods claimed – goods claimed to be substitutable produced in Australia in ordinary course of business - uses to which good subject of the application are put or can be put – uses to which goods claimed to be substitutable are put or can be put – locally produced goods not substitutable – decision under review set aside and remitted

## Migration

[Ahkeni and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3573 (30 October 2023); J Owen, Deputy President

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 – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review affirmed

[Bean and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3492 (28 September 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant does not satisfy character test – whether another reason for the cancellation decision to be revoked – Direction no. 99 – conviction for manslaughter – sentencing remarks considered – positive assessment of applicant’s prior character – special circumstances of crime – excessive force in self-defence – primary considerations – community’s expectations weigh against the applicant – low risk of reoffending – applicant’s ties to Australia and the best interests of minor children weigh in applicant’s favour – decision under review set aside

[Bonner and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3421 (23 October 2023); A McLean Williams, Member

MIGRATION – Migration Act 1958 (Cth) – Is the Tribunal satisfied that the Applicant passes the character test – Whether the Applicant would engage in the conduct identified in s 501(6)(d)(i) – Ministerial Direction No. 99 – Application of the character test – Primary and other considerations – Reviewable decision set aside and substituted

[DCBC and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3510 (24 October 2023); S Boyle, Deputy President

MIGRATION – s 36(1C) of the Migration Act – refusal to grant a protection visa under s 65 of the Migration Act – whether the Applicant has been convicted by final judgment of a particularly serious crime – whether Applicant is a danger to the Australia community – multiple violent offences – multiple dishonesty offences - several terms of imprisonment – alcohol and drug misuse as a risk factor – poor record of behaviour in prison and immigration detention – lack of protective factors against reoffending – Applicant would pose a real or significant risk or possibility of harm if released into the Australian community – reviewable decision affirmed

[DJKJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3416 (12 October 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act section 501CA(4) – primary considerations – other considerations – whether there is another reason to revoke mandatory cancellation of applicant’s visa – Ministerial Direction No.99 – substantial criminal record – nature and seriousness of the offending –strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if removed – decision set aside and substituted

[Fetalaiga and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3415 (23 October 2023); D J Morris, Senior Member

MIGRATION – applicant is a citizen of New Zealand – applicant held special category visa – visa cancelled on basis of substantial criminal record – applicant requested revocation of cancellation of visa – delegate refused to revoke – applicant sought review by Tribunal – ministerial direction – primary considerations – protection of Australian community from criminal or other serious conduct – culpable driving causing death – other traffic offences – strength, nature and duration of ties to Australia – best interest of minor children in Australia – expectations of Australian community – other considerations – extent of impediments if removed – impact on Australian business interests – decision under review is affirmed

[Gardner and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3424 (29 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 set aside and substituted

[GRCF and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023]  
AATA 3534 (30 October 2023); J Pennell, Senior Member

MIGRATION – Visa refusal – citizen of South Sudan – (Class AH) (Subclass 117) visa – Applicant does not satisfy character test– assaults on emergency workers – drug offences– dishonesty offences – driving offences – sexual offences as a minor – diagnosis of PTSD – low risk of engaging in further criminal conduct if allowed to remain in Australia – expert evidence considered – serious offending over a relatively short period – strong strength, nature and duration of ties to Australia – supportive partner and family – risk of impediments if returned – possibility of permanent detention – reviewable decision set aside and substituted

[Hassan and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 3576 (3 November 2023); A Maryniak KC

MIGRATION – Mandatory cancellation of visa – failure to pass character test – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – Class UF Subclass 309 Partner (Provisional) visa – citizen of Lebanon – protection of the Australian community –serious offence – culpable driving causing death-negligent – low risk of reoffending – strength nature and duration of ties to Australia – where family members Australian citizens/permanent residents – best interests of minor children – expectations of the Australian community – legal consequences of decision – extent of impediments if removed – decision set aside and substituted

[JFGN and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3418 (20 October 2023); B W Rayment OAM KC, Deputy President

MIGRATION – refusal to revoke mandatory cancellation – citizen of New Zealand – reckless grievous bodily harm – drug-induced psychosis – decision under review set aside and substituted

[LMRD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3572 (3 November 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 – strength nature and duration of ties to Australia – best interest of minor children in Australia – expectations of the Australian community – legal consequences of the decision – impediments to removal – decision affirmed

[Mai and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3417 (23 October 2023); A A Nikolic AM CSC, Senior Member

MIGRATION – Mandatory visa cancellation – citizen of Vietnam – Class BS Subclass 801 Partner (Residence) Visa – failure to pass good character test – 2017 conviction for cultivate cannabis – principal offender – theft of electricity – possess methylamphetamine – deal with proceeds of crime – mandatory cancellation revoked – formal warning issued – repeat convictions in 2021 – whether another reason why mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – decision affirmed

[PHTP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3536 (30 October 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 Afghanistan – granted a Safe Haven Enterprise Visa - Direction 99 considered – reckless wounding – medium high risk of reoffending – unresolved PTSD and other mental health issues – drug and alcohol addictions – need for ongoing, consistent and detailed psychotherapy – lack of support if released into community – legal consequences of “reinstating” expired visa limited - protection of community and expectations of community weigh against revocation of cancellation of visa – legal consequences of cancellation weigh in favour of revocation - considerations against revocation of the cancellation of the applicant's visa outweigh those in favour of revocation of cancellation – weighing and balancing exercise – reviewable decision affirmed

[Prasad and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3438 (9 October 2023); R Bellamy, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Permanent Resident Class AY Subclass 104 Preferential Family 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 – criminal history includes multiple violent offences including family violence – multiple driving offences – decision under review affirmed



[\*\*QKWV and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2023]  
AATA 3504 (27 October 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – refusal to grant a protection visa – whether Tribunal satisfied there are serious reasons to consider that the Applicant committed a serious non-political crime before entering Australia – non-political crime – serious non-political crime – serious Australian offence – serious foreign offence – serious reasons for considering – Applicant member of a criminal gang before arriving in Australia – Applicant admitted committing violent offences as a gang member – Reviewable Decision affirmed

[\*\*Smith and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2023]  
AATA 3570 (3 November 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant does not satisfy character test – whether “another reason” for the cancellation decision to be revoked – Direction no. 99 – most recent convictions involve family violence – sentencing remarks considered – applicant’s assault extremely serious – applicant re-approaches victim six days after being released on parole and after AVO made final in his presence in Court – community’s expectations weigh against the applicant – substantial risk of reoffending – applicant’s ties to Australia and the best interests of minor children weigh in applicant’s favour particularly as children are half-Aboriginal Australian – decision under review affirmed

[\*\*TSXN and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2023]  
AATA 3533 (20 October 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – protection visa – whether the applicant is a danger to the Australian community – meaning of “danger” – decision under review set aside and remitted for reconsideration

[\*\*Tupu and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2023]  
AATA 3508 (7 September 2023); A McLean Williams, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category Visa under section 501(3A) – where the Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – Ministerial Direction 99 – Decision under review set aside and substituted

[\*\*VZSJ and Minister for Immigration, Citizenship and Multicultural Affairs\*\*](#) (Migration) [2023]  
AATA 3439 (20 October 2023); S Evans, Member

Decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – Character test – Substantial criminal record – Direction No 99 – Primary and other considerations – Applicant Chinese national – Financial Crimes – Protection of the Australian community – Strength, nature and duration of ties to Australian Community – Best interests of Applicant’s minor children and nephew – Legal Consequences of decision – triads – claims of re-prosecution if returned – Impediments to Removal – Impact on Australian Business – Reviewable Decision Affirmed



[YBTD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]  
AATA 3423 (24 October 2023); R Reitano, Member

MIGRATION – mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa under section 501(3A) – whether there is another reason to revoke the cancellation – offence involving personal violence – history of many other offences - seriousness of offences – risk of re-offending – nature of harm if applicant reoffends – protection of Australian community – best interests of minor children - strength, nature and duration of ties to Australia – Expectations of the Australian community – legal consequences of decision – impediments if returned to Iraq – decision under review set aside – decision revoking cancellation substituted

#### [2214479](#)

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – visa applicant’s committed relationship in Thailand – unemployment – caring responsibilities – previous compliant visit to Australia – decision under review remitted

#### [2112807](#)

MIGRATION – Skilled Work Regional (Provisional) (Class PS) visa – Subclass 491 - Skilled Work Regional (Provisional) – occupation of Accountant (General) – professional year course with no expiry date – recently attained English language competency – timing of language test – referral for Ministerial Intervention – residence and work in a designated regional area – decision under review affirmed

#### [2312937](#)

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – acceptable arrangements to depart Australia – periods of unlawful residence – multiple bridging visas on departure grounds – judicial review – no current intention of departing – request for Ministerial Intervention – decision under review affirmed

#### [2310394](#)

MIGRATION – cancellation – Federal Court remittal – Temporary Business Entry (Class UC) visa – Subclass 457 (Temporary Work (Skilled)) – applicant ceased employment over 90 days – salary payments delayed – unfair dismissal dispute with employer pending – threats of deportation – brief return to same employment – plans for further studies – visa cancelled less than 90 consecutive days since actual employment ceased – cancellation power does not arise – decision under review set aside

#### [2302606](#)

MIGRATION – cancellation – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – incorrect information in the visa application – applicant overstayed in another country for several years – identity details – medical conditions of the sponsor – contribution to the community – decision under review set aside

## National Disability Insurance Scheme

[CBFP and National Disability Insurance Agency](#) [2023] AATA 3425 (23 October 2023); D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – whether applicant meets the disability or early intervention requirements – PTSD, anxiety, depression and personality disorder – survivor of child sexual abuse – whether impairments are permanent – decision under review affirmed

[Clarke and National Disability Insurance Agency](#) [2023] AATA 3494 (27 October 2023); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – impairments from polymorphic light eruption and autism spectrum disorder – permanency- whether there is substantial reduction in functional capacity – available treatments – decision set aside

[Kirgiz and National Disability Insurance Agency](#) [2023] AATA 3540 (26 October 2023); D Katter, Senior Member

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

[PBZB and National Disability Insurance Agency](#) [2023] AATA 3385 (20 October 2023); D Barker, Member

NATIONAL DISABILITY INSURANCE AGENCY – whether early intervention supports are reasonable and necessary – Tribunal has jurisdiction to consider the inclusion of supports from the date of approval of a Statement of Participant Supports – reimbursement – Tribunal has discretion to determine the weight of evidence – whether supports are value for money – whether supports are effective and beneficial – decision set aside and remitted with directions

## Practice and Procedure

[Britton and Comcare](#) (Compensation) [2023] AATA 3505 (30 October 2023); D O'Donovan, Senior Member

PRACTICE AND PROCEDURE – workers' compensation – abuse of process – whether an application is an abuse of process – whether the Tribunal should consider the reasonable prospects of success – whether the applicant should be permitted to relitigate issues – where the applicant has previously settled a related claim – application for abuse of process granted – substantive application dismissed

[Dawori and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3436 (25 October 2023); D J Morris, Senior Member

PRACTICE AND PROCEDURE – request for extension of time – applicant refused citizenship by conferral – applicant lodged application for review by Tribunal – application lodged significantly late – technically defective decision – question about whether applicant notified of right of review – Tribunal now satisfied applicant notified – consideration of factors relating to extending time – applicant found to have rested on his rights – time not extended

[Fumberger and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3484 (20 October 2023); D J Morris, Senior Member

PRACTICE AND PROCEDURE – applicant was overpaid jobseeker payment – not in contest that overpayment was due to error of respondent – authorised review officer confirmed overpayment and therefore debt – Tribunal at First Review affirmed decision – applicant sought Second Review by Tribunal – respondent made without prejudice offer to settle matter by waiving debt and interest charge – applicant declined to accept offer unless specified conditions were satisfied – applicant sent copy of offer to Tribunal – respondent then made with prejudice offer to applicant – respondent sought directions hearing for Tribunal to decide how to proceed – Tribunal decided hearing could not provide any additional relief to applicant – legislative history of s 42B of AAT Act – application dismissed as lacking in substance – dismissal not to take effect until specified future date

SOCIAL SECURITY – applicant in receipt of jobseeker payment – applicant overpaid when earning other income – applicant had notified respondent of other earnings – error by department – authorised review officer confirmed overpayment and that waiver of debt on basis money received in good faith or special circumstances not applicable – Tribunal at First Review affirmed decision – amount of overpayment and interest garnisheed from applicant on day First Review decision provided to parties – whether this was precipitate action

[NSX Limited and Australian Securities and Investments Commission](#) [2023] AATA 3544 (27 July 2023); B J McCabe, Deputy President

ASX LISTING RULES – REGULATION OF MARKET LICENSEES – Fair, orderly and transparent market – Potential conflict situations – Commercial interests – Specific and significant conflicts – Enforcement powers – Commercially sensitive information – Conflict of interest

[NSX Limited and Australian Securities and Investments Commission](#) [2023] AATA 3548 (24 October 2023); B J McCabe, Deputy President

Specific and significant conflicts – potential conflicts – competition – market operator

[Specific Care Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2023] AATA 3538 (1 November 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – jurisdiction – Aged Care Quality and Safety Commission Act – decision to grant or refuse an application for approval to provide home care – whether the Tribunal has jurisdiction to hear the matter when party no longer seeks to rely on original application – most current application considered – jurisdiction not found – application dismissed

## **Professions and Trades**

[D'coutho and Tax Practitioners Board](#) [2023] AATA 3485 (26 October 2023); J C Kelly, Senior Member

TAX AGENTS – breach of TASA Code of Professional conduct – tax agent registration termination – decision to prevent reapplying for tax agent registration for three years – whether the applicant acted honestly and with integrity – whether the applicant complied with taxation laws – whether the applicant provided tax agent services competently – whether the applicant is a fit and proper person – reviewable decision affirmed

## Refugee

### 1800524

REFUGEE – protection visa – Sri Lanka – actual or imputed political opinion – anti-government/pro-LTTE – particular social group – failed asylum seeker of Tamil ethnicity – former LTTE combatant with officer rank – amputation – unlawfully departed on fraudulent passports – Tamil women with connections with former LTTE combatants – credibility concerns – reasons for providing a false statement – exaggerations or embellishments – decision under review remitted

### 1909300

REFUGEE – protection visa – Afghanistan – race – Hazara – religion – Christian convert – imputed Shi'a Muslim – imputed political opinion – supporter of former Afghan government – particular social group – failed asylum seekers – fear of harm by Islamic State Khorasan Province (ISKP) and Taliban – decision under review remitted

### 2114777

REFUGEE – protection visa – Malaysia – Indian ethnicity – religion – Christianity – involved in missionary work – outreach to Orang Asli settlements – wife's brother's forced conversion to Islam – children bullied/harmed in school – credibility concerns – inconsistent evidence – delay in claiming protection – outreach/proselytisation work in Australia – purpose and genuineness of these activities – Malaysian law prohibiting conversion of Muslims to other religions – 'appropriate and adapted to achieving a legitimate object of the country' – decision under review remitted

### 2212399

REFUGEE – protection visa – Malaysia – religion – Christian – unable to marry Muslim without becoming Muslim – sharia law – applicant did not attend hearing – power to dismiss an application for non-appearance at a further hearing in a remitted case – inconsistent evidence – decision under review affirmed

### 1713266

REFUGEE – protection visa – India – particular social group – divorced or single women from Punjab without male protection – twice divorced single woman – honour killing – fear of acid attacks – domestic violence – fear of revenge by ex-husband and his family – prevalence of sexual assault and harassment of women – lack of family and community support – capacity to relocate – ineffectiveness and corruption of the police – inconsistent evidence – credibility issues – decision under review remitted

### 1702621

REFUGEE – protection visa – Bangladesh – political opinion – Bangladesh Nationalist Party official – arrest warrant – false legal proceedings – falsely identified as a terrorist – state protection – delay in applying for protection – passport renewal – decision under review affirmed

## Social Security

[Desfosses and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 5278 (20 September 2022); J C Kelly, Senior Member

SOCIAL SECURITY – carer payment – whether the Applicant applied for carer payment 11 years before an application was made and granted – decision affirmed; whether Applicant did not receive CP payments during the period 28 May 1998 and 24 May 2011 – not accepted

[Nguyen; Secretary Department of Social Services and](#) (Social services second review) [2023] AATA 3422 (24 October 2023); A Maryniak KC, Member

SOCIAL SECURITY – Family Tax Benefit top-up – whether applicant eligible to be paid FTB top-up – whether applicant lodged tax return in time – whether special circumstances prevented applicant from lodging tax return – reviewable decision affirmed

[O'Connor and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3419 (24 October 2023); C J Furnell, Senior Member

SOCIAL SECURITY – family assistance – carer allowance – date of entitlement – whether the applicant's carer allowance can be backdated – interception of a communication passing over a telecommunications system as evidence of special circumstances – alleged failure by the respondent to advise the applicant of his entitlement to a carer allowance – alleged breach of duty of care – decision under review affirmed

[William and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3437 (25 October 2023); D Mitchell, Member

SOCIAL SECURITY – Disability Support Pension debt – overpayment – where income was not correctly reported – where no sole administrative error – where no special circumstances – decision under review affirmed

## Taxation

[Bowerman and Commissioner of Taxation](#) (Taxation) [2023] AATA 3547 (31 October 2023); G Lazanas, Senior Member

TAXATION – income tax – allowable deductions – whether loss made on sale of property incurred in gaining or producing assessable income – application of Commissioner of Taxation v The Myer Emporium Ltd (1987) 163 CLR 199 – whether taxpayer's intention or purpose in entering into transaction was to make a profit or gain – whether the property was part of a business operation or commercial transaction or the sort of thing a business person would do – meaning of loss – whether the loss was of a capital nature – whether the loss is of a private or domestic nature – meaning of incurred – whether the loss was incurred in the income year when the sale contract exchanged and became unconditional or when the sale contract completed – taxpayer's reliance on public ruling issued by the Commissioner of Taxation as to the meaning of incurred and the timing of deductions – objection decision set aside and substituted with decision allowing the objection

[Holm and Commissioner of Taxation](#) (Taxation) [2023] AATA 3545 (31 October 2023); D Mitchell, Member

TAXATION – extension of time to lodge an objection – income years ended 30 June 1999 to 30 June 2019 – circumstances concerning and reasons for delay – merit of objection – prejudice – decision under review affirmed

[Jassar & Manesh Pty Ltd as trustee for the Jassar & Manesh Unit Trust and Commissioner of Taxation](#) (Taxation) AATA 3502 (30 October 2023); R Olding, Senior Member

TAXATION – CORONAVIRUS ECONOMIC RESPONSE PACKAGE – JOBKEEPER – discretion to determine that an entity is not liable to repay an overpaid amount – considerations relevant to exercise of discretion – determination not made

[Jassar & Manesh Pty Ltd as trustee for the Jassar Manesh Consultants Unit Trust and Commissioner of Taxation](#) (Taxation) AATA 3499 (30 October 2023); R Olding, Senior Member

TAXATION – CORONAVIRUS ECONOMIC RESPONSE PACKAGE – JOBKEEPER – discretion to determine that an entity is not liable to repay an overpaid amount – considerations relevant to exercise of discretion – determination not made

[QQRK and Commissioner of Taxation](#) (Taxation) [2023] AATA 3493 (27 October 2023); B J McCabe, Deputy President and N Gaudion, Member

Section 14ZZK(b) of the Taxation Administration Act 1953 – Onus – substantiation – gambling – betting – winnings – losses – record-keeping – assessment of evidence – substantive liability – administrative penalty – intentional disregard – recklessness – Austrac

## **Veterans' Affairs**

[Taylor and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 3506 (31 October 2023); J C Kelly, Senior Member

VETERANS' ENTITLEMENTS – claim for disability pension – whether applicant's medical condition was causally related to his eligible defence service – relevant statement of principles – correct diagnosis of applicant's knee condition – whether applicant on the balance of probabilities satisfies criteria in SoP 26 – reviewable decision affirmed

# Appeals

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

## Appeals lodged

CASE NAME	AAT REFERENCE
<b>Hawk and Linfox Armaguard Pty Limited</b>	<a href="#">[2023] AATA 3068</a>
<b>James and Comcare</b>	<a href="#">[2023] AATA 2826</a>
<b>Keane and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3279</a>
<b>LRMM and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3162</a>
<b>Nguyen and Comcare</b>	<a href="#">[2023] AATA 3099</a>
<b>Singh and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2023] AATA 3365</a>
<b>Tkatschenko and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3066</a>
<b>Trego and Minister for Immigration, Citizenship, and Multicultural Affairs</b>	<a href="#">[2023] AATA 1202</a>
<b>VZSJ and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 3439</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Edmonds v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3191</a>	<a href="#">[2023] FCA 1341</a>
<b>Ibrahim v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 3637</a>	<a href="#">[2023] FCAFC 173</a> <a href="#">[2022] FCA 450</a>
<b>McPartland v Commissioner of Taxation</b>	<a href="#">[2022] AATA 686</a>	<a href="#">[2023] FCA 1260</a>



<b>Pera v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4582</a>	<a href="#">[2023] FCA 1318</a>
<b>Pewhairangi v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2596</a>	<a href="#">[2023] FCA 1322</a>
<b>PGDX v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2022] AATA 1034</a>	<a href="#">[2023] FCA 1259</a>
<b>Tziavaras v Secretary, Department of Social Services</b>	<a href="#">[2022] AATA 1154</a>	<a href="#">[2023] FCA 1250</a>

# Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 28 November 2023:

### **Pericarditis (Reasonable Hypothesis) – No. 90 of 2023**

<https://www.legislation.gov.au/Details/F2023L01427>

### **Pericarditis (Balance of Probabilities) – No. 91 of 2023**

<https://www.legislation.gov.au/Details/F2023L01428>

### **Trochanteric bursitis (Reasonable Hypothesis) – No. 92 of 2023**

<https://www.legislation.gov.au/Details/F2023L01422>

### **Trochanteric bursitis (Balance of Probabilities) – No. 93 of 2023**

<https://www.legislation.gov.au/Details/F2023L01425>

### **Gluteal tendinopathy (Reasonable Hypothesis) – No. 94 of 2023**

<https://www.legislation.gov.au/Details/F2023L01446>

### **Gluteal tendinopathy (Balance of Probabilities) – No. 95 of 2023**

<https://www.legislation.gov.au/Details/F2023L01447>

### **Medial tibial stress syndrome (shin splints) (Reasonable Hypothesis) – No. 96 of 2023**

<https://www.legislation.gov.au/Details/F2023L01433>

**Medial tibial stress syndrome (shin splints) (Balance of Probabilities) – No. 97 of 2023**

<https://www.legislation.gov.au/Details/F2023L01434>

**Chronic exertional compartment syndrome of the lower leg (Reasonable Hypothesis) – No. 98 of 2023**

<https://www.legislation.gov.au/Details/F2023L01460>

**Chronic exertional compartment syndrome of the lower leg (Balance of Probabilities) – No. 99 of 2023**

<https://www.legislation.gov.au/Details/F2023L01461>

**Anxiety disorder (Reasonable Hypothesis) – No. 100 of 2023**

<https://www.legislation.gov.au/Details/F2023L01440>

**Anxiety disorder (Balance of Probabilities) – No. 101 of 2023**

<https://www.legislation.gov.au/Details/F2023L01439>

**Malignant neoplasm of the salivary gland (Reasonable Hypothesis) – No. 102 of 2023**

<https://www.legislation.gov.au/Details/F2023L01430>

**Malignant neoplasm of the salivary gland (Balance of Probabilities) – No. 103 of 2023**

<https://www.legislation.gov.au/Details/F2023L01431>

**Parkinson's disease and secondary parkinsonism (Balance of Probabilities) – No. 104 of 2023**

<https://www.legislation.gov.au/Details/F2023L01435>

## **Statements of Principles to be revoked**

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked on 28 November 2023:**

**Anxiety disorder – No. 102 of 2014**

<https://www.legislation.gov.au/Details/F2014L01389>

**Anxiety disorder – No. 103 of 2014**

<https://www.legislation.gov.au/Details/F2014L01390>

**Shin splits – No. 9 of 2015**

<https://www.legislation.gov.au/Details/F2014L01805>

**Shin splints – No. 10 of 2015**

<https://www.legislation.gov.au/Details/F2014L01812>

**Trochanteric bursitis and gluteal tendinopathy – No. 45 of 2015**

<https://www.legislation.gov.au/Details/F2015L00010>

**Trochanteric bursitis and gluteal tendinopathy – No. 46 of 2015**

<https://www.legislation.gov.au/Details/F2015L00011>

**Malignant neoplasm of the salivary gland No. 57 of 2015**

<https://www.legislation.gov.au/Details/F2015L00252>

**Malignant neoplasm of the salivary gland – No. 58 of 2015**

<https://www.legislation.gov.au/Details/F2015L00261>



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