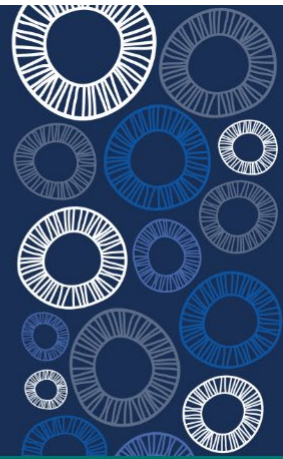




Administrative
Appeals Tribunal

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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Recent developments

Online forms service maintenance

Please note we will be undertaking maintenance to online services in early December that will include an outage and may impact saved and unsubmitted forms.

More information about the outage will be published on the AAT website soon.

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

[JDTX and Child Support Registrar](#) (Child support second review) [2023] AATA 3609 (8 November 2023); P Ranson, Member

CHILD SUPPORT - Percentage of care – does an extra week of school holidays change of the percentage of care - person's cost percentage - court orders complied with - audit of care - hours of care is not appropriate - the care determination is revoked under s 50(1)(b) - a new care determination made under one of s 54F – care percentage varied.

[Wearne and Watts](#) (Child support) [2023] AATA 3306 (15 August 2023); R Ellis, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – costs of the children include private education – decision under review set aside and substituted

[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

[Rooney and Jemison](#) (Child support) [2023] AATA 3401 (23 August 2023); P Jensen, Member

CHILD SUPPORT – opt-in arrears – whether there were unpaid amounts – decision under review set aside and matter remitted with directions

[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

Compensation

[Bith and Telstra Corporation Limited](#) (Compensation) [2023] AATA 3612 (8 November 2023); A E Burke AO, Member

WORKER'S COMPENSATION – arm, shoulder and neck injury – denial of liability – whether applicant failed to notify of injuries as soon as practicable – m whether injury is work related – conflicting medical evidence – decision under review affirmed

[Mas Rivadavia and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 3668 (10 November 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 conspired to import into Australia a commercial quantity of a prohibited import - where the applicant conspired to import into Australia a trafficable quantity of a prohibited import - where the applicant has driving offences – consideration of relevant material, law and policy – decision under review set aside and remitted

[Ross and Australian Capital Territory](#) (Compensation) [2023] AATA 3569 (3 November 2023); D O'Donovan, Senior Member

WORKERS' COMPENSATION – whether the applicant has an incapacity for work – what is the amount per week that the employee is able to earn in suitable employment – whether the applicant is able to earn an amount greater than the applicant's normal weekly earnings – whether the applicant is entitled to medical expenses – set aside and remitted

Corporations

[Anderson and Australian Securities and Investments Commission](#) [2023] AATA 3771 (17 November 2023); I Molloy, Deputy President

TAXATION AND COMMERCIAL – Australian Securities and Investments Commission – financial services provider – banning order under s 920A of the Corporations Act 2001 (Cth) – whether power to impose a banning order enlivened – whether banning order should be imposed in the applicant's case – whether other sanction is more appropriate – period of banning order – decision under review affirmed

Migration

[Farah and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3577 (3 November 2023); R West, Member

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

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

AATA 3716 (11 October 2023); R Bellamy, Senior Member

MIGRATION – refusal to grant a Protection visa – whether Applicant meets the criterion for a Protection visa in section 36(1C)(b) of the Migration Act 1958 – also consideration of s 36(2C)(b)(ii) of the Act – whether Applicant has been convicted by a final judgment of a particularly serious crime – whether the Applicant is a danger to the Australian community – evidence of rehabilitation – decision under review set-aside

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

AATA 3675 (13 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 set aside and substituted

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

AATA 3630 (9 November 2023); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – decision under review affirmed

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

AATA 3610 (31 October 2023); B W Rayment OAM KC, Deputy President

MIGRATION – refusal to revoke mandatory cancellation of Removal Pending Bridging (Class WR) (Subclass 070) visa – citizen of Lebanon – consideration of DFAT travel advice in light of ongoing Israel and Hamas conflict – decision under review set aside and substituted

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

3674 (12 October 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – decision under review affirmed

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

AATA 3736 (16 November 2023); K Raif, Senior Member

MIGRATION – mandatory visa cancellation - character test - substantial criminal record - whether another reason to revoke the cancellation - protection of Australian community - nature and seriousness of Applicant's conduct - whether conduct engaged in constitutes family violence - strength, nature and duration of ties to Australia - bests interest of minor children - expectations of Australian community - legal consequences of the decision - extent of impediments if removed - impact on victims - decision under review affirmed

[Kopa and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3627 (9 November 2023); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category Temporary visa – whether the Applicant passes the character test – substantial criminal history – whether there is another reason to revoke the cancellation of the Applicant’s visa – consideration of Ministerial Direction No. 99 – decision under review set aside and substitutes a decision revoking the original visa cancellation

[LPSP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3671 (9 November 2023); Dr S Fenwick, Senior Member

MIGRATION – refusal to grant protection visa – whether convicted by final judgment of particularly serious crime – whether a danger to the Australian community – seriousness and nature of offending – risk of reoffending – period of time in community during the proceeding – decision set aside and remitted

[MJVS AND Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3750 (20 October 2023); T Tavoularis, Senior Member

MIGRATION- Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa-where the Applicant does not pass the character test- whether there is another reason to revoke the mandatory cancellation decision- consideration of Ministerial Direction 99- where Applicant has an addiction to watching online pornography- where criminal offending involved possession of child abuse material – where the Court of Appeal reduced the head 12 month sentence to nine months on appeal- where Applicant’s risk of reoffending found to be low- where Applicant has demonstrated strong evidence of rehabilitation- where the Applicant has no other criminal conviction in Australia or overseas- Tribunal finding that there is another reason to revoke the mandatory cancellation decision- decision under review set aside and substituted

[Seau and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3718 (14 November 2023); J C Kelly, Senior Member

MIGRATION – visa was mandatorily cancelled previously and affirmed by a differently constituted Tribunal – remitted by Federal Court of Australia – mandatory cancellation of visa under s 501CA(4) because applicant did not pass the character test – whether there is another reason why the cancellation decision should be revoked – Ministerial direction no.99 – protection of the Australian community – strength, nature, duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – reviewable decision set aside

[SKBQ and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 3673 (2 November 2023); R Maguire, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class XB Subclass 200 Refugee 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

[Williams and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3731 (18 October 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether “another reason” for visa cancellation to be revoked – applicant a citizen of Liberia – applicant guilty of crimes of violence against women, including domestic violence towards mother – applicant guilty of indecent touching of child – applicant has serious mental health conditions – not clear whether applicant owed non-refoulement obligations – applicant most likely either to be returned to Liberia or to remain in detention on an ongoing basis – on either scenario serious concerns arise for applicant’s welfare if decision affirmed – primary considerations outweighed by applicant’s special circumstances – decision under review set aside

[WKBF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3728 (13 November 2023); The Hon Justice E Kyrou, President

MIGRATION – decision refusing to grant a class XA, subclass 866 protection visa under s 65 Migration Act 1958 – whether applicant, having been convicted of a particularly serious crime, is a danger to Australian community – applicant diagnosed with paranoid schizophrenia characterised by grandiose and persecutory delusions – concession that applicant would be a danger to Australian community if released from immigration detention without treatment and supports – psychiatric evidence established that applicant will very likely be subject to a compulsory treatment order for significant period of time – very likely that applicant will not be released into community until risk to Australian community is assessed at an acceptably low level – applicant not a danger to Australian community – decision set aside and remitted.

MIGRATION – state of satisfaction required to determine whether applicant is a danger to Australian community – significant consequences to applicant as a result of adverse finding – rigour required in assessment whether a person is a danger – principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336 capable of providing assistance.

MIGRATION – definition of ‘serious Australian offence’ in s 5(1) Migration Act 1958 – whether phrase ‘offence ... involves violence against a person’ requires that elements of offence include violence against a person or that actual offending involves violence against a person – relevant legal principles.

MIGRATION – whether an offence involving threat of violence constitutes offence which ‘involves violence against a person’ for purposes of definition of ‘serious Australian offence’ in s 5(1) Migration Act 1958 – phrase ‘violence against a person’ requires physical application of force to victim’s body.

MIGRATION – concept of ‘danger’ in phrase ‘danger to the Australian community’ – principles in *SLGS v Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs* [2023] FCAFC 104 summarised.

MIGRATION – whether s 36(1C)(b) Migration Act 1958 requires a causal connection between particularly serious crime and danger to Australian community – *WKCG v Minister for Immigration and Citizenship* (2009) 110 ALD 434; [2009] AATA 512, *WGKS v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1060, *DMQ20 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] FCAFC 84 and *SLGS v Minister for Immigration, Citizenship, Migration Services and Multicultural Affairs* [2023] FCAFC 104, discussed.

MIGRATION – factors relevant to assessment of ‘danger to the Australian community’ – factors discussed in *WKCG v Minister for Immigration and Citizenship* (2009) 110 ALD 434; [2009] AATA 512 explained.

[ZDPL and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 3720 (9 October 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – South Sudanese citizen – Refugee (Class BA) (Subclass 200) 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 set aside and substituted

[2201451](#) (Migration) [2023] AATA 3377 (7 September 2023); A Murphy, Member

MIGRATION – cancellation – Refugee and Humanitarian (Class XB) visa – Subclass 204 (Woman at Risk) – incorrect information given in visa application – name, date of birth and only child of deceased parents – information received of correct name and date, and living parents and siblings – discretion to cancel visa – ground for cancellation conceded – no contact with parents or siblings at the time, and fear of harm to them – unaccompanied young divorced woman at risk of gender-based harm – ethnic minority – sexual abuse by military member – length of residence, education, church and community activities – Australian citizen husband and children – health and financial difficulty – political opinion, activities and financial support – mandatory legal consequences and non-refoulement – country information – military coup and political and security situation – best interests of children – decision made without hearing necessary – decision under review set aside

[Lagoon Caravan Pty Ltd](#) (Migration) [2023] AATA 3084 (12 September 2023); A Mendes Da Costa, Member

MIGRATION – sponsorship cancellation or bar – sponsorship obligations – ensuring equivalent terms and conditions of employment – false and misleading information – underpayment and late payments – nominee ceased employment – impact of the COVID-19 pandemic lockdowns – extra voluntary unpaid leave – salary payments were eventually made – financial hardship – decision under review set aside

[Jin](#) (Migration) [2023] AATA 3128 (15 September 2023); P Katsambanis, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Australian study requirement – course completed within six months before application made – statement of academic record and conferral of degree dated three days after application made – course completed when academic requirements met – amended thesis lodged and acknowledged before application made, followed by administrative steps unrelated to academic requirements – detailed oral and documentary evidence – ‘completed’ – decision under review remitted

[FAHME](#) (Migration) [2023] AATA 3079 (20 September 2023); K Raif, Senior Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – primary notification affected by error – relationship ceased – no substantive visa at the time of application – compelling reasons – sole parental responsibility of an Australian citizen child – joint residential tenancy agreement and utility bills – joint bank statements – previous mutual commitment to a shared life – decision under review remitted

[Basyal](#) (Migration) [2023] AATA 3116 (21 September 2023); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – applicant convicted of an offence – conditional release order without conviction – multiple courses completed – skills assessed as suitable for migration – decision under review set aside

National Disability Insurance Scheme

[Al-Bagqal and National Disability Insurance Agency](#) [2023] AATA 3717 (14 November 2023); D Barker, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – whether Tribunal has jurisdiction to consider reimbursement – insufficient evidence to determine whether supports are value for money – duplication of supports will not be funded – decision affirmed

[Hill and National Disability Insurance Agency](#) [2023] AATA 3626 (6 November 2023); S Webb, Member

NATIONAL DISABILITY INSURANCE SCHEME – participant supports – reasonable and necessary supports which will be funded – transport support – participant goals, objectives and aspirations – participation in activities – social and economic participation – exercise of choice – value for money assessment – meaning of ‘effective and beneficial’ and ‘current good practice’ – reasonable expectations of family support – amount of transport support to be funded – decision

JURISDICTION – remittal for reconsideration – consideration of *Klewer v National Disability Insurance Agency* – meaning of ‘decision as varied’ – scope of original decision not limited by variation of content

[Iannella and National Disability Insurance Agency](#) [2023] AATA 3676 (13 November 2023); C J Furnell, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria under s 21 of the National Disability Insurance Scheme Act 2013 (Cth) are met – s 24 “disability requirements” – Applicant has a disability arising from various impairments – cerebrovascular accident – hearing loss – diplopia and nystagmus of the right eye – chronic fatigue – whether impairments have resulted in substantially reduced functional capacity in any one of the six prescribed categories – decision under review affirmed

[Johnstone and National Disability Insurance Agency](#) [2023] AATA 3632 (8 November 2023); K Buxton, Senior Member

Interlocutory Application – National Disability Insurance Scheme – Plan – Review of Supports in Plan – Statement of Participant Supports – Section 42D Remittal – New Plan – Whether 42D remittal creates a new plan

[McGrath and National Disability Insurance Agency](#) [2023] AATA 3719 (14 November 2023); The Honourable P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – application for recusal – reasonable and necessary supports – value for money – effective and beneficial – reimbursement – specialist disability accommodation – medium term accommodation – decision varied

[Powell and National Disability Insurance Agency](#) [2023] AATA 3677 (10 November 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – Application to review a decision made by a reviewer of the National Disability Insurance Agency under subsection 100(6)(a) of the National Disability Insurance Scheme Act 2013 (Cth) to confirm a decision made by a delegate of the Chief Executive Officer of the NDIA under subsection 20(1)(a) of the NDIS Act 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 physical impairments arising from his post-poliomyelitis syndrome diagnosis – whether the Applicant is a person who meets the disability requirements as set out in section 24 of the NDIS Act or whether the Applicant is a person who meets the early intervention requirements as set out in section 25 of the NDIS Act – whether the Applicant’s physical impairments result in substantially reduced functional capacity to undertake one or more activities that involve communication, social interaction, learning, mobility, self-care, and self-management as required by subsection 24(1)(c) of the NDIS Act – whether the Applicant’s impairments affect his capacity for social or economic participation as required by subsection 24(1)(d) of the NDIS Act – whether the Applicant is likely to require the support under the NDIS for his lifetime as required by subsection 24(1)(e) of the NDIS Act – whether the provision of early intervention supports for the Applicant is likely to benefit him by reducing his future needs for supports in relation to his disability as required by subsections 25(1)(b) and (c) of the NDIS Act – whether early intervention supports for the Applicant is not most appropriately funded or provided through the NDIS as required by subsection 25(3) of the NDIS Act - decision under review affirmed

[ZHTH and National Disability Insurance Agency](#) [2023] AATA 3593 (6 November 2023); The Hon P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – value for money – effective and beneficial – current good practice – reasonable expectation of families, carers, informal supports and the community – decision under review set aside and remitted with direction

Practice and Procedure

[Brock and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3596 (7 November 2023); B W Rayment OAM KC, Deputy President

PRACTICE AND PROCEDURE – application for reinstatement – application for extension of time dismissed for non-attendance – reinstatement refused

[Estanillo and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3670 (10 November 2023); S Webb, Member

PRACTICE AND PROCEDURE – application for review of AAT first review decision – prescribed period – application for review outside the prescribed period – no adequate explanation for delay – failure to comply with Tribunal direction within a reasonable time – application dismissed

[Watson and Commissioner of Taxation](#) (Taxation) [2023] AATA 3751 (8 November 2023); B J McCabe, Deputy President

REINSTATEMENT – withdrawal – the power to reinstate – dismissed in error – evidence of impairment – dismissal attended by error

[Webeck and Comcare](#) (Compensation) [2023] AATA 3598 (7 November 2023); S Webb, Member

PRACTICE AND PROCEDURE – summons – production of medical records – objections to grant of access – relevant principles – Harman obligation – objections refused

Professions and Trades

[Borella and Tax Practitioners Board](#) [2023] AATA 3748 (15 November 2023); G Lazanas, Senior Member

TAX AGENTS – breach of Code of Professional Conduct in Tax Agents Services Act 2009 (Cth) – tax agent registration termination – decision to preclude applicant from applying for tax agent registration for two years – whether applicant complied with taxation laws in the conduct of his personal affairs – where applicant committed repeated breaches of personal tax obligations – where applicant did not respond to an investigation notice from the Tax Practitioners Board – where applicant was given multiple opportunities to rehabilitate – whether applicant a fit and proper person – reckless behaviour - reviewable decision affirmed

Refugee

[1838172](#) (Refugee) [2023] AATA 3027 (8 June 2023); J Marquard, Member

REFUGEE – Protection Visa – Iran – criminal conviction – political opinion – fear of the Basij militia – religion – conversion to Christianity – tattoos – has genuinely taken an interest in Christianity – returnee asylum seeker status – appearance – mental health issues – generally anti-regime and anti-Islamic views – effective protection measures are not available to the applicant – applicant's second visa application is invalid – decision under review remitted

[1910200](#) (Refugee) [2023] AATA 3190 (23 June 2023); M Sripathy, Member

REFUGEE – protection visa – Vietnam – political opinion – 2004 land acquisition and subsequent protests – issues with authorities since that time – police visit to parents' home following data breach incident – left the country unlawfully – political activity in Australia – fear from money lenders – Australian citizen partner and child – referred for ministerial intervention – Temporary Protection visa of 12 November 2020 is invalid – decision under review affirmed

[1815047](#) (Refugee) [2023] AATA 3219 (29 June 2023); N Goetz, Member

REFUGEE – protection visa – Iran – member of atheist group – atheist tattoo – anti-religious activities – arrest – torture – ex-wife granted protection visa – divorced – delay in protection application – criminal offences – credibility issues – decision under review affirmed

[1924287](#) (Refugee) [2023] AATA 3284 (30 June 2023); M Bishop, Senior Member

REFUGEE – protection visa – Lebanon – informant with local Municipality – informed security forces of location of drugs – applicant's details leaked to crime families – applicant of adverse interest to crime families – crime families have means to locate and harm applicant irrespective of where he resides in Lebanon – authorities unable to provide adequate protection – decision under review remitted

[1809793](#) (Refugee) [2023] AATA 3322 (10 July 2023); D Creedon, Member

REFUGEE – protection visa – Nigeria – complementary protection – reporting criminal gangs – online scam – identity stolen online – fear of killing – money mules – decision under review remitted

Social Security

[Brooks; Secretary, Department of Social Services and](#) (Social services second review) [2023] AATA 3629 (9 November 2023); W Frost, Member

SOCIAL SECURITY – alleged debt – carer payment – irrecoverable at law – special circumstances – sole administrative error – no write off or waiver of debt – decision under review set aside and substituted

[Collins and Secretary, Department of Health and Aged Care](#) (Social services) [2023] AATA 3733 (15 November 2023); B Pola, Senior Member

AGED CARE – Calculation of home care fees – whether applicant income correctly calculated to include income tested care fee – where applicant was deemed to have income from savings held in bank account – where applicant relied on ethical and moral arguments regarding the application of deeming provisions - statutory calculations correctly applied - Aged Care Act 1997 (Cth) applied – decision affirmed

[Girouard and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3582 (26 September 2023); L Benjamin, Member

SOCIAL SECURITY – Disability Support Pension portability – where Applicant residing in the Philippines – where numerous extensions of Disability Support Pension portability previously granted – where Applicant sought further extension of Disability Support Pension portability – Applicant does not suffer serious illness for the purposes of relevant legislation – no other basis to exercise discretion to extend Disability Support Pension portability exists – decision of the Social Services and Child Support Division of the Administrative Appeals Tribunal affirmed – application refused

[Thompson and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3611 (8 November 2023); Professor A O'Connell, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant's medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – whether the impairments rated 20 points or more under a single heading of the Impairment Tables – whether there was a continuing inability to work – decision under review set aside

[Van Vlymen and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3715 (14 November 2023); A Poljak, Senior Member

SOCIAL SERVICES – Age Pension – assets test – hardship rules – compliance with notice – unknown assets – combined assets exceeding the allowable assets limit – companies to be disregarded because they are in receivership, administration and liquidation – decision under review is set aside and remitted

Taxation

[Managed Contracts Pty Ltd and Commissioner of Taxation](#) (Taxation) [2023] AATA 3581 (3 November 2023); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – where applicant did not maintain a schedule of sales and purchases for each tax period instead relying on bank statements – whether applicant discharged burden of proving assessments excessive – decision varied

[Mitri and Commissioner of Taxation](#) (Taxation) [2023] AATA 3762 (30 October 2023); B J McCabe, Deputy President and R J Olding, Senior Member

TAXATION – INCOME TAX – whether applicants discharged burden of proving gains on sale of real property were capital in nature and properties acquired by applicant not in its own right but as trustee of a trust – held burden of proof not discharged

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
HSKK and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3095
Kim and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 3212
Mizen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2023] AATA 3113
Warwick and National Disability Insurance Agency	[2023] AATA 3093

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Nkani v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 1239	[2023] FCA 1410
Sayed v Principal Registrar of the High Court & Ors	[2007] AATA 1508	[2023] HCASL 169
YFMG v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1699	[2023] FCA 1342

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.

Notification of Investigations relating to existing Statements of Principles

The AAT was advised that the RMA intends to carry out [investigations](#) under subsection 196B(7) of the VEA in respect of the following:

Multiple conditions – instruments sunseting on 16 November 2025, 25 January 2026 and 4 April 2026 – <https://www.legislation.gov.au/Details/C2023G01180>

This investigation will be carried out in the context of the following Statement of Principles Instruments:

Non-melanotic malignant neoplasm of the skin (Reasonable Hypothesis) – No. 7 of 2016

<https://www.legislation.gov.au/Details/F2017C00849>

Non-melanotic malignant neoplasm of the skin (Balance of Probabilities) – No. 8 of 2016

<https://www.legislation.gov.au/Details/F2017C00848>

External bruise (Reasonable Hypothesis) – No. 5 of 2016

<https://www.legislation.gov.au/Details/F2016L00008>

External bruise (Balance of Probabilities) – No. 6 of 2016

<https://www.legislation.gov.au/Details/F2016L00005>

Ischaemic heart disease (Reasonable Hypothesis) – No. 1 of 2016

<https://www.legislation.gov.au/Details/F2021C00904>

Ischaemic heart disease (Balance of Probabilities) – No. 2 of 2016

<https://www.legislation.gov.au/Details/F2021C00952>

Adjustment disorder (Reasonable Hypothesis) – No. 23 of 2016

<https://www.legislation.gov.au/Details/F2018C00629>

Adjustment disorder (Balance of Probabilities) – No. 24 of 2016

<https://www.legislation.gov.au/Details/F2018C00630>

Malignant neoplasm of the endometrium (Reasonable Hypothesis) – No. 11 of 2016

<https://www.legislation.gov.au/Details/F2017C00843>

Malignant neoplasm of the endometrium (Balance of Probabilities) – No. 12 of 2016

<https://www.legislation.gov.au/Details/F2017C00842>

Loss of teeth (Reasonable Hypothesis) – No. 124 of 2015

<https://www.legislation.gov.au/Details/F2018C00665>

Loss of teeth (Balance of Probabilities) – No. 125 of 2015

<https://www.legislation.gov.au/Details/F2018C00668>

Eating disorder (Reasonable Hypothesis) – No. 13 of 2016

<https://www.legislation.gov.au/Details/F2018C00640>

Eating disorder (Balance of Probabilities) – No. 14 of 2016

<https://www.legislation.gov.au/Details/F2018C00641>

Lyme disease (Reasonable Hypothesis) – No. 25 of 2016

<https://www.legislation.gov.au/Details/F2016L00254>

Lyme disease (Balance of Probabilities) – No. 26 of 2016

<https://www.legislation.gov.au/Details/F2016L00255>

Peritoneal adhesions (Reasonable Hypothesis) – No. 3 of 2016

<https://www.legislation.gov.au/Details/F2017C00847>

Peritoneal adhesions (Balance of Probabilities) – No. 4 of 2016

<https://www.legislation.gov.au/Details/F2017C00846>

Discoid lupus erythematosus (Reasonable Hypothesis) – No. 126 of 2015

<https://www.legislation.gov.au/Details/F2015L01680>

Discoid lupus erythematosus (Balance of Probabilities) – No. 127 of 2015

<https://www.legislation.gov.au/Details/F2015L01681>

Dental caries (Reasonable Hypothesis) – No. 122 of 2015

<https://www.legislation.gov.au/Details/F2015L01675>

Dental caries (Balance of Probabilities) – No. 123 of 2015

<https://www.legislation.gov.au/Details/F2015L01676>

Benign prostatic hyperplasia (Reasonable Hypothesis) – No. 17 of 2016

<https://www.legislation.gov.au/Details/F2016L00240>

Benign prostatic hyperplasia (Balance of Probabilities) – No. 18 of 2016
<https://www.legislation.gov.au/Details/F2016L00242>

Myopia, hypermetropia and astigmatism (Reasonable Hypothesis) – No. 9 of 2016
<https://www.legislation.gov.au/Details/F2016L00245>

Myopia, hypermetropia and astigmatism (Balance of Probabilities) – No. 10 of 2016
<https://www.legislation.gov.au/Details/F2016L00246>

Malignant neoplasm of the oesophagus (Reasonable Hypothesis) – No. 120 of 2015
<https://www.legislation.gov.au/Details/F2017C00840>

Malignant neoplasm of the oesophagus (Balance of Probabilities) – No. 121 of 2015
<https://www.legislation.gov.au/Details/F2017C00838>

Polymyalgia rheumatica (Reasonable Hypothesis) – No. 19 of 2016
<https://www.legislation.gov.au/Details/F2016L00249>

Polymyalgia rheumatica (Balance of Probabilities) – No. 20 of 2016
<https://www.legislation.gov.au/Details/F2016L00259>

Diverticular disease of the colon (Reasonable Hypothesis) – No. 15 of 2016
<https://www.legislation.gov.au/Details/F2020C00426>

Diverticular disease of the colon (Balance of Probabilities) – No. 16 of 2016
<https://www.legislation.gov.au/Details/F2020C00383>

Systemic lupus erythematosus (Reasonable Hypothesis) – No. 21 of 2016
<https://www.legislation.gov.au/Details/F2016L00262>

Systemic lupus erythematosus (Balance of Probabilities) – No. 22 of 2016
<https://www.legislation.gov.au/Details/F2016L00274>

Pterygium (Reasonable Hypothesis) – No. 116 of 2015
<https://www.legislation.gov.au/Details/F2015L01671>

Pterygium (Balance of Probabilities) – No. 117 of 2015
<https://www.legislation.gov.au/Details/F2015L01674>

Pinguecula (Reasonable Hypothesis) – No. 118 of 2015
<https://www.legislation.gov.au/Details/F2015L01670>

Pinguecula (Balance of Probabilities) – No. 119 of 2015
<https://www.legislation.gov.au/Details/F2015L01672>

Amended Statements of Principles

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from 28 November 2023:

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

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



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