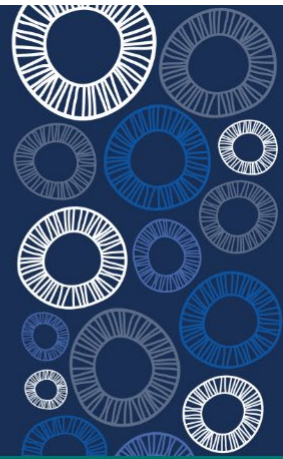




Administrative
Appeals Tribunal

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.

Contents

Recent developments	3
Our End of Year Arrangements	3
AAT Recent Decisions	4
Child Support.....	4
Citizenship	5
Compensation.....	5
Freedom of Information	5
Health	6
Migration	6
National Disability Insurance Scheme.....	11
Practice and Procedure	12
Professions and Trades.....	13
Refugee.....	13
Social Security.....	15
Superannuation	16
Taxation	16
Veterans' Affairs	17
Appeals.....	18
Appeals lodged.....	18
Appeals finalised	18
Statements of Principles	19
Notification of Investigations (where there is no existing Statement of Principles)	19

Recent developments

Our End of Year Arrangements

Our offices will be closed on:

- Monday 25 December 2023
- Tuesday 26 December 2023
- Monday 1 January 2024

You can still lodge applications or documents [online](#) during this period.

Our registries in Adelaide, Brisbane, Melbourne, Perth and Sydney will be open on Wednesday 27, Thursday 28 and Friday 29 December 2023. Our Canberra and Hobart registries will be closed between 23 December 2023 and 1 January 2024 (inclusive).

Responding within a timeframe

If we or the agency that made the original decision have provided a date by which an application or documents must be submitted, the quickest way to ensure you do not miss your deadline is to use our [online services](#). If you plan to send documents through the post, please be aware that there may be delays in postal delivery during this time.

You can contact us on 1800 228 333 or visit www.aat.gov.au for more information.

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

[LJSS and Child Support Registrar](#) (Child support second review) [2023] AATA 3960 (29 November 2023); R West, Member

CHILD SUPPORT ASSESSMENT – on remittal from the Federal Court – application for review – child care percentage – alleged change of percentage – appeal from decision of the Social Services and Child Support Division of the Administrative Appeals Tribunal – care period affected by COVID restrictions – decision varied

[Benstock and Latymer](#) (Child support) [2023] AATA 3298 (29 August 2023); C Breheny, Member

CHILD SUPPORT – percentage of care – whether there was a change to the care of the child – whether child remained in care of parent – decision under review affirmed

[Bignot and Bignot](#) (Child support) [2023] AATA 3404 (29 August 2023); E Kidston, Member

CHILD SUPPORT – percentage of care – what was the likely pattern of care from the start of the administrative assessment – decision under review set aside and substituted

[Casey and Derrick](#) (Child support) [2023] AATA 3399 (30 August 2023); S De Bono, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – a ground for departure established – decision to depart - decision under review varied

[Newton and Holder](#) (Child support) [2023] AATA 3295 (31 August 2023); J Leonard, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – whether the estimate was likely to be less than parent's actual income – decision under review affirmed

[Shirley and McLean](#) (Child support) [2023] AATA 3400 (30 August 2023); E Kidston, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – a ground for departure established – decision to depart - decision under review set aside and substituted

Citizenship

[Beyan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3980 (30 November 2023); L M Gallagher, Member

CITIZENSHIP – application for citizenship by conferral – eligibility – refusal of citizenship – Australian Citizenship Act 2007 s 24(3) – whether Tribunal satisfied of applicant’s identity – applicant claims to be a 33-year-old citizen of Liberia – pillars of identity – biometrics – documents – life story – Tribunal cannot satisfactorily ascertain the Applicant’s identity – reviewable decision affirmed

[Jaber and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3812 (14 November 2023); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – applications for citizenship by conferral by members of a family (mother, father and four adult children and two minor children) – eligibility – refusal of citizenship – whether Tribunal satisfied of Applicants’ identity – whether Tribunal satisfied of good character of one of the Applicants – two of the Applicants were children when the Reviewable Decisions were made but were adults at the time of the Tribunal hearing – whether the statutory question before the Tribunal different to the decision-maker – *Frugniet v Australian Securities and Investments Commission* [2019] HCA 16; (2019) 266 CLR 250 considered – three pillars of identity – Applicants found to be honest and credible witnesses – evidence corroborated by the evidence of other witnesses and available documentation – Tribunal is satisfied of Applicants’ identity and good character – Reviewable Decisions set aside and remitted with a direction

[Su and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 3919 (9 November 2023); Dr L Bygrave, Member

CITIZENSHIP BY DESCENT – whether parent of Applicant was Australian citizen at the time of the birth – definition of ‘time of the birth’ – whether claimed parent-child relationship existed at or before time of the birth – whether ‘time of the birth’ should be given technical or ordinary meaning – decision set aside and remitted

Compensation

[Noonan and Australian Capital Territory](#) (Compensation) [2023] AATA 3786 (20 November 2023); W Frost, Member

WORKERS’ COMPENSATION – denied liability – workplace injury – condition resulting in incapacity for employment – condition contributed to a significant degree by employment – ‘injury’ pursuant to the SRC Act – ‘disease’ pursuant to the SRC Act – compensation for medical treatment or incapacity – aggravation of acquired deformities – peripheral neuropathy – Charcot foot – decision under review set aside

Freedom of Information

[Walker Group Holdings Pty Ltd and Secretary, Department of Climate Change, Energy, the Environment and Water](#) (Freedom of information) [2023] AATA 3920 (17 November 2023); The Hon. J Pascoe AC CVO, Deputy President

FREEDOM OF INFORMATION – relevant third party under s 27 – exemptions claimed under ss 47 (commercially sensitive information) and ss 47G (conditional exemption) – decision varied

Health

[TFG Holding Pty Ltd and Aged Care Quality and Safety Commissioner](#) [2023] AATA 3809 (22 November 2023); R I Hanger, Deputy President

HEALTH AND AGED CARE – aged care provider – approval under section 63D of the Aged Care Quality and Safety Commission Act 2018 (Cth) – whether applicant is suitable to provide aged care – policies developed after approval – decision set aside and substituted

Migration

[Cummings and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3773 (17 November 2023); P Britten-Jones, Deputy President

MIGRATION – cancellation of applicant’s visa on character grounds under s 501(2) of the Migration Act 1958 (Cth) – applicant was a member of the Rebels motorcycle gang and committed family violence when in a relationship with his former partner – applicant has now left the Rebels and is adequately rehabilitated – the applicant is in a loving relationship and has not engaged in any further criminal conduct or family violence – applicant does not pass the character test by reason of s 501(6)(b) – whether discretion to cancel the visa should be exercised – primary considerations – low risk of reoffending – other considerations – ties to the Australian community are very strong – cancellation of the visa is not in the best interests of the children – decision under review set aside

[DFHB and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3813 (22 November 2023); J C Kelly, Senior Member

MIGRATION – refusal to grant Bridging E (Class WE) visa exercised under s 501(1) because applicant did not pass the character test – whether the discretion to refuse to grant the visa should be exercised – whether the delegate’s decision is reviewable – whether the applicant passes the character test – Ministerial direction no.99 – protection of the Australian community – family violence – strength, nature, duration of ties to Australia – expectations of the Australian community – legal consequences of the decision – impact of NZYQ decision – extent of impediments if removed – costs for the Commonwealth, State and Territory governments – reviewable decision set aside

[DLZZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3922 (28 November 2023); S Boyle, Deputy President

MIGRATION – s 501(1) of the Migration Act 1958 – decision of a delegate of the Minister to refuse to grant the Applicant a Bridging E (Class WE) visa – whether the Applicant passes the character test under s 501(6)(c) – Ministerial Direction 99 – whether Tribunal should exercise discretion in s 501(1) to refuse to grant the Applicant the visa – Applicant covered by previous protection finding – Applicant granted a Bridging (Removal Pending) (subclass 070) visa – already released into the community – effect of High Court decision in NZYQ and grant of removal pending visa on considerations under Direction 99 considered – decision set aside and substituted

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

AATA 3954 (29 November 2023); R Cameron, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction No 99 – intentionally causing injury – contravention of community correction order – armed robberies of milk bars – recklessly causing injury – assaulting emergency worker on duty – theft – committing indictable offence whilst on bail – contravention of a condition of bail – other offending – violence against women including family violence – alcohol and drug use – propensity to act impulsively and violently – protection of Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor children – extent of impediments if removed – decision affirmed

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

AATA 3955 (10 November 2023); R Bellamy, Senior Member

MIGRATION – Application for Protection visa after Global Humanitarian visa cancelled on character grounds – where Applicant does not pass the character test – whether there is another reason to decline to exercise the discretion to refuse the visa application – consideration of Ministerial Direction No. 99 – very serious offending contributed to by serious mental illness – no present threat to the community – decision set aside

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

3958 (22 November 2023); W Frost, Member

MIGRATION – review of whether to revoke a decision to mandatorily cancel an Absorbed Persons visa – mandatory cancellation of visa under s501(3A) Migration Act – character test under s501(3A) Migration Act – criminal record of non-citizen – ‘substantial criminal record’ under s501(7) Migration Act – amount of time spent in Australia in formative years – consideration of Ministerial Direction 99 – protection of the Australian community from criminal or other serious conduct – conduct constituting family violence – strength, nature and 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 – ‘another reason’ why decision should be revoked under s501CA(4) – reoffending after being warned of consequences relating to migration status – citizen by chance and circumstance New Zealand citizen – potential impact on New Zealand relations – decision under review affirmed

[**Fred-Tutavaha and Minister for Immigration, Citizenship and Multicultural Affairs**](#) (Migration)

[2023] AATA 3982 (30 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 – where Applicant’s visa was previously mandatorily cancelled but successfully revoked – where ties to minor children, links to the Australian community and impediments outweigh considerations not in favour of revocation – Tribunal finding there is another reason to revoke the mandatory cancellation of the Applicant’s visa – decision under review set aside and substituted

[HSKJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3981 (30 November 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant's Visa – character test – substantial criminal record – offences include numerous offer to sell/supply a prohibited drug offences, aggravated burglary and breaches of family violence restraining orders – Applicant is a 33 year old citizen of Iraq who arrived in Australia as a 19 year old – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor daughter whom the Applicant has not met – expectations of the Australian community – Applicant is the subject of a protection finding – legal consequences of the decision changed on the 84th day that the Tribunal's decision was due because the Applicant was released on a Bridging (Removal Pending) (subclass 070) visa – impact of the High Court's orders in NZYQ on the legal consequences of the decision – extent of impediments if removed to Iraq – impact on victims – Reviewable Decision set aside and substituted

[KVRK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3978 (30 November 2023); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – supply of prohibited drug of indictable quantity – assault occasioning actual bodily harm – 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 – family violence – 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

[Mahmood and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3953 (28 November 2023); A E Burke AO, Member

MIGRATION – applicant is a citizen of Pakistan – applicant held Class WA Subclass 010 Bridging visa – visa mandatorily cancelled under Migration Act – substantial criminal record – delegate of Minister decided not to revoke mandatory cancellation – serious offence - dangerous driving causing death and dangerous driving causing serious injury -consideration of the ministerial direction 99 – primary considerations – protection of the Australian community – nature and seriousness of the conduct – conduct found to be very serious – risk to the Australian community – best interests of minor children in Australia – special consideration – expectations of the Australian community – extent of impediments if applicant removed to Pakistan – links to the Australian community – negligible risk of reoffending found – decision under review set aside and new decision substituted there is another reason to revoke the mandatory cancellation of the visa

[Matangi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 3772 (17 November 2023); S Evans, Member

MIGRATION – visa cancellation under subsection 501(3A) of the Migration Act 1958 (Cth) – cancellation not revoked under subsection 501CA(4) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there another reason why the visa cancellation should be revoked – best interests of minor children – family violence – impediments to removal –where the Applicant suffers from a mental illness that contributed to offending – where mental illness exacerbated by drug use – Direction no. 99 considered – reviewable decision affirmed

[Pajic and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3794 (21 November 2023); A Nikolic AM CSC, Senior Member

MIGRATION - Mandatory visa cancellation – citizen of Croatia – Class AH Subclass 101 Child visa – multiple criminal convictions between 2009 and 2022 – whether another reason to revoke mandatory cancellation – Ministerial Direction no. 99 applied – decision affirmed

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

AATA 3959 (16 November 2023); S Burford, Senior Member

MIGRATION – decision of delegate of Minister to cancel visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – child sexual offences, reporting offences, drug offences – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – family violence – strength, nature and duration of ties to Australia – best interests of children – expectations of the Australian community – extent of impediments if returned to India – impact on victims – decision affirmed

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

AATA 3853 (20 November 2023); A Younes, Deputy President

MIGRATION – refusal to grant visa – failure to pass the character test – supply of prohibited drug in a large commercial quantity – whether to exercise discretion to refuse to grant the visa – Ministerial Direction No. 99 – nature and seriousness of offending conduct – protection of the Australian community – strength nature and duration of ties to Australia – expectations of the Australian community – legal consequences of the decision – decision affirmed

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

AATA 3956 (29 November 2023); J Pennell, Senior Member

MIGRATION – Visa refusal – citizen of New Zealand – Class TY (Subclass 444) visa – Applicant does not satisfy character test – extensive criminal history – drug offences – dishonesty offences – driving offences – prohibited person possess a firearm – whether another reason to revoke mandatory cancellation – Ministerial Direction no. 99 applied – reviewable decision affirmed

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

AATA 4013 (1 December 2023); D Dragovic, Deputy President

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Class AY Subclass 104 Preferential Family visa – substantial criminal record – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction No 99 – citizen of Ethiopia – diagnosis of schizophrenia and florid psychosis – drug and alcohol dependency – protection visa application – appointment of guardian – long history of offending – protection of Australian community – strength, nature and duration of ties to Australia – expectations of the Australian community – legal consequences of decision – decision affirmed

[WPDS and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 3797 (21 November 2023); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include aggravated burglary, numerous possess prohibited drug offences and breaches of court orders – Applicant is a 37 year old citizen of the United Kingdom who arrived in Australia as a seven year old child – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no family violence – strength, nature and duration of ties to Australia – best interests of minor Indigenous daughter – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to the United Kingdom – impact on victims – Reviewable Decision set aside and substituted

[2214533](#) (Migration) [2023] AATA 3132 (14 September 2023); A McLean Williams, Member

MIGRATION – cancellation – Partner (Migrant) (Class BC) visa – Subclass 100 (Spouse) – incorrect information in the visa application – identity details – period of unlawful residence – domestic violence – subsequent cancellation – impact upon the family business – best interests of the children – decision under review set aside

[2312799](#) (Migration) [2023] AATA 3255 (7 September 2023); L Mojsin, Member

MIGRATION – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – periods of unlawful residence – applicant convicted of several offences – intended partner visa application – abiding by visa conditions – No Work condition – failing to report twice – acceptable arrangements to depart Australia – decision under review affirmed

[Ji](#) (Migration) [2023] AATA 3197 (8 September 2023); D McCulloch, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – risk to safety of individual – conviction for assault with suspended sentence and fines – very low risk exists – discretion to cancel visa – circumstances of offending – impulsive and uncharacteristic reaction to emotional interaction – genuine remorse, therapy, counselling and behavioural change program – support of current partner – continuing study and internship, with plans to apply for further visa as pathway to permanent residence – decision under review set aside

[Jokic](#) (Migration) [2023] AATA 3240 (9 August 2023); J Owen, Deputy President

MIGRATION – cancellation – Partner (Residence) (Class BS) visa – Subclass 801 (Spouse) – changes in circumstances not notified – two criminal charges and AVO between making of application and granting of visa – personal circumstances, language, mental health treatment and reliance on representative – genuineness of relationship at the time – charges withdrawn and dismissed, and AVO expired – sponsor took Australian citizen child overseas without applicant’s permission – best interests of child – possibility of indefinite detention and opportunity for applying for bridging visa – decision under review set aside

[Nguyen](#) (Migration) [2023] AATA 3260 (4 October 2023); D Barker, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – genuine and continuing relationship – genuinely intend to marry – genuinely intend to live together – allegation of continuing to reside with a previous spouse – no shared finances – limited international visits – proposed marriage not shared with acquaintances – insufficient evidence – decision under review affirmed

National Disability Insurance Scheme

[Dzajkovska and National Disability Insurance Agency](#) [2023] AATA 3952 (29 November 2023);
Dr L Bygrave, Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria under section 24 or section 25 of the National Disability Insurance Scheme Act 2013 (Cth) are met – where Applicant’s disability is attributable to one or more impairments – where Applicant’s impairments are not, or are not likely to be, permanent – where impairments do not result in a substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, activities – where impairments affect capacity for social or economic participation – where Applicant is not likely to require support under the NDIS for her lifetime – where Applicant does not meet the early intervention requirements – decision affirmed

[Daniels and National Disability Insurance Agency](#) [2023] AATA 3854 (24 November 2023); P Hunter, Member

Scheuermann’s disease, degenerative disc disease, radiculopathy, osteoarthritis, Chronic Obstructive Pulmonary Disease, anxiety, Post Traumatic Stress Disorder and depression – Whether impairments from Scheuermann’s disease, radiculopathy, osteoarthritis and Chronic Obstructive Pulmonary Disease are permanent – whether the early intervention requirements are met – decision affirmed

[Dewar and National Disability Insurance Agency](#) [2023] AATA 3884 (20 November 2023); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – application for review of a decision to grant the Applicant access to the National Disability Insurance Scheme – Applicant meets access requirements of the National Disability Insurance Scheme Act 2013 (Cth) – 42D(4)(b)(i) AAT Act – grant of access made on remittal – review of new decision following remittal – application misconceived – no reasonable prospect of success – abuse of the Tribunal process – 42B AAT Act – application dismissed

[GFWJ and National Disability Insurance Agency](#) [2023] AATA 3789 (17 November 2023); D Katter, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – whether requested additional support is reasonable and necessary pursuant to sub-section 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – decision under review affirmed

[Kisela and National Disability Insurance Agency](#) [2023] AATA 4014 (30 November 2023); P Smith, Member

NATIONAL DISABILITY INSURANCE SCHEME – Application to review a decision made by 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 disability requirements as set out in section 24 of the NDIS Act or alternatively 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 of the activities prescribed in subsection 24(1)(c) of the NDIS Act – commonly used items – whether rule 5.8(a) of the National Disability Insurance Scheme (Becoming a Participant) Rules 2016 applies – whether the Applicant is likely to require the support under the NDIS for her lifetime for the purpose of subsection 24(1)(e) of the NDIS Act – whether the provision of early intervention supports for the Applicant is likely to benefit her by reducing the Applicant’s future needs for supports in relation to her disability for the purpose of 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 for the purpose of subsection 25(3) of the NDIS Act – decision under review affirmed

Practice and Procedure

[Nolan and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3885 (24 November 2023); Senior Member George

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

[O’Hara and Comcare](#) (Compensation) [2023] AATA 3814 (15 November 2023); S Webb, Member

PRACTICE & PROCEDURE – compensation for injury – determination Applicant should undertake a rehabilitation program – program ended in the course of proceedings – subsequent rehabilitation determinations – application for dismissal – review of past rehabilitation program – alleged purchase of rehabilitation items – potential for reimbursement of costs incurred – not presently established proceedings lack utility – application for dismissal held over – directions issued

PRACTICE AND PROCEDURE – application for extension of time to lodge application for review – decision not reviewable by the Tribunal – application refused

PRACTICE AND PROCEDURE – application for review of deemed decision of rehabilitation authority – determination Applicant should undertake a rehabilitation program – no request for reconsideration by rehabilitation authority – no deemed reviewable decision – no jurisdiction – application dismissed

[Winter and Commissioner of Taxation](#) (Taxation) [2023] AATA 3857 (21 November 2023); S Boyle, Deputy President

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act 1975 – whether Tribunal has power to extend time for the making of an application which was previously dismissed under s 42A(5) – consideration of estoppel – consideration of reinstatement pursuant to s 29(7) – restriction on the power to reinstate is necessary to deliver harmonious goals – s 42(10) – Tribunal does not have power to extend time – application dismissed

TAXATION – Taxation Administrative Act 1953 – pt IVC – s 14ZZC – objection to amended assessment – objection to administrative penalty – application for an extension of time to make an application to the Tribunal for review of objection decision – application dismissed

[Zhou and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 3798 (21 November 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – request for extension of time for lodgement of proposed application for review (EOT Application) – EOT Application opposed by the Respondent – Applicant seeks review of substantive decision to cancel the Applicant’s approval for Australian citizenship by conferral – Applicant failed to attend citizenship ceremony because she was fearful that if she became an Australian citizen at that time, it would have prevented her from being able to undertake imminent pre-arranged work-related travel – considerable lodgement delay of 213 days after expiry of 28-day statutory time limit – consideration of Applicant’s explanation for the delay – Applicant states she did not read, closely, the Decision Under Review which contained a statement in it about her review rights – Applicant claims she was experiencing mental health issues at the relevant time due to personal circumstances – whether any prejudice to the Respondent resulting from belated lodgement of application for review – consideration of public interest and other factors – Tribunal satisfied that it is reasonable in all the circumstances to extend the time for lodgement of the substantive application – EOT Application granted

Professions and Trades

[ProGalar Hub Pty Ltd and Australian Skills Quality Authority](#) [2023] AATA 4012 (1 December 2023); B W Rayment OAM KC, Deputy President

VOCATIONAL EDUCATION AND TRAINING – decision not to register applicant under the Education Services for Overseas Students Act 2000 (Cth) – decision affirmed – decision to suspend all of the applicant’s scope of registration under the National Vocational Education and Training Regulator Act 2011 (Cth) – decision varied to cancel registration

Refugee

[1726389](#) (Refugee) [2023] AATA 3601 (11 August 2023); P Papadopoulos, Member

REFUGEE – protection visa – China – religion – Yiguandao – introduction, initiation and activities in Australia – three return trips, one taking publications – friend jailed and applicant’s name on watchlist – credibility – knowledge, activities and supporting evidence consistent with low-level member – inconsistent and unreliable evidence and no corroboration of activities during return visits – implausible and speculative claims of harm to friends – country information – origins, beliefs, rituals and practices – previously proscribed, now not on official lists of cults – tacit approval of private practice and possible future legalisation – localised and variable legal action against leaders – decision under review affirmed

[1805993](#) (Refugee) [2023] AATA 3287 (7 July 2023); N Goetz, Member

REFUGEE – protection visa – Iran – Federal Court remittal – employment in Iran – prohibited occupation – arrested and summoned to attend court – credibility concerns – inconsistent evidence – departed Iran legally without any issue – flexible approach to the truth – political opinion – critical of the Iranian Government while outside of the country – religion – Christian convert – sole purpose of strengthening refugee claim – failed asylum seeker – decision under review affirmed

[1816797](#) (Refugee) [2023] AATA 3217 (27 June 2023); L Nicholls, Senior Member

REFUGEE – protection visa – Sierra Leone – political opinion – supported the All-People’s Congress party (APC) – fears harm from the Sierra Leone People’s Party (SLPP) – assaulted and suffered an injury in 2012 – decision under review affirmed

[1820416](#) (Refugee) [2023] AATA 3201 (8 June 2023); S Roushan, Senior Member

REFUGEE – protection visa – Burma (Myanmar) – stateless Rohingya – Muslim – obtained Pink Card through the payment of bribes to a broker – does not speak the Rohingya language – applicant’s father involved in pro-Rohingya activities – applicant’s arrest and confiscation of National Registration Card (NRC) – political opinion – opposed to the military rule – participation in protest activities and demonstrations in Australia – financial contributions in support of the National Unity Government (NUG) – particular social group – failed asylum seeker – children in Myanmar – decision under review remitted

[1933888](#) (Refugee) [2023] AATA 3205 (7 July 2023); S Burford, Senior Member

REFUGEE – cancellation – protection visa – Afghanistan – incorrect information in the visa application – family composition – identity details – death of husband – previous visa application – identity documents – Hazara – Shia – diagnosed health and mental health issues – non-refoulement obligations – indefinite detention – decision under review set aside

[2104305](#) (Refugee) [2023] AATA 3325 (12 July 2023); R Shanahan, Member

REFUGEE – protection visa – Pakistan – Federal Court remittal – Pashtun ethnicity – fear of Tehrik-e Taliban Pakistan (TTP) – uncle target of a bomb attack – relatives kidnapped – social media activity – political opinion – Pashtun Tahafuz Movement (PTM) – credibility concerns – inconsistencies with information in student visa application – medical conditions – access to health care – decision under review affirmed

[2212393](#) (Refugee) [2023] AATA 3248 (4 July 2023); P Vlahos, Member

REFUGEE – protection visa – Lebanon – religion – beaten and stabbed by militia group after refusing attempted recruitment – fear of harm from that group and others because of criminal record and former drug use – mental health and inability to access treatment – returnee from western country after long absence and general political, economic, security and social conditions – no family or social networks – application made after spouse visa cancelled – imprisonment and immigration detention, rehabilitation courses, mental health diagnosis and ongoing treatment – country information – forced recruitment not used at the time – claims on religious grounds not accepted – claims on economic, security, social and mental health grounds accepted – decision under review remitted

[2217070](#) (Refugee) [2023] AATA 3370 (1 August 2023); M McAdam, Member

REFUGEE – protection visa – Philippines – family of police officer – threats from criminal suspects before trial – fear of killing – fear of sexual violence – decision under review affirmed

Social Security

[Ahmed and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3923 (28 November 2023); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – Parenting Payment Partnered debt – Austudy debt – whether debts recoverable – whether applicant reported business and rental income – where applicant had unexplained bank deposits – whether unexplained bank deposits to be calculated as income – whether business expenditures taken into account – decision under review set aside and substituted

SOCIAL SECURITY – Disability Support Pension debt – whether debt recoverable – whether income reported – where applicant received rental income – where applicant received loans from friends and relatives – where applicant had unexplained bank deposits – whether unexplained bank deposits to be calculated as income – whether debt can be waived

[Atwell and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3851 (24 November 2023); A E Burke AO, Member

SOCIAL SECURITY – Jobseeker Payment – refusal of benefits – failure to provide requested information – complex asset test assessment – whether qualified – whether reasonable excuse for not providing information – decision under review affirmed

[Chadwick and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3921 (28 November 2023); B Pola, Senior Member

SOCIAL SECURITY – Application of Student Financial Supplement Scheme – where applicant had entered into student loans as a minor and with an intellectual impairment – where applicant was not studying on a full-time basis – whether applicant was entitled to youth allowance and the student loans – where Centrelink were aware of applicant study load and invited applicant to apply for the loans – applicant not entitled to the loans – loans separate contract not voidable under Social Security Act 1991 (Cth) – no common law relief available – decision set aside and substituted

[Pitts and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 3957 (28 November 2023); Senior Member George

SOCIAL SECURITY – disability support pension – applicant in receipt of disability support pension while in gaol – applicant incurred debt – whether appropriate to waive or write off debt – decision under review affirmed

Superannuation

[Townshend and Australian Securities and Investments Commission](#) [2023] AATA 3810 (23 November 2023); B J McCabe, Deputy President

SUPERANNUATION – self-managed superannuation funds – approved SMSF auditor – Commissioner of Taxation referral to regulator – disqualification order issued by ASIC – failure to comply with auditor independence requirements – auditing of funds of immediate family and close family members – whether discretion should be exercised to disqualify applicant from being an approved SMSF or whether another decision should be made – decision affirmed

[Yarahmadi and Commissioner of Taxation](#) (Taxation) [2023] AATA 3811 (22 November 2023); B J McCabe, Deputy President

SUPERANNUATION – release of superannuation on compassionate grounds – whether Reg 6.19A of the Superannuation Industry (Supervision) Regulations 1994 (Cth) is reviewable by the Tribunal – application dismissed pursuant to s42A(4) of the Administrative Appeals Tribunal Act (Cth)

Taxation

[Banktech Group Pty Ltd and Commissioner of Taxation](#) (Taxation) [2023] AATA 3850 (23 November 2023); R Olding, Senior Member

TAXATION – GOODS AND SERVICES TAX – financial supplies – whether supply is an ATM service being a withdrawal from account – whether automatic teller machine service takes trade meaning or ordinary meaning – held ordinary meaning applies – supplies are not ATM supplies – decision affirmed

[Came and Commissioner of Taxation](#) (Taxation) [2023] AATA 3951 (28 November 2023); I Molloy, Deputy President

Application for Review – Objection to Tax Assessment-Foreign Superannuation Funds – transfers to Complying Superannuation Fund – assessability of taxpayer for applicable fund earnings – entitlement to choose assessable to Complying Superannuation Fund – Set Aside and Substituted Decision

[Meakins and Commissioner of Taxation](#) (Taxation) [2023] AATA 3852 (17 November 2023); S Boyle, Deputy President

TAXATION – applications for review of objection decisions – whether assessments excessive or otherwise incorrect – s 14ZZK of Taxation Administration Act 1953 - whether Applicants could claim deductions for property held – whether holding expenses for the property were deductible under s 8.1 of the ITAA 1997 – whether costs incurred in the course of or producing assessable income or the carrying on of a business – whether Applicants had intention to construct something which will produce assessable income – insufficient meaningful action over 17 years to evidence intention – Applicants did not have the requisite degree of commitment to the relevant income producing activity – Steele v DCoT distinguished – whether administrative penalties correctly applied – whether penalties should be remitted in part or in full – reviewable decisions affirmed

[Sladden and Commissioner of Taxation](#) (Taxation) [2023] AATA 3815 (16 November 2023); I Molloy, Deputy President

Taxation – lump sum paid in settlement of claim – characterisation of settlement payment made by insurer under deed of release – ordinary income or statutory income – decision under review affirmed

Veterans' Affairs

[Bawden and Repatriation Commission](#) (Veteran's entitlements) [2023] AATA 3961 (29 November 2023); D Mitchell, Member

VETERANS' AFFAIRS – war widow's pension – whether death was war caused – kind of death – decision under review affirmed

[Seamons and Repatriation Commission](#) (Veteran's entitlements) [2023] AATA 3856 (24 November 2023); B W Rayment OAM KC, Deputy President

VETERAN'S ENTITLEMENTS – whether conditions are related to service – hepatitis C, post-traumatic stress disorder and depression – Royal Australian Navy – decisions under review set aside and remitted

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
Ahkeni and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3573
Khalifeh and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3736
Lyall and Secretary, Department of Social Services	[2023] AATA 3356
QQRK and Commissioner of Taxation	[2023] AATA 3493

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Abuuh v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1091	[2023] FCA 1492
JSMJ v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 4183	[2023] FCA 1466
Korat v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1725	[2023] FCA 1333
RPQB v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3192	[2023] FCA 1419

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 (where there is no existing Statement of Principles)

The AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

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