



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 aatweb@aat.gov.au.

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Recent news

Our end of year arrangements

Our registries will be closed on:

- Monday 26 December 2022
- Tuesday 27 December 2022
- Monday 2 January 2023

You can still contact us using our [online services portal](#) during this period.

Our registries, except for Canberra and Hobart, will be open from Wednesday 28 December to Friday 30 December 2022.

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, you should consider using our [online services portal](#) so that you do not miss the required timeframe for submission.

If you plan to send an application or documents through the post, please be aware that there may be delays in postal delivery during the period.

You can contact us on 1800 228 333.

Bulletin: Last edition for 2022 and first edition for 2023

Please note that the last edition of the Bulletin will be issued on 22 December 2022.

The first edition of the Bulletin for 2023 will be on **16 January 2023**.

We wish you all a safe and happy festive season.

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

[VYZB and Child Support Registrar](#) (Child support second review) [2022] AATA 4069 (1 December 2022) ; K Millar, Senior Member

CHILD SUPPORT – percentage of care – change in percentage of care – whether percentage of care changed – criteria to determine to what extent a parent has care of a child – decision under review is set aside and remitted for reconsideration

[Darwin and Ledger](#) (Child support) [2022] AATA 3970 (27 September 2022); K Dordevic, 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 set aside and substituted

[Jephson and Dowson](#) (Child support) [2022] AATA 3961 (6 October 2022); T Hamilton-Noy, Member

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

[Leavitt and Leavitt](#) (Child support) [2022] AATA 3973 (21 September 2022); M Baulch, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable income of the liable parent was correctly applied – decision under review set aside and substituted

[MacCauley and Shersby](#) (Child support) [2022] AATA 3959 (27 October 2022); M Douglas, Member

CHILD SUPPORT – particulars of the administrative assessment – whether relevant dependent child should have been included from start of case – decision under review set aside and sent back with directions

[Maltby and Gotts](#) (Child support) [2022] AATA 4001 (3 October 2022); K Dordevic, Senior Member

CHILD SUPPORT – departure determination – income, property and financial resources of the liable parent – school fees – a ground for departure established – decision to depart – decision under review set aside and substituted

Citizenship

[Aburumman and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 4180 (7 December 2022); Dr L Bygrave, Member

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

[Aljobori and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 4070 (1 December 2022); Dr Stewart Fenwick, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – national of Iraq – humanitarian visa holder – whether applicant is of good character – prior incident involving disruption of aircraft flight – whether information withheld in the immigration process and in declarations made – no negative security assessment – no other conduct or offending history – substantial physical disabilities – decision affirmed

[Bayu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2022] AATA 4126 (2 December 2022); Dr M Evans-Bonner, Senior Member

CITIZENSHIP – application for citizenship by conferral – eligibility – decision to refuse citizenship – whether Tribunal satisfied of Applicant's identity – inconsistencies in Applicant's documentation and life story – Applicant could make further attempts to obtain identity documents – Reviewable Decision affirmed

[Hossaini and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2022] AATA 4135 (6 December 2022); Mrs J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant meets the character requirements – provision of false documents and information by the applicant – application of citizenship procedural instruction – whether applicant has enduring moral qualities – reviewable decision affirmed

Karunakaran and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 4021 (25 November 2022); Mrs J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the Applicant is of good character at the time of the decision – domestic violence – apprehended violence order – good behaviour bond – failure to disclose convictions – whether reasonable time has passed since offences – reviewable decision affirmed

Uwangabe and Minister for Immigration, Citizenship and Multicultural Affairs (Citizenship) [2022] AATA 4118 (1 December 2022); S Barton, Member

CITIZENSHIP – refusal of application for Australian citizenship by conferral – whether Tribunal is satisfied of Applicant's identity and good character – uncertainty and inconsistencies in the Applicant's life story – the Applicant has provided false information to Australian Government authorities – identity not satisfied – Reviewable Decision affirmed

XTPR and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Citizenship) [2022] AATA 4184 (7 December 2022); Dr L Bygrave, Member

CITIZENSHIP – applications by three sisters for Australian citizenship by descent under section 16 of the Australian Citizenship Act 2007 (Cth) – whether applicants had a parent who was an Australian citizen at the time of their respective births – decisions under review affirmed

Compensation

Booth and Military Rehabilitation and Compensation Commission (Compensation) [2022] AATA 4183 (2 December 2022); Dr M Evans-Bonner, Senior Member

VETERANS' ENTITLEMENTS – claim for compensation – whether Applicant suffered an "injury" which is compensable under s 14 of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – psychological injury – post-traumatic stress disorder, anxiety/ depression, alcohol abuse (secondary alcohol dependency) – whether Applicant's ailments contributed to, to a material degree, by his employment in the Defence Force – bastardisation and physical assaults at Kapooka during recruit training – sexual assault at Watsonia – Commonwealth liable to pay compensation – Reviewable Decision set aside and substituted

EVIDENCE – Respondent questioning reliability of Applicant's evidence due to incorrect information about his service in medical records – expert medical evidence – where Applicant's treating psychiatrist advocating for him – consideration of advantages and disadvantages of treating practitioner compared to independent medical examiner – Recommendations made by Tribunal that information provided to treatment providers by veterans during mental health treatment should not be used to question reliability or credibility

Corporations

[Sherwal and Australian Securities and Investments Commission](#) [2022] AATA 4192 (7 December 2022); Mr P W Taylor SC, Senior Member

CORPORATIONS – banning order under s 920A and 920B – banning an individual from providing financial services – lack of fitness, training competence to provide financial advice – reduction in the period of the ban – reduction in scope of ban – not a fit and proper person – decision varied

Freedom of Information

[Warren; Services Australia and](#) (Freedom of information) [2022] AATA 4191 (2 December 2022); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – request for access to Robodebt documents – Information Commissioner granted access to some but not all documents – Services Australia applies for review – onus on Services Australia to establish that the decision of the Information Commissioner is not justified – objections to evidence – Cabinet documents – application of s 34(1)(d) of the Freedom of Information Act 1982 (Cth) (FOI Act) - interpretation of section 34(3) of the FOI Act – whether disclosure would reveal a Cabinet Deliberation - interpretation of the qualification in s 34(3) as to whether the existence of the deliberation has been officially disclosed - whether Cabinet deliberations were officially disclosed – whether documents are conditionally exempt under s 47C of the FOI Act – public interest test – decision under review is partially set aside

Migration

[Au and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 4040 (28 November 2022); A Nikolic AM CSC, Senior Member

MIGRATION – citizen of New Zealand – mandatory visa cancellation – Class TY Subclass 444 Special Category (Temporary) visa – non-revocation of mandatory cancellation decision – substantial criminal record – failure to pass the character test – Ministerial Direction No. 90 applied – reviewable decision affirmed

[Dobrosavljevic and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4046 (28 November 2022); S Burford, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – long history of criminal offending – Direction No 90 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – expectations of the Australian community – strength, nature and duration of ties to Australia – international non-refoulement – Other consideration absorbed person claims – Applicant is a 63 year old man who arrived in Australia as an 11 year old – extent of impediments if returned to Serbia – Non-Revocation Decision affirmed

[FPJF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4045 (24 November 2022); G Lazanas, Senior Member

MIGRATION – mandatory visa cancellation – Applicant does not pass the character test – whether there is another reason why the visa cancellation should be revoked – consideration of Ministerial Direction No. 90 – nature and seriousness of offending conduct – sexual offences – risk of re-offending – protection of the Australian community – expectations of the Australian community – the best interests of minor children – strength, nature and duration of ties to Australia – impediments to removal – decision under review set aside and substituted

[GKYW and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2022] AATA 4119 (21 November 2022); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of Class WE Subclass 050- Bridging (General) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – where Applicant committed offences as a minor but was sentenced when he became an adult- consideration of possibility of indefinite detention- decision under review affirmed

[HDWH and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]
AATA 4064 (18 November 2022); B J Illingworth, 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 – serious criminal record – assaulting a police officer – public nuisance – armed robbery – grievous bodily harm - possession of drugs – criminal record when Applicant was a child - whether “another reason” to revoke visa cancellation – Ministerial Direction 90 – decision under review is affirmed

[Himone and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4142 (1 November 2022); D Cosgrave, Member

MIGRATION – Non-revocation of a mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – failure to pass good character test – substantial criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – decision affirmed

[JTYX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022]
AATA 4068 (2 November 2022); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – serious offending including family violence
– abuse of alcohol – real risk of re-offending – interests of minor children – child with mental-health concerns – impediments on removal – applicant a South Sudanese national – extreme hardship in South Sudan – alternative hypothesis of indefinite detention also considered – on either hypothesis correct or preferable decision favours revocation of the cancellation decision – decision set aside and cancellation revoked

[Misi and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 4140 (26 October 2022); Mr S Evans, Member

MIGRATION – Non-revocation of mandatory cancellation – Class TY Subclass 444 Special Category (Temporary) Visa – where the Applicant does not pass the character test by virtue of his “substantial criminal history” – whether there is “another reason” to revoke the mandatory cancellation – consideration of Ministerial Direction 90 – allegations of family violence from untested police reports – evidence does not rise to level to contemplated in Direction 90 – consideration not engaged - interests of minor children – impediments to removal - decision under review set aside and substituted

[NDBR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4042 (28 November 2022); P Britten-Jones, Deputy President

MIGRATION – refusal to grant visa on character grounds – whether discretion to refuse to grant a visa should be exercised – applicant committed a crime of a sexual nature against a child – applicant has been in detention for eight and a half years – primary considerations of protection and expectations of the Australian community – strong countervailing consideration of indefinite detention – weighing up all considerations – decision under review affirmed

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4065 (30 November 2022); The Hon. D Cowdroy AO KC, 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. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – best interests of minor child – expectations of the Australian community – strength, nature and duration of ties to Australia – impediments to removal – decision set aside and substituted

[Opelu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4222 (9 December 2022); Mr S. Webb, Member

MIGRATION – mandatory cancellation of visa – representations – decision not to revoke cancellation – substantial criminal record – visa applicant fails character test – consideration whether another reason for revocation – Ministerial Direction No. 90 – primary and other relevant considerations – protection of Australian community from criminal or other serious conduct – family violence – best interests of minor children – expectations of the Australian community – extent of impediments if removed – links to the Australian community – balance of considerations weigh for/against revocation – decision set aside and substituted

PHMK and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs

(Migration) [2022] AATA 4144 (20 October 2022); Dr L Kirk, Senior Member

MIGRATION – refusal to grant protection visa on character grounds pursuant to s 501(1) of the Migration Act 1958 (Cth) – Applicant has substantial criminal record – whether there is another reason not to exercise discretion – Direction 90 – protection of the Australian community – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – extent of impediments if removed – links to the Australian community – decision set aside and remitted for reconsideration with directions

PJJT and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 4071 (25 November 2022); J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa) under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 90 - decision under review is affirmed

QCRG and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 4137 (6 December 2022); K Raif, Senior Member

MIGRATION – mandatory cancellation of visa – Protection (Class XA) visa – visa cancelled under s 501(1) of the Migration Act 1958 (Cth) – applicant did not pass character test – substantial criminal record – aggravated sexual intercourse – indecent assault – Ministerial Direction No. 90 – primary considerations – protection of the Australian community – nature and seriousness of applicant's conduct – seriousness of offending and future risk – expectations of the Australian community – international non-refoulement obligations – other considerations – extent of impediments if removed – impact on victims – links to the Australian community – strength, nature and duration of ties to Australia – other factors – possibility of indefinite detention – decision under review set aside and substituted

Ryan and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2022] AATA 4204 (21 September 2022); L Benjamin, Member

MIGRATION – Non-revocation of mandatory cancellation of a Transitional (Permanent) (Class BF) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review affirmed

[Sequera and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4020 (28 November 2022); C Puplick AM, Senior Member

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

[ZNKS and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 4223 (9 December 2022); A Nikolic AM CSC, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Syria – Class XB (Subclass 200) Refugee visa – convicted of sexual offending against a child – where victim was family member – failure to pass good character test – substantial criminal record – mandatory visa cancellation – whether another reason to revoke the mandatory cancellation – Ministerial Direction no. 90 applied – decision affirmed

[Ali](#) (Migration) [2022] AATA 3856 (1 November 2022); E Howard, Member

MIGRATION – Partner (Temporary) (Class UK) – Subclass 820 (Partner) – genuine continuing relationship – registered civil partnership – financial, household and social aspects of relationship and nature of commitment – living separately while sponsor’s mother visiting and unaware of relationship – COVID travel restrictions prevent her departure – mother’s prejudice and parties’ plan to inform her when visa granted – applicant’s contribution to sponsor’s mortgage – evidence from applicant’s colleague/friend – length of relationship – decision under review remitted

[Bacaj](#) (Migration) [2022] AATA 3873 (26 October 2022); D Dragovic, Deputy President

MIGRATION – cancellation – Bridging B (Class WB) visa – Subclass 020 (Bridging B) visa – Federal Circuit Court remittal – risk to the health and safety of the Australian community – applicant charged with criminal offences – applicant’s criminal charges reduced – seeking further studies – Australia based family members – work for one employer over 6 months – three year waiting period – contribution to the Australian community – decision under review affirmed

[Patel](#) (Migration) [2022] AATA 3869 (25 October 2022); M Cooke, Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – incorrect answers in the visa application – applicant’s husband’s employer address – employer’s business does exist at the premises – business leasing arrangements – intends to work for the nominator – power to cancel the visa does not arise – decision under review set aside

[Wilson Brewing Company](#) (Migration) [2022] AATA 3851 (3 November 2022); A Mendes Da Costa, Member

MIGRATION – application for approval of nomination of position – direct entry nomination stream – safety inspector – full-time employment for two years – financial documentation and oral evidence from director of nominating company and nominee – substantial income but financial losses while establishing and expanding business – additional finance through crowdfunding – nominee employed for six years already – genuine need for position and difficulty in recruiting skilled and experienced employees – decision under review set aside

[1913777](#) (Migration) [2022] AATA 3954 (17 October 2022); A Mercer, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 (Business Innovation and Investment – Provisional) – investor stream – secondary applicant members of family unit – primary applicant not in migration zone at relevant times and visa refused with no right of merits review – application for judicial review dismissed – primary applicant’s decision reviewable on issue of business and personal assets, but not on issue of not being in migration zone – applicants’ visa and review applications separate from primary applicant’s – affected by primary applicant’s decision but not ‘subject’ of it – first applicant wife not invited by minister to apply for visa so unnecessary to consider whether she can satisfy primary criteria – decision under review affirmed

National Disability Insurance Scheme

[GMXV and National Disability Insurance Agency](#) [2022] AATA 4038 (25 November 2022); K. Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision relating to decision to approve a statement of participant supports for Applicant – Applicant has autism spectrum disorder and severe intellectual disability – Applicant living with father with frequent outings with mother – transport supports – whether duplication of supports –management of funding under NDIS plan – decision under review set aside and remitted with directions

[Mottley and National Disability Insurance Agency](#) [2022] AATA 4048 (29 November 2022); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether Applicant’s disability meets disability requirements – consideration of section 24 National Disability Insurance Scheme Act 2013 (Cth) – whether impairment is permanent or likely to be permanent – permanence criteria not satisfied – decision under review affirmed

[XCFB and National Disability Insurance Agency](#) [2022] AATA 4121 (2 December 2022); K. Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access request – whether access criteria under s 21 of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act) are met – whether “disability requirements” under s 24 or “early intervention requirements” under s 25 of the NDIS Act are met – Applicant has somatic symptom disorder, anxiety, depression, hypermobility Ehlers-Danlos syndrome, orthostatic blood pressure intolerance, irritable bowel syndrome, gastroparesis, chronic fatigue and pain – whether impairments are, or likely to be, permanent – whether impairments have resulted in substantially reduced functional capacity in any one of the six prescribed activities – credibility issues – Respondent alleges Applicant has exaggerated her symptoms including during functional assessment conducted by occupational therapist and neuropsychologist – reliance upon neuropsychological test results to show Applicant did not make a genuine effort to perform during assessments – decision under review set aside and substituted with decision to grant access to the Applicant to the NDIS

PRACTICE AND PROCEDURE – contested interlocutory application for a confidentiality order to be made under s 35 of the Administrative Appeals Tribunal 1975 (Cth) – consideration of general principle in NDIS Act in respect of dignity and privacy – interlocutory application granted ex tempore

Practice and Procedure

[Bolton and Australian Securities and Investments Commission](#) [2022] AATA 4215 (7 December 2022); The Hon. M Groom, Senior Member

PRACTICE AND PROCEDURE – access to documents – three categories of objections considered – whether documents subject to professional legal privilege claims – whether Harman implied undertaking claims apply – whether the documents are of relevance – partial release of documents to applicant allowed for access and inspection

[Dunn and National Disability Insurance Agency](#) [2022] AATA 4061 (30 September 2022); M Mischin, Deputy President

National Disability Insurance Scheme – application for review of plan

Practice and Procedure – application to stay decision under review pending hearing and final decision

[Grammar and National Disability Insurance Agency](#) [2022] AATA 4044 (9 November 2022); M Mischin, Deputy President

National Disability Insurance Scheme – application for review of decision

Practice and Procedure – application for review lodged out of time – application to extend time to lodge application – cogency of reasons and explanation

[Kanapathipillai and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4124 (2 December 2022); C Puplick AM, Senior Member

PRACTICE AND PROCEDURE – application for an extension of time – disability support pension – further request for portability extension – no cogent reasons for delay – no merits or reasonable prospects of success – extension of time refused

[Kassem and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2022] AATA 4043 (25 November 2022); Theodore Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BF Transitional (permanent) visa – where review application to Administrative Appeals Tribunal lodged outside the prescribed statutory period of nine days - where the non-revocation decision emailed to the representative recorded on Department of Home Affairs Form 956- where the review rights was placed at the end of the decision notification package- whether notification was validly made- Migration Regulations 5.02- whether Form 956 validly authorised nomination of a representative - whether the review rights factsheet not being placed upfront invalidated the decision notification- issue of Tribunal's jurisdiction to hear and determine the matter- No jurisdiction found – application dismissed.

[MLTR and National Disability Insurance Agency](#) [2022] AATA 4128 (2 December 2022); T Bubutievski, Member

PRACTICE AND PROCEDURE – objection by the Applicant to the issue of summons and the Respondent's inspection of material produced under summons – relevance of the material produced under summons to the issues raised by the reviewable decision – objections disallowed

[Moncrieff; Secretary, Department of Social Services and](#) (Social services second review) [2022] AATA 4052 (29 November 2022); D Mitchell, Member

PRACTICE AND PROCEDURE – jurisdiction – power to review entire decision afresh – where Social Services and Child Support Division decision was made pursuant to section 43(1)(c)(ii) of the Administrative Appeals Tribunal Act 1975 (Cth) – decision under review to be heard afresh

[Pelovski and National Disability Insurance Agency](#) [2022] AATA 4185 (7 December 2022); P Goward, Senior Member

PRACTICE AND PROCEDURE – interlocutory application – recusal – objection to the Tribunal's constitution – whether the applicant has met the test to prove apprehended bias as a ground for recusal – interlocutory application refused

[RFPC and National Disability Insurance Agency](#) [2022] AATA 4218 (7 September 2022); K Buxton, Senior Member

PRACTICE AND PROCEDURE – NATIONAL DISABILITY INSURANCE AGENCY – summons – objection to inspection of summons documents – whether the documents produced under summons fall outside the scope of the summons request – whether the documents produced under summons are immaterial and irrelevant – Applicant’s objection upheld

[Ryan and National Disability Insurance Agency](#) [2022] AATA 4186 (17 November 2022); D. Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access to scheme – application for review of a decision that applicant does not meet the access requirements of the National Disability Insurance Scheme Act 2013 (Cth) – whether applicant was aged under 65 years when access request made – no reasonable prospect of success – application dismissed

[Ryder and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022] AATA 4179 (6 December 2022); A George, Senior Member

MIGRATION – Class TY Subclass 444 Special Category (Temporary) visa – matter dismissed for non-appearance

[SNSV and Commissioner of Taxation](#) (Taxation) [2022] AATA 4047 (29 November 2022); R Olding, Senior Member

TAXATION – allocation of matters to Small Business Taxation Division – where applicant denied he carried on a business – whether a “small business taxation decision” - matter allocated to Taxation and Commercial Division

Refugee

[1709503](#) (Refugee) [2022] AATA 3778 (7 September 2022); D McCulloch, Member

REFUGEE – protection visa – Malaysia – member of a particular social group – homosexual woman – school and adult relationships – suspension from school, punishment by mother, pressure from parents to marry and harassment in workplace – detailed and consistent evidence – online and social activity in Australian – country information – decision under review remitted

[1821127](#) (Refugee) [2022] AATA 3735 (31 August 2022); P Katsambanis, Member

REFUGEE – Protection Visa – Vietnam – HIV positive – applicants’ son had now been granted Australian citizenship – particular social groups – people living with HIV in Vietnam – women living with HIV in Vietnam – severe stigma and discrimination – lack of adequate access to medical treatment – effective protection measures not available – decision under review remitted

[2109844](#) (Refugee) [2022] AATA 4198 (8 September 2022); M Bishop, Senior Member

REFUGEE – protection visa – Ethiopia – ethnicity – Oromo – imputed political opinion – family's involvement in political processes of Oromo and Ethiopia – persecution of family members and applicant – applicant's involvement with Oromo diaspora in Australia – social group – medical worker – state protection unavailable – decision under review remitted

[1733091](#) (Refugee) [2022] AATA 3811 (12 September 2022); T Hamilton-Noy, Member

REFUGEE – Protection visa – Pakistan – membership of the particular social group – perceived as being gay and as having a political opinion opposing the ideology of the Taliban – voluntary return to Pakistan in 2009 – applicant's wife defaulted on a car loan – any risk to the applicant is localised to Malakand – delay in lodging protection application – decision under review affirmed

[1907568](#) (Refugee) [2022] AATA 4146 (5 October 2022); G Cullen, Member

REFUGEE – protection visa – Bangladesh – Federal Circuit Court remittal – child applicant born in Australia after refusal of parents and sister's protection visa application – refusal affirmed on review – father's political opinion – party supporter, member and leader – party previously in power, now in opposition – general insecurity and violence – returnees imputed to be wealthy – health conditions and unfamiliarity with culture – father's credibility – inconsistent claims and evidence – political activity in home country and Australia – delay in applying for protection after change of government – country information – family's long residence – sister now an Australian citizen and applicant close to meeting residence requirement – sister and applicant thriving academically, emotionally and socially – referred for ministerial intervention – decision under review affirmed

[1714992](#) (Refugee) [2022] AATA 4141 (7 October 2022); B Darcy, Member

REFUGEE – protection visa – Malaysia – religion – conversion to Christianity – Seventh Day Adventist – apostasy – mixed religion relationship – physical assault – not wearing the Islamic headscarf – economic hardship – state protection – decision under review affirmed

[1824560](#) (Refugee) [2022] AATA 4196 (17 October 2022); B Darcy, Member

REFUGEE – protection visa – Iran – religion – apostate from Islam to atheism – ethnicity – Faili Kurd – harassed and questioned by security and intelligence agents – weblog with anti-religion and government and pro-secularism content – monitored and blocked by cyber police – social media activity in Australia, some under actual name – detailed and consistent claims and evidence – adverse information not relevant and given no weight – returned failed asylum seeker – country information – cumulative factors – more than remote chance of serious harm amounting to persecution – decision under review remitted

Social Services

[Covello and Secretary, Department of Health and Aged Care](#) (Social services) [2022] AATA 4181 (11 November 2022); Mr A Maryniak KC, Member

AGED CARE ACT - Where Applicant holds power of attorney for late father - whether applicant's father eligible for financial hardship supplement - at all relevant times assets exceeded threshold - significant expenditure on behalf of father - whether expenses can retrospectively offset assets - decision affirmed

[Danielson and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4139 (5 December 2022); Brigadier AG Warner, AM LVO (Retd), Member

SOCIAL SECURITY – disability support pension – overpayment due to not reporting wife's income – debt not disputed – whether write off or waiver provisions available – whether debt can be written off – administrative error – whether overpayment received in good faith – special circumstances – decision under review affirmed

[Edmonds and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4138 (6 December 2022); D Mitchell, Member

SOCIAL SECURITY – disability support pension – DSP – 20 points across multiple impairment tables, whether there is a continuing inability to work, whether the Applicant had actively participated in a program of support, whether an exemption to participation applied – decision under review affirmed

[JRQF and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4066 (30 November 2022); Ms A E Burke AO, Member

SOCIAL SECURITY – parenting payment single - overpayment – debt due to the Commonwealth – did not advised return to work – did not report fortnightly income - should recovery of debt be written off or waived – debt not attributable solely to error made by Centrelink – whether applicant knowingly made false statements or gave false representation in claims - special circumstances not found – decision under review affirmed

[Loone and Secretary, Department of Social Services](#) (Social services second review) [2022] AATA 4220 (18 October 2022); Mr A Maryniak KC, Member

SOCIAL SECURITY - Disability support pension - Impairment Tables in the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 - where only one claimed condition fully diagnosed, treated and stabilised - where other conditions not fully diagnosed, treated and stabilised - whether condition attracted sufficient points in Impairment Tables to qualify - decision affirmed

[MANIKANTAN and Secretary, Department of Education](#) (Social services second review) [2022]
AATA 4051 (24 November 2022); The Hon. J Pascoe AC CVO, Deputy President

SOCIAL SECURITY LAW – cancellation of newstart allowance payments – where the applicant failed to enter into a new employment pathway plan – whether the Secretary could require the applicant to enter into a new EPP – whether the original EPP had expired – whether notice was valid under s 68(2) – whether the applicant failed to meet his mutual reporting obligations – whether cancellation was automatic or manual – decision under review affirmed

[McCluskie and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 4221 (1 September 2022); Emeritus Professor P A Fairall, Senior Member

SOCIAL SECURITY – debt – Home Equity Access Scheme – whether valid loan created – no ground for waiver of debt – decision affirmed

[McDonald and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 4207 (8 December 2022); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – age pension – deprivation of assets – whether the applicant was an attributable stakeholder – whether the applicant deprived himself of the attributable assets of the company – calculation of rate of age pension – reviewable decision affirmed

[Meehan; Secretary, Department of Social Services and](#) (Social services second review) [2022]
AATA 4182 (7 December 2022); B W Rayment OAM KC, Deputy President

SOCIAL SECURITY – age pension – appeal by the Secretary of the Department of Social Services – whether there are special circumstances that make it desirable to waive recovery of debt – failure to notify of additional property asset – decision to waive debt affirmed

[Raleigh and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 4041 (28 November 2022); R Bellamy, Senior Member

SOCIAL SECURITY – disability support pension – DSP – whether medical conditions fully diagnosed, fully treated and fully stabilised – whether 20 points or more under the impairment tables during the relevant period – decision under review affirmed

[Wilson and Secretary, Department of Social Services](#) (Social services second review) [2022]
AATA 4067 (30 November 2022); P Ranson, Member

SOCIAL SECURITY — Parenting Payment Single — where applicant misreported her income — where applicant may be a member of Robodebt class action — where applicant applies for waiver of debt due to illnesses – decision under review varied

Taxation

[Tanddo and Commissioner of Taxation](#) (Taxation) [2022] AATA 4143 (8 August 2022); B J McCabe, Deputy President

TAXATION - whether applicant exempt from tax liabilities - where applicant deployed overseas by employer - whether applicants deployment subject to designation - decision affirmed

[The Trustee for the NFTA Unit Trust and Commissioner of Taxation](#) (Taxation) [2022] AATA 4132 (5 December 2022); D Mitchell, Member

TAXATION – goods and services tax (GST) – input tax credits (ITCs) – eligibility to claim input tax credits – taxpayer’s burden to prove assessment excessive or otherwise incorrect – lack of substantiation – GST applied in a blanket manner – lack of corroborating evidence to link transaction to creditable purpose – ITCs properly disallowed – recklessness shown on the evidence – taxpayer’s burden to prove the decision should not have been made or should have been made differently - decisions under review affirmed

[XPTC and Commissioner of Taxation](#) (Taxation) [2022] AATA 4147 (28 November 2022); Mr R Reitano, Member

TAXATION – INCOME TAX – review of objection decision – whether allowable deductions – fees paid in settlement of court proceedings – legal fees – whether settlement or legal fees incurred in gaining or producing assessable income – essential character of expenditure from practical business point of view – expenditure for multiple purposes – whether expenditure of a private or domestic nature – whether expenditure of a capital nature – decision varied

Trade and Commerce

[Island Ajna Medicinal Herbs Pty Ltd and Minister for Health and Aged Care](#) [2022] AATA 4062 (30 November 2022); Dr Stewart Fenwick, Senior Member

NARCOTIC DRUGS – medicinal cannabis licence – cultivation of cannabis plants – fit and proper person requirements – body corporate – previous business experience of directors and officers – financial background and circumstances – capacity of body corporate – suitability of location – 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
Ba and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 191
English and Minister for Immigration, Citizenship, and Multicultural Affairs	[2022] AATA 3627
Falaniko and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 1781
HBMH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2825
Nguyen and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2357
Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3169
Sarimsaklio and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 3194

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Australian Securities and Investments Commission v Gilliland	[2020] AATA 2660	[2022] FCA 1421
BQHJ v Minister for Immigration, Citizenship and Multicultural Affairs	[2020] AATA 3734	[2022] FCAFC 187 [2021] FCA 372
Cleanaway Operations Pty Ltd v Torr	[2022] AATA 2134	[2022] FCA 1172
Healey v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 4309	[2022] FCAFC 188 [2022] FCA 449
Kwatra v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 3147	[2022] FCAFC 194 [2022] FCA 680
Luck v Secretary of Services Australia	[2010] AATA 6	[2022] FCAFC 195 [2016] FCA 950

Rutherford (Bankrupt) v Inspector-General in Bankruptcy	[2022] AATA 403	[2022] FCA 1469
Sexton v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 320	[2022] FCA 1463
Va'a v Minister for Immigration, Citizenship, Multicultural Affairs and Migration Services	[2022] AATA 573	[2022] FCA 1412

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