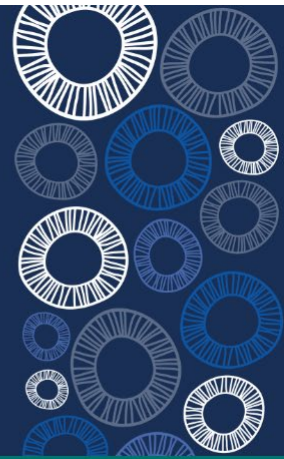




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

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

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

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

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Recent developments

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

[Altman and Altman](#) (Child support) [2023] AATA 4004 (17 October 2023); K Dordevic, Senior Member

CHILD SUPPORT – non-agency payment – condition for crediting as prescribed payment not satisfied – refusal to credit non-agency payment – decision under review affirmed

[Blakley and Mossey](#) (Child support) [2023] AATA 4000 (3 October 2023); R Ellis, Senior 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 set aside and substituted

[Coombes and Bostock](#) (Child support) [2023] AATA 4007 (9 October 2023); K Dordevic, Senior 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 set aside and substituted

[Harrison and Harrison](#) (Child support) [2023] AATA 4002 (17 October 2023); C Breheny, Member

CHILD SUPPORT – departure determination – whether there was a ground for departure – no ground for departure – application to depart is refused – decision under review affirmed

[Sedgemore and Child Support Registrar](#) (Child support) [2023] AATA 4003 (3 October 2023); R Ellis, Senior Member

CHILD SUPPORT – refusal to grant an extension of time to object – departure determination – objection submitted within relevant timeframe – extension of time not required – decision under review set aside and substituted

Citizenship

[Singh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 4031 (30 November 2023); S Evans, Member

CITIZENSHIP – Application for Australian citizenship by conferral – Refusal of citizenship application – Whether Applicant has satisfied section 21(2)(h) – Good character requirement – Citizenship Policy – Meaning of 'good character' – Enduring moral qualities – Common assault – domestic violence – traffic offences – Inconsistent evidence – not positively satisfied – Decision under review affirmed

Compensation

[Bedford and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 4094 (11 December 2023); The Hon. J Pascoe AC CVO, Deputy President

COMPENSATION – Injury occurring prior to commencement of Safety, Rehabilitation and Compensation Act 1988 (Cth) – Transitional provisions – whether there is a causal nexus between Applicant’s injuries and employment – whether injury sustained during travel from his employment – where Applicant lived on base – reviewable decision affirmed

[Webber and Comcare](#) (Compensation) [2023] AATA 4032 (4 December 2023); A McLean Williams, Member

Workers Compensation (Cth) - Injury – Disease – Ailment – Whether injury arose out of or during the course of employment – Whether injury arising out of or during the course of employment aggravated an underlying condition – Pre-existing condition – decision under review affirmed

Customs and Excise

[Vega Industries Australia Pty Ltd and Comptroller-General of Customs](#) [2023] AATA 4091 (8 December 2023); D K Grigg, Senior Member

CUSTOMS – Customs Act 1901 – tariff concession orders – applicant importer of high chrome grinding balls – goods claimed to be substitutable produced in Australia in ordinary course of business – whether substitutable goods – relevance of superiority, quality or price – whether corresponding use “reasonable” or “commercial” use – decision under review affirmed

Education and Research

[Active Sports Management Pty Ltd and Industry Innovation and Science Australia](#) [2023] AATA 4078 (6 December 2023); A Poljak, Senior Member

TAXATION – Research and development – R&D Tax Incentive – Whether activities undertaken by the Applicant are eligible research and development activities under the Industry Research and Development Act 1986 (Cth) and Income Tax Assessment Act 1997 (Cth) – Decision under review affirmed

Freedom of Information

[Webster and Commonwealth Superannuation Corporation](#) (Freedom of information) [2023] AATA 4137 (14 December 2023); D Mitchell, Member

FREEDOM OF INFORMATION – whether all reasonable steps have been taken to find documents – decision under review affirmed

Health

[Pharmacy NEO Pty Ltd and Secretary, Department of Health and Aged Care](#) [2023] AATA 4072 (7 December 2023); R Cameron, Senior Member

HEALTH LAW – cancellation of applicant’s approval to supply pharmaceutical benefits – pharmacy in Melbourne CBD – pharmacy not carrying on business as a pharmacist at approved premises – pharmacy not accessible by members of the public – discretion enlivened – whether discretion to cancel approval should be exercised – relocation of pharmacy to temporary location – landlord elected to redevelop site – expired tenancy – premises incorporated into other tenancy – significant deactivation period – failed ACPA application – prompt communication with respondent – exceptional circumstances of COVID-19 pandemic – significant decline in trade – applicant required to vacate premises – decision under review set aside and substituted

Migration

[FRWH and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 4071 (1 December 2023); A Poljak, Senior Member

MIGRATION – Cancellation of Class BB Subclass 155 – Five Year Resident Return visa under section 501(2) – where applicant does not pass the character test – applicant has substantial criminal record – whether the discretion under section 501(2) should be exercised – consideration of Ministerial Direction No. 99 – decision under review is set aside and substituted

[HMYN and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4046 (5 December 2023); J C Kelly, Senior Member

MIGRATION – mandatory cancellation – Applicant failed to pass the character test due to a substantial criminal record – whether there is another reason why the original decision should be revoked – protection of the Australian community – family violence – strength, nature and ties to Australia – expectations of the Australian community – other considerations – decision set aside

[Jagan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4048 (19 September 2023); A McLean Williams, Member

MIGRATION – Mandatory cancellation of visa – failure to pass character test – whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – Special Category (Class TY) (Subclass 444) visa – citizen of New Zealand – protection of the Australian community – seriousness of offence – risk of reoffending – domestic violence – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of decision – extent of impediments if removed – decision affirmed

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

AATA 4117 (7 December 2023); R Reitano, Member

MIGRATION – discretion under s.501(1) – visa refusal – effect of past periods of prolonged detention – protection of the Australian community – expectations of the Australian community – relevance of personal circumstances to weight to be given to expectations of Australian community – relevance of two periods of prolonged detention – best interests of children – child with limited life expectancy – nature duration and ties to community – legal consequence of decision where applicant holds Bridging (Removal Pending) (subclass 070) visa – monitoring – curfew – exposure to imprisonment for breach of conditions – onerous conditions – restrictions on freedom – invasion of privacy – decision set aside with direction not to exercise discretion

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

AATA 4069 (7 December 2023); The Hon Justice E Kyrou, President

MIGRATION – refusal of application for return (residence) (class BB) visa where visa applicant does not pass the character test – visa applicant remains offshore – whether discretion conferred by s 501(1) of the Migration Act 1958 to refuse visa should be exercised.

MIGRATION – Ministerial Direction 99 – visa applicant has strong ties to Australia – that consideration outweighs other considerations – decision under review set aside and remitted with a direction that discretion conferred by s 501(1) should not be exercised

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

AATA 4126 (12 December 2023); R Reitano, Member

MIGRATION – discretion under s 501(1) of the Migration Act 1958 (Cth) – visa refusal – protection of the community – very serious criminal offending – risk of reoffending – expectations of the Australian community – best interests of children – nature duration and ties to community – legal consequence of decision – relevance of conditions of Bridging (Removal Pending) (subclass 070) – decision to refuse visa affirmed

[Manebona and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 4123 (12 December 2023); Hon. J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class BC Subclass 100 Spouse visa under section 501(3A)- where Applicant does not pass the character test – Applicant has substantial criminal record – family violence- whether the discretion to revoke the visa cancellation under section 501CA (4) should be exercised – consideration of Ministerial Direction No. 99 - decision under review is affirmed

[Mate and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4129 (14 December 2023); Mrs J C Kelly, Senior Member

MIGRATION – mandatory cancellation of visa under s 501CA(4) because applicant did not pass the character test – whether there is another reason why the cancellation decision should be revoked – Ministerial direction no.99 – protection of the Australian community – strength, nature, duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – extent of impediments if removed – reviewable decision set aside

[NTCV and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4092 (10 November 2023); R Bellamy, Senior Member

MIGRATION – revocation of mandatory cancellation of a Class Subclass 155 Resident Return 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 – intentionally sexually touching two children between 10 and 16 years old – no other offending history – low risk of re-offending – over 50 years of positive contribution to Australian community – elderly and in poor health – disabled adult child – decision under review set-aside

[Omani and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4119 (28 November 2023); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category Temporary visa – whether the Applicant passes the character test – where the applicant has a substantial criminal record - whether there is another reason why the decision to cancel the Applicant's visa should be revoked – consideration of Ministerial Direction No. 99 – where Applicant's offending included offences of actual violence - decision under review affirmed

[SPRT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4049 (5 December 2023); J Owen, Deputy President

MIGRATION – mandatory cancellation of Class BF Transitional (Permanent) visa under section 501(3A) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the discretion to revoke the visa cancellation under section 501CA(4) should be exercised – consideration of Ministerial Direction No. 99 – decision under review affirmed

[Thompson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4076 (5 December 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record including dangerous driving and family violence – whether there is 'another reason' to revoke mandatory cancellation decision – where applicant accepted as a Yorta Yorta man by an Elder of that community – the countervailing considerations of ties to Australia and best interests of minor children outweigh the primary considerations of protection and expectations of the Australian community and family violence – decision set aside and substituted

[TVVT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 4034 (4 December 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant's visa – applicant has substantial criminal record including violence after periods of prison and detention – whether there is 'another reason' to revoke mandatory cancellation decision – he would face significant impediments and serious risk of harm if removed to South Sudan – the primary considerations of the protection and expectations of the Australian community outweigh the countervailing considerations – decision under review is affirmed

[YYTF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4038 (29 November 2023); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – primary considerations – protection of the Australian community from criminal or other serious conduct – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – other considerations – legal consequences of the decision – NZYD decision - Applicant released on Bridging Visa – monitoring conditions – decision affirmed

[Harsimran Kaur](#) (Migration) [2023] AATA 3525 (19 October 2023); J Murphy, Member

MIGRATION – Skilled Regional Sponsored (Provisional) (Class SP) visa – Subclass 489 (Skilled – Regional (Provisional)) – false or misleading information given in relation to visa application – confidential adverse information that applicant never worked at claimed employer in home country and employer’s website created a few days before application made – departmental checks and other concerns raised – not declared that employer operated by applicant’s mother – website created due to increase in customers, with small budget and photos and text suggested by developer – little documentary evidence – small service business and cash payments – no evidence of fraud or deception and insufficient evidence to determine truth of allegations – positive skills assessment – decision under review remitted

[Kumar](#) (Migration) [2023] AATA 3564 (14 July 2023); M Bradford, Member

MIGRATION – cancellation – Student (Temporary) (Class TU) visa – Subclass 600 (Student) – incorrect information and bogus documents provided with application – work history and associated documents – grounds for cancellation conceded – discretion to cancel visa – application prepared by agent in home country – intention to study automotive course, but application specified cookery – told by agent he could change courses in Australia – started course then enrolment cancelled – later enrolled in automotive course before visa cancelled – comprehensive, consistent and plausible explanations – repeated denials that he worked at workplace or signed documents – forensic examination of signatures supports explanations – age and vulnerability – agent acted against instructions to fill gap in study/work history – decision under review set aside

[MADECHIHWE](#) (Migration) [2023] AATA 3509 (20 September 2023); N Schmitz, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – sponsored family stream – visiting brother – genuine temporary entrant and compliance with conditions – incentives to remain or return – immediate family and settled life in home country – other relatives in home country, Australia and third country – review applicant’s visa history – political and socio-economic conditions in home country – review applicant’s offer of security bond – no corroborative evidence provided – decision under review affirmed

[Prajapati](#) (Migration) [2023] AATA 3565 (12 October 2023); N Schmitz, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine temporary stay for medical treatment – support person for family member – family member refused a Medical Treatment visa – no family or close friends in Australia – reasonableness of adjournment – decision under review affirmed

[1904564](#) (Migration) [2023] AATA 3584 (6 October 2023); J Cripps Watts, Member

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – relationship ceased – family violence committed by the sponsor – family violence occurred during genuine relationship – non-judicially determined claim of family violence – psychologist and social worker statutory declarations – physical assault – decision under review remitted

National Disability Insurance Scheme

[Bolt and National Disability Insurance Agency](#) [2023] AATA 4047 (5 December 2023); The Honourable P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – permanency – substantially reduced functional capacity – mobility – self-care – social interaction – early intervention requirements – decision under review affirmed

[Newell and National Disability Insurance Agency](#) [2023] AATA 4140 (13 December 2023); 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) are met – “disability requirements” under s 24 – “early intervention requirements” under s 25 – Applicant has disability arising from various physical and psychosocial impairments – bipolar affective disorder type II – anxiety and depression – hand conditions – back, neck and shoulder issues – osteoarthritis – 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 – decision under review affirmed

[O’Hearn and National Disability Insurance Agency](#) [2023] AATA 4141 (15 December 2023); W Frost, Member

NATIONAL DISABILITY INSURANCE SCHEME – reasonable and necessary supports – where the Applicant is an accepted participant of the National Disability Insurance Scheme – decision under review set aside

Practice and Procedure

[Crosby and Comcare](#) (Compensation) [2023] AATA 4139 (15 December 2023); S Webb, Member

PRACTICE AND PROCEDURE – compensation for injury – psychological and physical ailments – aggravation – application for review – requests to summons medical records – objections to summons – relevant principles – right to privacy – apparent relevance – legitimate forensic purpose – objections upheld in part

[DRXK and National Disability Insurance Agency](#) [2023] AATA 4093 (8 December 2023); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – statement of participant supports – request for additional funding for allied health therapies and support worker hours – decision affirmed on internal review – application for review by the Tribunal – request under section 37(2) of the Administrative Appeals Tribunal Act 1975 to the Respondent to produce additional documents – order for production of documents not made

[FDNR and Child Support Registrar](#) (Child support second review) [2023] AATA 4068 (1 December 2023); A Poljak, Senior Member

SOCIAL SECURITY – child support – extension of time – whether there was a reasonable explanation for the delay – prospects of success of the substantial application – whether the applicant has exercised alternative avenues of relief – extension of time request refused

[Helping Hands Residential Assisted Living and National Disability Insurance Agency](#) [2023] AATA 4089 (8 December 2023); K Bean, Member

PRACTICE AND PROCEDURE – jurisdiction – National Disability Insurance Scheme – whether a decision not to pay an invoice is a reviewable decision – whether a support provider has standing to make an application – no internal review decision – application not reviewable – application dismissed

[Joyful Kids Pty Ltd and Secretary, Department of Education](#) [2023] AATA 4036 (1 December 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – application for extension of time (EOT) for lodgement of proposed application for review – EOT application opposed by the Respondent – Applicant seeks review of decision by the Respondent not to approve the Applicant as a “provider” under ss 194A and 194B of A New Tax System (Family Assistance) (Administration) Act 1999 (Cth) – delay of 38 days – consideration of Applicant’s explanation for the delay – Applicant wished to seek legal advice before making an application as it was unsure about the basis upon which the Respondent made the decision – the first lawyer engaged by the Applicant did not do what was required in a timely manner necessitating the Applicant to engage a second lawyer – whether any prejudice to the Respondent would arise from the belated lodgement of the proposed application for review – consideration of public interest – alternative avenues of review – Tribunal satisfied that it is reasonable in all the circumstances to extend the time for lodgement of the substantive application – EOT application granted

[Neo Health \(OTC\) Pty Ltd and Minister for Health and Aged Care](#) [2023] AATA 4073 (17 November 2023); A Poljak, Senior Member

PRACTICE AND PROCEDURE – interlocutory application – remittal of application – whether application should be remitted pursuant to section 42D of the Administrative Appeals Tribunal Act 1975 (Cth) (the AAT Act) – whether remittal would be consistent with objectives in section 2A of the AAT Act – relevant law and circumstances considered – application granted

Professions and Trades

[Crocker and Tax Practitioners Board](#) [2023] AATA 4131 (13 December 2023); R Reitano, Member

TAX AGENTS – application for registration as a tax agent – Tax Practitioners Board – no relevant tertiary qualification – whether a person is eligible to be registered as a tax agent on the basis of relevant experience – supervision and control – decision under review affirmed

Refugee

[1904806](#) (Refugee) [2023] AATA 3444 (10 July 2023); P Papadopoulos, Member

REFUGEE – protection visa – Nepal – religion – Hindu convert to Christianity – harassment – police assistance unavailable – social group – Dalit caste – separated woman with child – unable to relocate in Nepal – Treaty of Peace and Friendship between India and Nepal 1950 – applicant has to enter and reside in India – real chance of serious harm in India as separated Dalit woman with a child – decision under review remitted

[2010932](#) (Refugee) [2023] AATA 3527 (1 August 2023); B Darcy, Member

REFUGEE – protection visa – Nigeria – ethnicity – Igbo tribe – particular social group – executive member of MASSOB and IPOB – activist for independence of Igbo people – received oral threats and suffered mental and physical injuries – credibility concerns – significant weight on other more reliable evidence – expired passport – Nigerian influence in ECOWAS states – no existing right to enter and reside in other ECOWAS states – decision under review remitted

[1919942](#) (Refugee) [2023] AATA 3539 (3 August 2023); K Chapple, Member

REFUGEE – protection visa – Venezuela – political opinion – anti-Venezuelan government political opinions – member of social group – people suffering from illness or disability, including mental illness – young male from low socioeconomic background – victim of identity theft – used for criminal offences – no remaining family in Venezuela – participation in protests in Australia – decision under review remitted

[1903163](#) (Refugee) [2023] AATA 3604 (8 August 2023); B Darcy, Member

REFUGEE – protection visa – Iran – arrived in vicinity of the Territory of Ashmore and Cartier Islands – first visa application valid – adulterous relationship – complaint lodged – summons – credibility issues – no evidence – inconsistencies – involuntary failed asylum seeker or forced returnee – voluntary return – criminal offence in Australia – good behaviour bond – double jeopardy – past punishment during compulsory national service – physical and mental health symptoms – second visa application set aside as invalid – decision under review affirmed

[2007534](#) (Refugee) [2023] AATA 3529 (11 August 2023); J Henderson, Member

REFUGEE – Protection Visa – Nepal – primary applicant has become an Australian citizen – a victim of domestic violence – suffering health problems (both physical and mental) as a result of the abuse – third applicant's mental health conditions – third applicant is the de facto partner of the second applicant – a member of the same family unit as the second applicant – membership of the particular social group – primary care-giver fathers with disabled partners – decision in relation to the first applicant affirmed – decision in relation to the second and third named applicant under review remitted

[1927648](#) (Refugee) [2023] AATA 3555 (15 August 2023); K Chapple, Member

REFUGEE – protection visa – Venezuela – political opinion – protest participant, NGO/public sector employee and community volunteer – workplaces monitored by authorities, close work association with one public figure and social media association with another – protester friend killed, allegedly by agents of government – other friends jailed or left country – participation in protests and social media activity in Australia – delay in applying for protection – applied one day after student visa ceased – reasonable to concentrate on studies first – conduct in Australia not solely to strengthen claim – country information – politically-motivated arbitrary arrests, detentions, torture and extrajudicial killings – limited political opposition and effective judiciary – economic conditions – DFAT’s ‘do not travel’ advice – real chance of targeted and serious harm – decision under review remitted

[1708705](#) (Refugee) [2023] AATA 3490 (27 October 2023); J.L Redfern PSM, Deputy President

REFUGEE – Protection (Class XA) (Subclass 866) visa – China – Fujian province – Applicant child born in Australia out of wedlock in breach of China’s family planning policies – Second of two children born to unmarried parents – Black child – Member of a particular social group – Access to household (hukou) registration – Whether subject to social compensation fee – Decision under review affirmed

[1715509](#) (Refugee) [2023] AATA 3989 (22 August 2023); T Hamilton-Noy, Member

REFUGEE – protection visa – Taiwan – particular social group – victim of loan sharks – family business debts – physical assault – attacks on home – torture – forced labour – return visits to Taiwan – state protection – decision under review affirmed

Social Security

[Pisanelli and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4116 (12 December 2023); D J Morris, Senior Member

SOCIAL SECURITY – applicant is in receipt of disability support pension – applicant had successful claim for compensation for workplace injury – applicant did not advise respondent’s department of compensation payments – certain of compensation payments relevant to income of applicant – DSP therefore overpaid for period – debt raised – applicant sought internal review – authorised review officer affirmed debt – Tribunal at First Review affirmed reviewable decision – can debt be written off – are other statutory provisions regarding treatment of debt engaged – decision under review is affirmed

[Zaporowski and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 4042 (5 December 2023); Professor A O’Connell, Senior Member

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

Taxation

[CVMW and Commissioner of Taxation](#) (Taxation) [2023] AATA 4039 (30 November 2023); G Lazanas, Senior Member

TAXATION – income tax – where Commissioner of Taxation treated deposits into bank account of corporate trustee of a discretionary trust as assessable income – where applicants are beneficiaries of trust and taxed as presently entitled – where no independent evidence to support claims of applicants that deposits were loans and or equity contributions from parents of applicants – where evidence of applicants and tax agent contains inconsistencies – where evidence of applicants not sufficiently reliable – where financial records of trustee company not conclusive or determinative – administrative penalty – whether conduct involved failure to take reasonable care – whether conduct involved recklessness – whether safe harbour applies – burden of proof not discharged – objection decisions affirmed

PRACTICE AND PROCEDURE – whether confidentiality order relating to name of tax agent necessary to protect identity of applicants – whether sufficient connection between applicants and tax agent – whether desirable to exercise discretion to anonymise name of tax agent – whether in public interest – application for confidentiality order regarding tax agent refused

[HNMF and Commissioner of Taxation](#) (Taxation) [2023] AATA 4067 (30 November 2023); F D O'Loughlin KC, Deputy President and R J Olding, Senior Member

TAXATION – GST – general anti-avoidance provision – gold industry – whether it would be concluded an entity entered into scheme for sole or dominant purpose of obtaining a GST benefit – whether obtaining a GST benefit the principal effect of scheme – decision set aside

[SQYY and Commissioner of Taxation](#) (Taxation) [2023] AATA 4070 (5 December 2023); R Reitano, Member

TAXATION – section 14ZZK of the Taxation Administration Act 1953 – onus – assessment excessive or otherwise incorrect – failure to prove what assessment should have been – unexplained deposits – failure to produce records – personal services income – amount of personal services income not proven – amount of personal service income deductions not proven – decision under review 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
Jattan and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3630
Kelly and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3674
PHTP and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 3536
Ross and Australian Capital Territory	[2023] AATA 3569
Sladden and Commissioner of Taxation	[2023] AATA 3815

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v SDCS	[2022] AATA 1327	[2023] FCA 1509
GKYW v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4119	[2023] FCA 1543
Harding v Secretary, Department of Employment and Workplace Relations	[2023] AATA 1984	[2023] FCA 1512
Johnson v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 251	[2023] FCA 1558
Kassem v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4043	[2023] FCAFC 193 [2023] FCA 451
Khalil v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 3563	[2023] FCA 1528
MKBL v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 279	[2023] FCA 1537



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