



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 4/2023

27 February 2023

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

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

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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

Contents

AAT Recent Decisions	3
Child Support.....	3
Citizenship.....	4
Compensation	5
Environment	5
Migration.....	5
National Disability Insurance Scheme.....	10
Practice and Procedure.....	11
Refugee.....	13
Social Services.....	14
Taxation.....	16
Appeals.....	17
Appeals lodged.....	17
Appeals finalised	17

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

[NYVN and Child Support Registrar](#) (Child support second review) [2023] AATA 249 (21 February 2023); Ms A E Burke AO, Member

CHILD SUPPORT – review of care percentage determinations – change in care – actual care not varied from arrangements as provided for in Court orders – interpretation of the percentage of care in dispute – conflicting evidence of extent of impact of special days on actual care provided – decision under review set aside and substituted

[Burton and Bronson](#) (Child support) [2022] AATA 4672 (2 November 2022); S Hoffman, Member

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

[Craven and Craven](#) (Child support) [2022] AATA 4675 (16 November 2022); J Thomson, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no change to the likely pattern – decision under review affirmed

[Kenyon and Marcello](#) (Child support) [2022] AATA 4994 (10 November 2022); M Martellotta, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the application for an administrative assessment was correctly accepted – decision under review affirmed

[Pullman and Fitzsimons](#) (Child support) [2022] AATA 4983 (15 September 2022); T Hamilton-Noy, Member

CHILD SUPPORT – departure determination – income, property and financial resources of both parents – costs of orthodontic costs – decision under review set aside and substituted

[Sickler and Child Support Registrar](#) (Child support) [2022] AATA 4674 (20 October 2022); S Cullimore, Member

CHILD SUPPORT – application for extension of time - satisfactory explanation for the lengthy delay – significant merit – no real prejudice to the other parent - extension of time granted

Citizenship

[John and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023] AATA 235 (22 February 2023); Mrs J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – import control of tobacco products – whether the applicant is a person of good character – reviewable decision affirmed

[Khairollah and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 154 (15 February 2023); Emeritus Professor P A Fairall, Senior Member

CITIZENSHIP – application for Australian Citizenship by conferral – identity requirement – where approval is prohibited unless identity requirement is satisfied – where applicant claims to be a stateless Feyli Kurd – concerns about the Applicant’s departure from Iran – conflict in names – insufficient documentary identification – three pillars of identification – decision under review affirmed

[Malistani and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 156 (15 February 2023); S Webb, Member

AUSTRALIAN CITIZENSHIP – application for conferral of citizenship – questions of identity – significance of previous decisions relating to identity – weight to be given to previous determinations and Tribunal findings – applicable thresholds of satisfaction – limited biometric information – reliability of documents – tazkira – life story – inconsistencies – reliability of corroborative evidence – mental health considerations – identity established to satisfaction – decision set aside and remitted

[Molla and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023] AATA 170 (14 February 2023); A Nikolic AM CSC, Senior Member

CITIZENSHIP – decision to refuse citizenship application under s 24(6)(a) of the Australian Citizenship Act 2007 (Cth) – Applicant continues to face criminal charges – reviewable decision affirmed

[Muhammadi and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023] AATA 149 (15 February 2023); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – failure to pass citizenship test – Australian Citizenship Act 2007 (Cth) – application made under general eligibility provisions – Citizenship Policy applied – Applicant has not passed citizenship test – decision affirmed

[TPYX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023]
AATA 141 (14 February 2023); J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the identity of the applicant is satisfied – provision of false documents and information by the applicant – whether the applicant is of good character – reviewable decision affirmed

Compensation

[Whitworth and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023]
AATA 172 (16 February 2023); W Frost, Member

VETERANS' AFFAIRS – claim for compensation – where liability was denied pursuant to section 14 of the Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988 (Cth) – dentistry – whether Applicant's claimed condition arose out of employment – initial employment training – guard duty – 'dental caries' – 'fracture of tooth' – no material contribution – decision under review affirmed

Environment

[Innovative Reefs Pty Ltd and Minister for the Environment and Water](#) [2023] AATA 186 (17 February 2023); J Sosso, Deputy President

ENVIRONMENT AND WATER – sea dumping – permits – placement of artificial reef – London Protocol – pollution – potentially harmful material – novel proposal – absence of independent expert evidence – exercise of discretion under s 19(1) – absence of long-term management arrangements – decision under review affirmed

Migration

[Afamiliona and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 131 (25 January 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 – impact on victims – where victims expressed desire for Applicant to remain in Australia – Direction no. 90 considered – reviewable decision affirmed

[Archer and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 250 (22 February 2023); D J Morris, Senior Member

MIGRATION – applicant is a citizen of the United Kingdom of Great Britain and Northern Ireland – applicant held Class BF Transitional (Permanent) visa – visa mandatorily cancelled under Migration Act – substantial criminal record – delegate of Minister decided not to revoke mandatory cancellation – serious offence – two historical minor offences – consideration of the ministerial direction – primary considerations – protection of the Australian community – nature and seriousness of the conduct – assisting murderer after the fact – conduct found to be very serious – risk to the Australian community – best interests of minor children in Australia – special consideration – best interests of minor child of murder victim – expectations of the Australian community – extent of impediments if applicant removed to UK – links to the Australian community – age and health of applicant – negligible risk of reoffending found – decision under review set aside and new decision substituted that the visa not be revoked

[Asare Appiah Johnson and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 251 (23 February 2023); D Cosgrave, Member

MIGRATION – Refusal to grant visa – citizen of Ghana – failure to pass good character test – past and present conduct – whether the discretion to set aside the visa refusal decision should be exercised – Ministerial Direction No. 90 applied – delegate’s decision affirmed

[GMTY and Minister for Immigration and Border Protection](#) (Migration) [2023] AATA 134 (9 January 2023); Dr L Kirk, Senior Member

MIGRATION – Migration Act section 501CA(4) – primary considerations – other considerations – whether there is another reason to revoke mandatory cancellation of Applicant’s visa – Ministerial Direction No. 90 – substantial criminal record – nature and seriousness of offending – domestic violence – best interest of minor children – expectations of the Australian community – international non-refoulement obligations – detention with no chronologically fixed endpoint – extent of impediments if removed – links to the Australian community – strength, nature and duration of ties – Decision set aside and substituted

[Holloway and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 182 (17 February 2023); A Nikolic AM CSC, Senior Member

MIGRATION – mandatory visa cancellation – citizen of Canada – Class AO (Subclass 802) Child visa – substantial criminal record – violent offending – failure to pass good character test – mandatory visa cancellation – whether another reason to revoke mandatory cancellation – Ministerial Direction 90 applied – decision affirmed

[Kanneh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 4976 (22 December 2022); D Cosgrave, Member

MIGRATION - Mandatory visa cancellation – citizen of Liberia – Class XB Subclass 200 Refugee visa – failure to pass good character test – criminal record – whether another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 90 applied – delegate’s decision set aside and substituted

[LMSL and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 173 (6 February 2023); S Boyle, Deputy President

MIGRATION – s 501CA(4) of the Migration Act – refusal of delegate of the Minister to revoke mandatory cancellation of applicant’s visa – whether there is “another reason” to revoke cancellation of applicant’s visa – Ministerial Direction 90 – consideration of aggregate sentencing in FCAFC judgment in Pearson – aggregate sentencing principles in Pearson considered; not applicable in present case – previous sentence of 12 months imprisonment – jurisdiction of the AAT does not extend to decision under 501(3A) – applicant a 38-year-old citizen of Iraq – no reason why other considerations should outweigh primary considerations – there is not another reason to revoke the decision to cancel the applicant’s visa – reviewable decision affirmed

[Mamatta and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 133 (10 February 2023); T Tavoularis, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TU Subclass 500 Student Visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – Applicant voluntarily left Australia- visa in question of a time-limited nature - Utility of Ministerial Direction No 90- consideration of Ministerial Direction No. 90 – decision under review affirmed

[MPTK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 189 (17 February 2023); Mr A Maryniak KC, Member

MIGRATION - mandatory cancellation of Five Year Resident Return (Subclass 155) visa - non-revocation of mandatory cancellation decision - substantial criminal record - where Applicant accepts he does not pass the character test - whether there is another reason to revoke mandatory cancellation decision - decision affirmed

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 181 (16 February 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 – numerous shoplifting offences, cultivate cannabis offence – Applicant is a 43-year-old woman who arrived in Australia from Vietnam she was 19-years-old as the holder of a student visa – later granted a Spouse (Subclass 801) visa which was mandatorily cancelled – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – no family violence – best interests of minor niece and nephew in Australia – expectations of the Australian community – links to the Australian community – strength, nature and duration of ties to Australia – interests of 18-year-old son and 21-year-old daughter considered as part of the Applicant’s links to the Australian community – Reviewable Decision set aside and substituted

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

AATA 238 (22 February 2023); Dr S Fenwick, Senior Member

MIGRATION – refusal to grant protection visa – whether convicted by final judgment of particularly serious crime – whether a danger to the Australian community – consideration of phrase ‘convicted by final judgment’ – offending as a child resulting in no conviction recorded can be considered – seriousness and nature of offending – risk of reoffending – decision set aside and remitted

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

AATA 257 (24 February 2023); A George, Senior Member

MIGRATION – Non-revocation of mandatory cancellation of a Class BB Subclass 155 Five Year Resident Return visa – where Applicant does not pass the character test – consideration of Ministerial Direction No. 90 – decision under review affirmed

[Siale and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]

AATA 5035 (29 July 2022); A G Melick AO SC, Deputy President

MIGRATION – Non-revocation of mandatory cancellation of a 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. 90 – decision under review set aside and substituted

[TBQH and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2022]

AATA 4975 (23 August 2022); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why the visa cancellation should be revoked – Ministerial Direction No. 90 – nature and seriousness of offending conduct – risk of reoffending – protection of the Australian community – family violence committed by the non-citizen – 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

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

AATA 175 (16 February 2023); 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 – offending whilst on liberty by conditional release order – remote prospects of rehabilitation – best interests of minor children – expectations of the Australian community – impediments to removal – links to the Australian community – strength, nature and duration of ties to Australia – decision under review affirmed

[Bhatta](#) (Migration) [2022] AATA 4457 (8 November 2022); N Schmitz, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine temporary stay for medical treatment – confirmation of study enrolment – lengthy stay in Australia – period of unlawful residence – applicant employed in Australia – three months study limit – maintaining ongoing residence in Australia – decision under review affirmed

[Dongjun](#) (Migration) [2022] AATA 4534 (3 November 2022); N Dougall, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – Temporary Residence Transition stream – Café or Restaurant Manager – English language proficiency – competent English – IMMI 18/045 – specified class of exempt applicants – 5 years full-time study in English – ‘higher education’ – ‘institution’ – ‘provider’ – decision under review remitted

[Hassen](#) (Migration) [2022] AATA 4620 (9 November 2022); K Raif, Senior Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan relative) – Federal Circuit and Family Court – ‘orphan relative’ of an Australian relative – niece and nephew – DNA testing – parental responsibility – no parental care – limited documentary and contemporaneous evidence – cultural and security issues in Ethiopia – hospital record – statements from attendees of funeral – appointment of ‘tutor and administrator’ by local court in Ethiopia – decision under review remitted

[Kaur](#) (Migration) [2022] AATA 4458 (10 November 2022); M Hyland, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – evidence of criminal history – statement from a relevant authority, however described – Punjab Police Clearance Certificate – pandemic closure of police clearance processing agency – Procedural Instructions – penal checking by a local Punjabi Senior Superintendent – decision under review remitted

[Zhang](#) (Migration) [2022] AATA 4585 (16 November 2022); N Burns, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – incorrect information in the visa application – applicant’s migration history – period of unlawful residence – applicant accompanying his grandchild to his parents in Australia – compassionate and compelling circumstances – grandchild’s lengthy pandemic separation from parents – decision under review affirmed

National Disability Insurance Scheme

[RKVM and National Disability Insurance Agency](#) [2023] AATA 259 (24 February 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of internal review decision by the National Disability Insurance Agency (NDIA) regarding decision to approve a statement of participant supports (SOPS) for the Applicant – Applicant is a child participant in the National Disability Insurance Scheme (NDIS) – Applicant’s mother seeks funding for several supports and a notional plan duration of three years – whether requested supports are “reasonable and necessary supports” under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – consideration of the type and level of supports which are “reasonable and necessary supports” – the NDIA considers that virtually all of the requested supports meet the “reasonable and necessary supports” criteria and agreed to the Applicant’s proposed notional plan duration of three years - decision under review set aside and remitted with directions to facilitate the making of a new SOPS for the Applicant to include virtually all of the requested supports with a notional plan duration of three years

[Shada and National Disability Insurance Agency](#) [2023] AATA 258 (23 February 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of decision not to grant Applicant’s request for a reassessment to be undertaken under s 48 of the National Disability Insurance Scheme Act 2013 (Cth) – Respondent consents to the reassessment being undertaken – Tribunal sets aside decision under review and in substitution decides that the Respondent is to undertake a reassessment of the Applicant’s NDIS plan

[TBDY and National Disability Insurance Agency](#) [2023] AATA 261 (24 February 2023); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of internal review decision by the National Disability Insurance Agency (NDIA) regarding decision to approve a statement of participant supports (SOPS) for the Applicant – Applicant is a child participant in the National Disability Insurance Scheme (NDIS) – Applicant’s mother seeks funding for several supports and a notional plan duration of three years – whether requested supports are “reasonable and necessary supports” under s 34(1) of the National Disability Insurance Scheme Act 2013 (Cth) – consideration of the type and level of supports which are “reasonable and necessary supports” – the NDIA considers that virtually all of the requested supports meet the “reasonable and necessary supports” criteria and agreed to the Applicant’s proposed notional plan duration of three years - decision under review set aside and remitted with directions to facilitate the making of a new SOPS for the Applicant to include virtually all of the requested supports with a notional plan duration of three years

Practice and Procedure

[Callander and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 188 (15 February 2023); D O'Donovan, Senior Member

PRACTICE AND PROCEDURE – Veterans' and Military Compensation – constraints upon the Tribunal's ability to receive evidence – interlocutory application to limit the evidence before the Tribunal – Tribunal can have regard to evidence obtained after commencement of Tribunal proceedings – interlocutory application dismissed

[Challis and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 150 (7 February 2023); L Benjamin, Member

PRACTICE AND PROCEDURE – jurisdiction - Abstudy debt – Tribunal has no jurisdiction to hear the application

PRACTICE AND PROCEDURE – jurisdiction – Parenting Payment debt – Tribunal has no jurisdiction to hear the application

[Haex and National Disability Insurance Agency](#) [2023] AATA 174 (15 February 2023); I Thompson, Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme – objection to compliance with summons – documents including psychological test material – whether documents contain information of apparent relevance to the issues before the Tribunal – summons to be satisfied

[Hoefl and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 151 (1 February 2023); L Benjamin, Member

SOCIAL SECURITY – age pension – relevant legislation and cases considered – abuse of process – reasonable prospect of success – application dismissed

[Lifeful Coordination & Management Pty Ltd and National Disability Insurance Scheme](#) [2023] AATA 155 (15 February 2023); K Parker, Senior Member

PRACTICE AND PROCEDURE – National Disability Insurance Scheme (NDIS) – Applicant is a NDIS plan manager – participant paid for medium-term accommodation (MTA) – MTA was not an approved support under participant's NDIS plan – plan manager made a claim for this payment and reimbursed the participant – NDIA cancelled claim for payment – plan manager does not wish to seek recovery of amount from participant – plan manager wants NDIA to approve further funding under the participant's plan for this amount – whether the participant's plan manager has standing under s 27(1) of the Administrative Appeals Tribunal Act 1975 (Cth) – whether plan manager is a person whose interests are affected by the decision to approve the participant's statement of participant supports – no valid application before the Tribunal

[Mackay and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 148 (14 February 2023); K Millar, Senior Member

STAY ORDER REFUSED – appeal on income management scheme – Respondent’s submission that appeal has low prospects of success – no exemption from income management scheme – stay refusal does not cause financial hardship for applicant – legislation must be applied consistently to reflect public interest – request for stay order refused

[MCLZ and Secretary, Department of Home Affairs](#) [2023] AATA 157 (3 February 2023); J Sosso, Deputy President

PRACTICE AND PROCEDURE – application for an aviation security identification card – adverse criminal record – whether a spent conviction – no discretion – no reasonable prospect of success – application dismissed

[PDTW and Child Support Registrar](#) (Child support second review) [2023] AATA 152 (4 January 2023); L Benjamin, Member

PRACTICE and PROCEEDURE – application for extension of time – where application refused in first instance – where notification of decision sent to wrong address – where applicant appealed in timely way – extension of time granted

[QBQS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 191 (17 February 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE - migration – jurisdiction – mandatory visa cancellation – where applicant no longer has a substantial criminal record – Pearson v Minister for Home Affairs [2022] FCAFC 203 - whether the Tribunal has jurisdiction to continue the application – where the convictions considered by the Minister were for sexual offences involving a child – Tribunal has jurisdiction

[SSPR and Office of the Australian Information Commissioner](#) [2023] AATA 135 (3 February 2023); A E Burke AO, Member

Practice and Procedure – Confidentiality Order – Legal Professional Privilege – Claim of Legal Professional Privilege – Whether Legal Professional Privileged Waived – Whether denial of procedural fairness – Confidentiality Order Granted

[SYMB and Child Support Registrar](#) (Child support second review) [2023] AATA 248 (20 February 2023); Mrs J C Kelly, Senior Member

PRACTICE AND PROCEDURE – jurisdiction question – child support – application for review by the Tribunal – Tribunal has no jurisdiction to review the decision on an AAT second review

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

(Citizenship) [2023] AATA 132 (13 February 2023); D J Morris, Senior Member

CITIZENSHIP – applicant approved for grant of citizenship by conferral – applicant did not make pledge of commitment within 12 months of approval – delegate of Minister cancels approval – basis of cancellation is that delegate not satisfied applicant likely to reside or continue to reside in Australia or maintain close and continuing relationship with Australia – applicant prevented from returning to Australia because of border closures – applicant did not receive notification cancellation being considered – applicant did not receive advice of cancellation until return to Australia – arguable case – time extended to lodge application for review

PRACTICE AND PROCEDURE – application lodged late – presumption of 28-day period – is Tribunal satisfied it is reasonable in all the circumstances to extend time – discretion is unfettered but general principles followed – time extended

Refugee

1731591 (Refugee) [2022] AATA 4566 (24 October 2022); R Da Costa, Member

REFUGEE – protection visa – Sri Lanka – race – Tamil ethnicity – imputed political opinion – member and/or supporter of the LTTE – links to LTTE members through brother-in-law – land disputes between Tamils and the Sri Lankan government – positive Independent Protection Assessment (IPA) assessment – particular social group – failed asylum seeker – activities in Australia – involvement with the Tamil Civic Centre (TCC) – ban on six Tamil diaspora groups and 316 individuals lifted – decision under review affirmed

1724015 (Refugee) [2022] AATA 4774 (13 October 2022); S Clarey, Member

REFUGEE – protection visa – South Africa – social group – white farmers – robbed and assaulted on stepfather's farm – race – white Afrikaans – crime and political corruption – no family in South Africa – vague evidence – generalised violence – applicant not restricted to being a farmer – can find work in his trade – can access healthcare – decision under review affirmed

1901601 (Refugee) [2022] AATA 5029 (7 November 2022); G Hamilton, Member

REFUGEE – protection visa – Ethiopia – ethnicity – Oromo – political opinion – member of Oromo Federalist Congress – arrest and rape – left Ethiopia while on bail – husband's missing status – social group – single women without male protection – victims of violence committed by the authorities – sufferer of mental illness and trauma – failed asylum seeker – credibility issues – decision under review affirmed

1801267 (Refugee) [2022] AATA 4780 (9 November 2022); P Windsor, Member

REFUGEE – protection visa – Pakistan – political opinion – Pakistan Muslim League Nawaz group – Village Defence Committee member – race – Pashtun – particular social group – people suffering mental illness – threats from the Pakistani Taliban – physical violence – internal relocation – unlawful killings – decision under review remitted

[1933486](#) (Refugee) [2022] AATA 4579 (9 November 2022); K Harvey, Senior Member

REFUGEE – protection visa – Nigeria – membership of particular social group – woman with HIV perceived as sex worker or drug user – access to and standard of healthcare – social stigma and discrimination, and no family support – mental health – ability to subsist – credible presentation and evidence – country information – no effective state protection and treaty right to enter and reside in other countries limited on same grounds – decision under review remitted

[2114248](#) (Refugee) [2022] AATA 5027 (7 December 2022); S Roushan, Senior Member

REFUGEE – protection visa – Iraq – Federal Circuit Court remittal – imputed political opinion – opposition to extremist groups – religion – apostasy – secular views – criticisms on social media – imputed atheist views – fear of killing – fear of Muslim fundamentalists – decision under review remitted

Social Services

[Bell; Secretary, Department of Social Services and](#) (Social services second review) [2023] AATA 190 (8 February 2023); R Bellamy, Senior Member

Rate of Social Security payment – Carer payment – whether assets disposed of for less than their value – characterisation of cash injections into private company where they were recorded as loans but regarded by claimant as investments – decision under review set aside

[Care and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 140 (13 February 2023); R Cameron, Senior Member

ADMINISTRATIVE LAW – whether applicant entitled to single rate or partnered rate of Age Pension – s 24(1) Social Security Act 1991 (Cth) – whether applicant should not be treated as a member of a couple for a ‘special reason’ in the particular case – consideration of the requirement for ‘special reasons’ – decision under review affirmed

[Dauenhauer and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 176 (16 February 2023); A E Burke AO, Member

SOCIAL SECURITY – application for disability support pension – whether qualified – whether as reasonable treatment has been undertaken – whether impairment attracts rating of 20 points or more under Impairment Tables – where program of support has been undertaken – decision under review set aside

[Houben and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 153 (15 February 2023); J C Kelly, Senior Member

SOCIAL SECURITY – age pension – assets value exceeded assets limit – whether there has been a manifest error caused by the respondent’s alleged misconduct – whether it is appropriate to reconsider a matter previously decided by the tribunal – reviewable decision affirmed

[Jacob and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 158 (14 February 2023); Dr M Evans-Bonner, Senior Member

SOCIAL SECURITY – decision to cancel Applicant's Newstart Allowance – absence from Australia found not to be an allowable absence for the purpose of portability – whether an allowable absence – whether a temporary absence for: the purpose of seeking eligible medical treatment overseas; attending to an acute family crisis; or for a humanitarian purpose – freedom of religion – Reviewable Decision affirmed

FEDERAL COURT REMITTAL – original AAT2 dismissed application after the hearing because Applicant did not lodge written closing submissions as directed – by consent Federal Court remitted the application for reconsideration to a differently constituted Tribunal on the basis of denial of procedural fairness – application reconsidered without a hearing

[Keynes and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 180 (16 February 2023); Brigadier A G Warner, AM LVO (Retd), Member

SOCIAL SECURITY – disability support pension – whether Applicant's conditions were fully diagnosed, treated and stabilised during the qualification period – whether Applicant's conditions attracted an impairment rating of at least 20 points under Impairment Tables – whether Applicant has a continuing inability to work – decision under review affirmed

[Sarwar and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 169 (16 February 2023); L M Gallagher, Member

SOCIAL SECURITY – Family Tax Benefit (FTB) – FTB payment withheld – Applicant failed to submit an income tax return by required date – Applicant did not advise Agency she was not required to lodge an income tax return – special circumstances not applicable – decision under review affirmed

[Stevenson and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 142 (14 February 2023); D Mitchell, 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

[Sutalo and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 143 (14 February 2023); S Barton, Member

SOCIAL SECURITY – whether the Applicant has been a member of a couple – financial aspects of the relationship – nature of the household – social aspects of the relationship – sexual relationship – nature of people's commitment to each other – whether the Applicant's parenting payment (single rate) should have been cancelled – rejection of a further claim for parenting payment (single rate) – debt waived – special reason – Tribunal satisfied that the Applicant is a member of a couple – Reviewable Decision affirmed

[Thomas and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 192 (24 January 2023); L Benjamin, Member

SOCIAL SECURITY – Age Pension Debt – Overpayment – Superannuation income - Whether overpayment constitutes debt to commonwealth – Whether debt is recoverable – Whether appropriate for debt to be written off – Whether appropriate for the debt to be waived – Where decision under review affirmed

Taxation

[VTBL and Commissioner of Taxation](#) (Taxation) [2023] AATA 168 (13 February 2023); S Boyle, Deputy President

TAXATION – four applications for review of objection decisions – whether assessments excessive or otherwise incorrect – whether Applicant held properties on trust or for her own benefit – use of bank accounts – betterment principle – whether shortfall penalties correctly imposed – whether penalties should be remitted in whole or in part – whether 2009 and 2010 assessments validly issued under ITAA 1936 s 170(1) item 5 – whether Respondent had formed the opinion that there had been fraud of evasion – reviewable decisions varied

PRACTICE AND PROCEDURE – TAA s 14ZZK(b) – Applicant must prove assessment excessive or otherwise incorrect and what assessment should have been – evidence before the Tribunal – Applicant and Applicant's de facto partner called to give evidence – credibility of evidence – Respondent sought that Tribunal make adverse inference in relation to failure to call witnesses – financial analysis provided by Applicant's witness relied on source material – admissibility of unstamped deeds

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
DSLB and Comcare	[2022] AATA 1369
Rewha and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 19
Pillay and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 270
KGLC; Secretary, Department of Social Services and (Social services second review)	[2023] AATA 17
Pearson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 3527
Stark and Commissioner of Taxation	[2021] AATA 2583
Taylor and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2889
Waqqa and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3791

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Franklin v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 77	[2023] FCAFC 18 [2022] FCA 643
Frugtniet v Australian Securities and Investments Commission	[2022] AATA 295	[2023] FCAFC 14
Mailau v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 1224	[2023] FCAFC 12 [2022] FCA 610
National Disability Insurance Agency v Foster	[2021] AATA 4738	[2023] FCAFC 11
Nufarm Australia Limited v Advanta Seeds Pty Ltd	[2022] AATA 1157	[2023] FCA 109

SPFH v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 874	[2023] FCA 97
Storry v Business Licensing Authority (No 2)	[2021] AATA 5329	[2023] FCA 102
Tapiki v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 1228	[2023] FCAFC 10 [2022] FCA 391

© Commonwealth of Australia 2022



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <https://www.pmc.gov.au/government/commonwealth-coat-arms>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLI](#).

