



Administrative
Appeals Tribunal

AAT
Bulletin

AAT Bulletin

Issue No. 5/2023

13 March 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.

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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

[Chipp and Chew](#) (Child support) [2022] AATA 4982 (2 December 2022); J Nalpantidis, Member

CHILD SUPPORT – particulars of the administrative assessment – whether a fixed annual rate of child support should not apply – income exceeds the allowable limit – the application for fixed annual rate not to apply should be refused - decision under review set aside and substituted

[Douglas and Heston](#) (Child support) [2022] AATA 4995 (24 November 2022); D Benk, 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 affirmed

[Feasey and Riggs](#) (Child support) [2022] AATA 4303 (30 November 2022); K Synon, Deputy President (Presiding) and K Dordevic, Senior Member

CHILD SUPPORT – jurisdiction – section 42D Administrative Appeals Tribunal Act 1975 – no power to remit from AAT2 to AAT1 – care – late application to AAT – no 95N determination made in original AAT1 review – decision under review not reconsidered

[McKeand and Meale](#) (Child support) [2022] AATA 4679 (17 November 2022); A Byers, Member

CHILD SUPPORT – percentage of care – whether there was a change to the likely pattern of care – no interim period applied – existing percentage of care determinations revoked and new determinations made – decision under review set aside and substituted

[Soulsby and Soulsby](#) (Child support) [2022] AATA 4988 (24 November 2022); K Dordevic, Senior Member (Presiding) and K Synon, Deputy President

CHILD SUPPORT – particulars of the administrative assessment – whether post separation costs should be excluded from the adjusted taxable income for the last relevant year – additional income was earned not in the ordinary course after separation – a partial amount should be excluded - decision under review set aside and substituted

Citizenship

[Kamara and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Citizenship) [2023] AATA 266 (27 February 2023); Dr P McDermott RFD, Deputy President

CITIZENSHIP – application for Australian citizenship – notice to cancel approval on character grounds – whether the applicant is not of good character – decision under review affirmed

[Pillai and Minister for Immigration, Citizenship, and Multicultural Affairs](#)

(Citizenship) [2023] AATA 346 (8 March 2023); J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the applicant is of good character – domestic violence protection order – history of traffic offences – whether sufficient time had passed since his last offence – whether the applicant misled the department by providing false information – reviewable decision affirmed

Education and Research

[Ella Early Education Pty Ltd and Secretary, Department of Education](#)

[2023] AATA 287 (28 February 2023); A Maryniak KC, Member

CHILD CARE – Family assistance law - Application for approval as an approved childcare service – Whether Applicant is a fit and proper person to be involved in the administration of CCS and ACCS – Whether sole director with management or control of the Applicant is a fit and proper person to be involved in the administration of CCS and ACCS – decision affirmed

Freedom of Information

[Roberts-Smith and Inspector General Australian Defence Force](#)

(Freedom of information) [2023] AATA 335 (6 March 2023); Justice T Thawley, Deputy President

FREEDOM OF INFORMATION – request for confidentiality order over information in Tribunal documents – confidentiality order granted

Migration

[Anyang and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)

(Migration) [2023] AATA 262 (27 February 2023); P Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of Class XB Subclass 202 Global Special Humanitarian visa – applicant has substantial criminal record and has had his visa cancelled twice – whether there is another reason to revoke mandatory cancellation decision – the primary considerations of the protection and expectations of the Australian community and family violence outweigh the countervailing considerations – the decision under review is affirmed

[Canetto and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 367 (18 January 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – citizen of Italy – Class BF Transitional (Permanent) 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

[CNJP and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 288 (2 March 2023); T Tavoularis, Senior Member

MIGRATION – Remittal- Non-revocation of mandatory cancellation of a Class XB Subclass 204 Woman at risk 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

[Cortes and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 284 (1 March 2023); L M Gallagher, Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of visa – character test – substantive criminal record – Direction No. 90 – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – Applicant is a 43-year-old man who came to Australia as a 5-year-old – extent of impediments if returned to Chile – reviewable decision affirmed.

[DWHX and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2023] AATA 336 (6 February 2023); N A Manetta, Senior Member

MIGRATION – discretionary cancellation of Applicant's visa under s 501(2) of the Migration Act 1958 (Cth) – applicant convicted in 2002 of eight counts of incest-based paedophilia – applicant assumed not to pass the character test – whether “another reason” for cancellation decision to be revoked – exercise of discretion under Direction 90 – very low risk of reoffending – otherwise insignificant criminal record – significant Australian ties – decision under review set aside

[Dezfuli and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2023] AATA 267 (31 January 2023); 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 serious of offending conduct – recklessly deal with proceeds of crime, money greater than \$1 million – 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

[Dinh and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 282 (8 February 2023); S Evans, Member

MIGRATION – visa refused under subsection 501(1) of the Migration Act 1958 (Cth) – where the applicant has a substantial criminal record – where the applicant does not pass the character test – issue: is there a reason why the visa should not be refused on character grounds – Direction no. 90 considered – reviewable decision set aside and remitted

[FRDH and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 281 (31 January 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – jurisdiction of Tribunal – error by delegate in applying section 501(3A) – materiality of alleged error – error held not to be material in this case – applicant does not satisfy character test – whether another reason for cancellation decision to be revoked – Direction No. 90 – overall seriousness of applicant’s offending – home invasion – violent crime – applicant affected by drug misuse – low risk of recidivism – interests of minor children – decision under review set aside and cancellation decision revoked

[Guttridge and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 338 (2 March 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 – extensive history of offending for approximately 30 years – Applicant is a 52-year-old man who arrived in Australia from the United Kingdom as 23 month old child – Direction No 90 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – definition of family violence not met – best interests of minor children – Applicant has twin 17 year old sons with autism who require constant care – minor great nieces and nephews and nephew – expectations of the Australian community – links to the Australian community – impact on victims – strength, nature and duration of ties to Australia – the future needs of the Applicant’s twin sons after the age of 18 years as a separate other consideration – Reviewable Decision set aside and substituted

[Hettiarachchi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 270 (24 February 2023); K Raif, Senior Member

MIGRATION – discretionary visa refusal – heard upon remittal – 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 – expectations of the Australian community – impediments to removal – links to the Australian community – where refusal would impact applicant’s partner – decision under review set aside and substituted

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

(Migration) [2023] AATA 317 (27 February 2023); Dr L Kirk, Senior Member

MIGRATION – Protection (Class XA) (Subclass 866) visa – whether the Applicant has been convicted by a final judgment of a particularly serious crime – whether Applicant is a danger to the Australian community – Decision under review affirmed

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

AATA 269 (27 February 2023); Dr C Huntly, Member

MIGRATION – Migration Act s 501CA(4) – decision of a delegate of the Minister not to revoke the mandatory cancellation of the applicant’s visa – whether there is “another reason” to revoke the cancellation of the applicant’s visa – substantial criminal record – family violence – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – applicant is a 39-year-old man who came to Australia as a 5-year-old – there is “another reason” to revoke the cancellation of the applicant’s visa – reviewable decision set aside

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

(Migration) [2023] AATA 283 (10 January 2023); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – citizen of Tonga – Class BB Subclass 155 Five Year Resident Return 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 affirmed

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

AATA 5037 (6 December 2022); 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 – whether there is another reason why the decision to cancel the Applicant’s visa should be revoked – consideration of Ministerial Direction No. 90 – substantial criminal record – decision under review set aside and substituted with a decision revoking the original visa cancellation

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

AATA 279 (24 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 – applicant is a 39-year-old citizen of United Kingdom who arrived in Australia as a 13 year old – sexual offences – use of carriage service to groom person under 16 – use of carriage service to transmit indecent communication to person under 16 – best interests of minor children – 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

[Moses and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 291 (2 March 2023); D Cosgrave, Member

MIGRATION – Refusal to grant visa – citizen of United Kingdom – failure to pass good character test – risk of engaging in criminal conduct – whether Applicant passes the character test – Ministerial Direction No. 90 applied – found the Applicant passes the character test- discretion in s 501(1) of the Migration Act not enlivened – delegate’s decision set aside and substituted

[NHBK and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023]
AATA 364 (9 March 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory visa cancellation – failure to pass character test – substantial criminal record – revocation under subsection 501CA(4) – whether there is another reason to exercise discretion to revoke – Ministerial Direction No.90 – expectations of the Australian community – protection of the Australian community – nature and seriousness of offending conduct – likelihood of reoffending – best interests of minor children – links to Australian community – strength, nature and duration of ties – decision under review affirmed

[Nolutshungu and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration)
[2023] AATA 265 (6 February 2023); T Tavoularis, 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 – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review affirmed

[QBQS and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#)
(Migration) [2023] AATA 289 (2 March 2023); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where the applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 90 – protection of the Australian community – expectations of the Australian community – international non-refoulement obligations – links to the Australian community – legal effect of decision – reviewable decision set aside

[Watson and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023]
AATA 290 (2 March 2023); A Nikolic AM CSC, Senior Member

MIGRATION – mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – persistent offending – substantial criminal record – failure to pass good character test – mandatory visa cancellation – whether another reason to revoke the mandatory cancellation – Ministerial Direction no. 90 applied – decision affirmed

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

AATA 268 (28 February 2023); M Griffin KC, Senior Member

MIGRATION – mandatory visa cancellation under section 501 – decision not to revoke mandatory visa cancellation – where the applicant does not pass the character test – whether there is another reason to revoke the visa cancellation – consideration of direction no. 90 – protection of the Australian community – the nature and seriousness of the conduct – risk of reoffending – family violence – best interests of minor children – expectations of the Australian community – international non-refoulement obligations – extent of impediments if removed – impact on victims – links to the Australian community – decision under review set aside and substituted

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

AATA 363 (2 March 2023); C J Furnell, Senior Member

MIGRATION – refusal to grant Protection (Class XA, subclass 866) visa – Migration Act 1958 (Cth) s 501(1) – applicant does not pass character test – substantial criminal record – whether to exercise discretion to refuse to grant the applicant the visa – Direction 90 – Ghana – primary and other considerations – decision under review affirmed

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

AATA 337 (1 March 2023); Dr C Huntly, Member

MIGRATION – Migration Act s 501(1) – decision of a delegate of the Minister to refuse the Applicant’s partner visa – failed character test – Direction 90 – whether there is “another reason” – primary and other considerations – protection of the Australian community – nature and seriousness of criminal offending – risk to the Australian community – best interests of minor children – expectations of the Australian community – strength, nature and duration of ties to Australia – applicant is a 32-year-old-male citizen of India – fraud – dishonest conduct – there is not “another reason” – reviewable decision affirmed

[2215968](#) (Migration) [2022] AATA 4687 (16 December 2022); S Burford, Senior Member

MIGRATION – cancellation – Bridging E (Class WE) visa – Subclass 050 (Bridging (General)) – Federal Circuit and Family Court remittal – applicant convicted of serious offences – Unauthorised Maritime Arrival – power to cancel a visa invalidly granted – no visa to cancel – decision under review set aside

[Grace Worldwide \(Australia\) Pty Ltd](#) (Migration) [2022] AATA 4665 (21 December 2022); R

Skaros, Senior Member

MIGRATION – sponsorship cancellation or bar – record keeping obligations – providing information to Immigration – sponsored person working in the nominated occupation – international movement of skilled Importer/Exporter workers – no reporting of nominee ceasing employment – new monitoring policies and processes ensuring future compliance – no influence over the nominee’s conduct post-employment – decision under review set aside

[Namgyal](#) (Migration) [2022] AATA 4698 (12 December 2022); W Shum, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – Direct Entry nomination stream – Motor Mechanic – necessary skills, qualification and experience – skills assessment – necessary qualifications according to the ANZSCO – Certificate III in Light Vehicle Mechanical Technology – Recognition of Prior Learning (RPL) assessment – Bachelor of Business – two years on-the-job training – three years relevant experience – ‘at the level of skill required’ – date of formal qualification attained – decision under review affirmed

[Radhakrishnan](#) (Migration) [2022] AATA 4699 (15 December 2022); A Mendes Da Costa, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – Medium-term stream – Motor Mechanic (General) – substantial compliance with previous visa conditions – must not work in inconsistent position or occupation – co-directors of the nominating company – positive skills assessment – ancillary tasks – decision under review remitted

[Sheikh](#) (Migration) [2022] AATA 4762 (12 December 2022); B Darcy, Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 117 (Orphan Relative) – orphan relative of an Australian relative – death of the visa applicants’ parents – one applicant’s biological family is unknown – DNA testing results – passports issued without birth certificates – child-parent relationship with adoptive parents – limited evidence of parental deaths – best interests of the visa applicants – decision under review remitted

National Disability Insurance Scheme

[DFFG and National Disability Insurance Agency](#) [2023] AATA 264 (30 January 2023); The Honourable P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME (NDIS) - Environmental restrictive practice – childproofing – all parts of a person’s environment – freedom of movement – behavioural support plan – whether support is reasonable and necessary – value for money – requirements of support workers – NDIS Act - Disability Act 2006 (Vic) – authorisation process – state and territory legislation

[Tobin and National Disability Insurance Agency](#) [2023] AATA 318 (8 February 2023); The Honourable P Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME (NDIS) – No reasonable prospect of success – failure to attend hearing – residency requirements – temporary visa – special category visa – Australian resident

Passports

[HGPV and Minister for Foreign Affairs](#) [2023] AATA 339 (1 March 2023); D J Morris, Senior Member

FOREIGN AFFAIRS – passports – renewal of Australian passport for a child – where passport refused – where parent of applicant applied for internal review by delegate of minister – where delegate of Minister affirmed refusal – where parent of applicant applied to Tribunal for review – general entitlement of citizens to an Australian passport – special provisions relating to passports for an unmarried child – one parent does not consent – consideration of provisions in Act relating to circumstances where issue of passport is not prevented – provisions of Determination – policy followed by Department – whether non-consenting parent has had no contact with Applicant for substantial period of time before application lodged – what is substantial period of time – whether applicant’s physical or psychological welfare would be affected if not allowed to travel internationally – whether discretion should be exercised to issue passport – decision set aside and new decision substituted

PRACTICE AND PROCEDURE – where non-consenting parent not joined in proceedings – where Respondent submitted proceedings could be adjourned to allow non-consenting parent to be joined or otherwise participate – where Respondent advised non-consenting parent of time and place of Tribunal hearing – where non-consenting parent did not contact the Tribunal – role of Tribunal in such a case – Tribunal satisfied non-consenting parent had reasonable opportunity to ask to be joined or to give evidence – recommendation that respondent institute protocol for non-consenting parent in such cases to be notified of an application to Tribunal – hearing proceeded

Practice and Procedure

[Bradley and Secretary, Department of Education](#) [2023] AATA 309 (3 March 2023); S Evans, Member

PRACTICE AND PROCEDURE – application for extension of time – substantive matter seeks review of decision refusing remission of course fees – delay – merits of substantive matter – jurisdiction – prejudice to the respondent – extension of time application refused – whether the Tribunal should dismiss the application under section 42B – application dismissed for no reasonable prospects of success – application of section 69BA to sections 42A and 42B – whether the Tribunal should make an order under subsection 42B(2) – order made

[Chen and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 344 (8 March 2023); Dr L Bygrave, Member

PRACTICE AND PROCEDURE – interlocutory application – jurisdiction – whether the General Division (AAT2) has jurisdiction to review a decision made by the Social Services and Child Support Division (AAT1) to dismiss an application for no reasonable prospects of success pursuant to paragraph 42B(1)(b) of the Administrative Appeals Tribunal Act 1975 (Cth) – relevant material, legislation and cases considered – application dismissed – decision not reviewable – no jurisdiction

[Hermes and O'Brien and Australian Securities & Investments Commission](#) [2023] AATA 286 (22 February 2023); W Frost, Member

INTERLOCUTORY APPLICATION – Jurisdiction question – Australian Securities and Investments Commission – where the Applicants made complaints to AFCA – systemic issues – Corporations Act (2001) – section 1052C(1) – where ASIC declined to make a direction to AFCA – reviewable decision – jurisdiction of the Tribunal – no jurisdiction to review – no standing – application dismissed pursuant to section 42A(4) of the AAT Act

[Karunaratne and Comcare](#) (Compensation) [2023] AATA 365 (9 March 2023); S Webb, Member

PRACTICE AND PROCEDURE – compensation claims – psychiatric ailment – allegations of bullying in the workplace – summons requiring production of Departmental records – objection to summons – relevant principles – extent of legitimate forensic purpose – no abuse of process – summons oppressive in part – scope of summons too broad – possible to narrow scope – objection upheld – order made

[Langeroudi and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 280 (28 February 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – application for an extension of time – application for disability support pension – where the application is 25 days out of time – whether there is an adequate explanation for the delay – whether the application has strong prospects of success – whether there are alternative avenues of relief – application for extension of time is refused

[Larkham and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 316 (14 February 2023); D O'Donovan, Senior Member

PRACTICE AND PROCEDURE – application for review of AAT first review decision – prescribed period – application for review outside the prescribed period – consideration of relevant factors – prospects of success not hopeless – short delay – application granted

[Matai and Australian Securities and Investments Commission](#) [2023] AATA 340 (22 February 2023); B J McCabe, Deputy President

STAY – financial services industry – banning – suppression order – restrain publication – discretion – legal representation – director – management

[Neville and Aged Care Quality and Safety Commissioner](#) [2023] AATA 285 (24 February 2023); A Nikolic AM CSC, Senior Member

PRACTICE AND PROCEDURE – complaint regarding provision of vitamins and supplements – review of 'no further action' decision by Commissioner – differentiation between 'complaints reviewable decision' and 'regulatory reviewable decision' – no jurisdiction – oral reasons provided – written reasons requested

[Pike and National Disability Insurance Agency](#) [2023] AATA 366 (8 March 2023); M Mischin, Deputy President

PRACTICE & PROCEDURE – NATIONAL DISABILITY INSURANCE SCHEME – Application for review of decision – application lodged out of time – application for extension of time to lodge application for review – whether ‘reasonable in all the circumstances’ to extend time – application refused

Refugee

[1820125](#) (Refugee) [2022] AATA 4749 (29 September 2022); G Cullen, Member

REFUGEE – protection visa – Sierra Leone – political opinion – All People Congress supporter – campaigned along with uncle – uncle’s death after victory of opposition party – fear of harm from opposition party – credibility issues – inconsistent evidence – referred for Ministerial intervention – Australian citizen daughter – payment of child support – serious, ongoing and irreversible hardship to daughter if applicant removed – decision under review affirmed

[1827752](#) (Refugee) [2022] AATA 4563 (17 November 2022); T Hamilton-Noy, Member

REFUGEE – protection visa – Uganda – member of particular social groups – divorced woman and supporter and perceived member of LGBTI community – emotional, physical and sexual violence during marriage – fear of harm from ex-husband, authorities and community – mental health and returned failed asylum seeker – credibility – claim of arranged marriage contradicted by media interview – authenticity of supporting statements – clear, plausible and credible evidence of work, community involvement and marriage – ex-husband’s refusal to recognise Australian divorce – ex-husband still in contact with children and applicant’s mother – country information – gender-based violence – limited treaty right to enter neighbouring countries – decision under review remitted

[1830926](#) (Refugee) [2022] AATA 4122 (5 September 2022); N Lamont, Member

REFUGEE – Protection Visa – Ghana – particular social group – albinos in Ghana – DNA evidence provided – kidnapped and threatened with ritual sacrifice – subject to ridicule, murder, violence, and discrimination – Economic Community of West African States (ECOWAS) – discrimination, stigma, marginalization and myths about persons with albinism common across African countries – decision under review remitted

[1900634](#) (Refugee) [2022] AATA 4802 (24 October 2022); P Katsambanis, Member

REFUGEE – protection visa – Ghana – chieftaincy dispute – Gbama-Yili – Bam-Gyili – Nanumba Konkomba conflict – applicant’s claimed identity and profile – birth certificate – claimed adopted identity – credibility concerns – inconsistent and contradictory evidence – decision under review affirmed

[1904001](#) (Refugee) [2022] AATA 4890 (13 October 2022); N Burns, Member

REFUGEE – protection visa – Ethiopia – race – Oromo ethnicity – imputed or actual political opinion – anti-government/pro-OLF/pro-OLA – Coalition for Unity and Democracy (CUD) – Patriotic Ginbot 7 (PG7) – father’s involvement with the Oromo Liberation Front (OLF) – monitored, threatened, and detained for seven months – country information – political, social and security developments in Ethiopia – decision under review remitted

[1921170](#) (Refugee) [2022] AATA 4738 (25 October 2022); D James, Senior Member

REFUGEE – Protection visa – Ethiopia – race – Amhara ethnic group – supporters of the Coalition for Unity and Democracy – supposed actual and/or imputed political view – religion – member of the Orthodox Christian faith – difficulties do not amount to a well-founded fear of persecution – fear of persecution is not well founded – ministerial intervention – decision under review affirmed

[1929897](#) (Refugee) [2022] AATA 4312 (30 September 2022); P Haag, Member

REFUGEE – protection visa – Ethiopia – race – mixed-race ethnicity – imputed political opinion – non-aligned – subjected to pressure to support Oromo political activists – likelihood of being barred from employment – influential Oromo-centric enemies – Ethiopian People’s Revolutionary Democratic Front (EPRDF) – Oromo People’s Democratic Organization (OPDO) – Oromo Democratic Party (ODP) – Oromo Liberation Army (OLA) – outbreak of civil war – political and ethnic conflict exacerbated by impact of natural disasters – decision under review remitted

[2001276](#) (Refugee) [2022] AATA 4739 (29 September 2022); A Duffield, Senior Member

REFUGEE – Protection Visa – Bangladesh –religion – Hindu – fears harm from Islamic extremists – imputed political opinion – membership of a particular social group being a Hindu activist – prominent member of Jago Hindu – persecution feared is not unintentional but involves significant discriminatory conduct – decision under review remitted

[2116229](#) (Refugee) [2022] AATA 5071 (17 November 2022); K Chapple, Member

REFUGEE – protection visa – Vietnam – member of particular social group – homosexual man – fear of harm by family, community and authorities and discrimination in workplace and health services – hidden sexuality and no activity or previous harm – arrived on student visa – recent disclosure to small number of people, two of whom provided supporting statements – mental health and psychologist’s report – country information – official and societal discrimination – decision under review remitted

Social Services

[Morgan and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 362 (28 February 2023); D J Morris, Senior Member

SOCIAL SECURITY – benefits, entitlements and pensions – applicant is recipient of disability support pension – other income not taken into account by Department – two debts consequently incurred – Department officer waives debt on grounds of special circumstances – authorised review officer affirms waiver decision – applicant seeks review by Social Services and Child Support Division (first review) – first review sets aside decision and substitutes decision that debts incurred but waived as attributable to sole error of Department – applicant seeks second review by General Division – application lodged late

PRACTICE AND PROCEDURE – late application – applicant seeks extension of time – postal service presumptions considered – period out of time not significant – presumptions about whether to extend time – applicant found not to have rested on his rights – reason for lateness accepted – however no utility in extending time – not in applicant's interests – hearing not proper basis for general grievance – extension of time refused – written reasons provided

[Sutton and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 263 (24 February 2023); B J Illingworth, Senior Member

Jobseeker Payment – Newstart Allowance – Increase in Jobseeker Payment – Centrelink – Services Australia – Internal Review – Rate of Jobseeker Payments

Taxation

[ZIOŁKOWSKI and Commissioner of Taxation](#) (Taxation) [2023] AATA 292 (2 March 2023); P W Taylor SC, Senior Member

TAXATION – application for reinstatement – income tax assessment and penalty decision – extensive non-compliance with directions – citizen of Australia and United States of America

Veterans' Affairs

[Fuller and Repatriation Commission](#) (Veterans' affairs) [2023] AATA 260 (24 February 2023) J Sosso, Deputy President

VETERANS' ENTITLEMENTS – eligibility for veteran gold card – whether the veteran rendered qualifying service – instrument of allotment – amended instrument – whether the veteran rendered warlike service – operational area – whether the veteran was allotted for duty – 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
Kwatra and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 3147
Moradi and Comcare	[2022] AATA 3168
Pera and Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4582
Precious Family Day Care and Secretary, Department of Education	[2023] AATA 99
Prosegur Australia Pty Ltd and Higerson	[2023] AATA 115
Pulini and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 59
RGKY and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2020] AATA 4255
Rukuwai and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2201
Warren; Services Australia and	[2022] AATA 4191

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BLBY v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 2282	[2023] FCA 128
Chiagozie v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 2380	[2023] FCA 139
Nguyen v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2357	[2023] FCA 150
Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 4308	[2023] FCA 180
Seau v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3430	[2023] FCA 176

**Thompson v Minister for Immigration,
Citizenship, Migrant Services and
Multicultural Affairs**

[\[2021\] AATA 4206](#)

[\[2023\] FCA 161](#)

**Ultimate Vision Inventions Pty Ltd v
Innovation and Science Australia**

[\[2019\] AATA 1633](#)

[\[2023\] FCAFC 23](#)

[\[2022\] FCA 606](#)

Statements of Principles

This section of the *Bulletin* provides information on recent developments including the notification or completion of investigations in relation to Statements of Principles made by the Repatriation Medical Authority (RMA) for the purposes of section 120A(2) of the [Veterans' Entitlements Act 1986 \(VEA\)](#) and section 338(2) of the [Military Rehabilitation and Compensation Act 2004 \(MRCA\)](#). These Acts require reference to be had to Statements of Principles made about particular conditions concerning injury, disease or death.

If the RMA gives notice that it intends to carry out an investigation in respect of a particular kind of condition, the Repatriation Commission cannot determine a claim made under the VEA about the incapacity or death of a person relating to that condition, until the RMA has determined a Statement of Principles or declares that it does not propose to determine a Statement of Principles about the condition. Also during this period, claims under the MRCA cannot be determined, reconsidered or reviewed by either the Repatriation Commission, the Veterans' Review Board or the AAT, until the RMA has determined a Statement of Principles about the condition concerned or declared it does not propose to do so.

Certain claims cannot succeed if the RMA has declared it does not propose to make a Statement of Principles in relation to the particular condition.

Existing Statements of Principles are also reviewed, amended or revoked from time to time.

New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These commence on 27 March 2023:

Cervical spondylosis (Reasonable Hypothesis) – No. 11 of 2023

<https://www.legislation.gov.au/Details/F2023L00158>

Cervical spondylosis (Balance of Probabilities) – No. 12 of 2023

<https://www.legislation.gov.au/Details/F2023L00177>

Chronic obstructive pulmonary disease (Balance of Probabilities) – No. 18 of 2023

<https://www.legislation.gov.au/Details/F2023L00176>

Chronic obstructive pulmonary disease (Reasonable Hypothesis) – No. 17 of 2023

<https://www.legislation.gov.au/Details/F2023L00175>

Mitral valve prolapse (Balance of Probabilities) – No. 16 of 2023

<https://www.legislation.gov.au/Details/F2023L00172>

Mitral valve prolapse (Reasonable Hypothesis) – No. 15 of 2023

<https://www.legislation.gov.au/Details/F2023L00171>

Periodic limb movement disorder (Balance of Probabilities) – No. 20 of 2023

<https://www.legislation.gov.au/Details/F2023L00180>

Periodic limb movement disorder (Reasonable Hypothesis) – No. 19 of 2023

<https://www.legislation.gov.au/Details/F2023L00179>

Thoracolumbar spondylosis (Balance of Probabilities) – No. 14 of 2023

<https://www.legislation.gov.au/Details/F2023L00165>

Thoracolumbar spondylosis (Reasonable Hypothesis) – No. 13 of 2023

<https://www.legislation.gov.au/Details/F2023L00164>

Vascular neurocognitive disorder (Balance of Probabilities) – No. 10 of 2023

<https://www.legislation.gov.au/Details/F2023L00157>

Vascular neurocognitive disorder (Reasonable Hypothesis) – No. 9 of 2023

<https://www.legislation.gov.au/Details/F2023L00156>

Warts (Balance of Probabilities) – No. 8 of 2023

<https://www.legislation.gov.au/Details/F2023L00169>

Warts (Reasonable Hypothesis) – No. 7 of 2023

<https://www.legislation.gov.au/Details/F2023L00168>

Statements of Principles to be revoked

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on **27 March 2023**:

Cervical spondylosis – No. 66 of 2014

<https://www.legislation.gov.au/Details/F2019C00787>

Cervical spondylosis – No. 67 of 2014

<https://www.legislation.gov.au/Details/F2014L00932>

Chronic obstructive pulmonary disease – No. 38 of 2014

<https://www.legislation.gov.au/Details/F2015C00914>

Chronic obstructive pulmonary disease – No. 37 of 2014

<https://www.legislation.gov.au/Details/F2015C00915>

Lumbar spondylosis – No. 63 of 2014

<https://www.legislation.gov.au/Details/F2018C00480>

Lumbar spondylosis – No. 62 of 2014

<https://www.legislation.gov.au/Details/F2018C00478>

Mitral valve prolapse – No. 44 of 2014

<https://www.legislation.gov.au/Details/F2014L00473>

Mitral valve prolapse – No. 43 of 2014

<https://www.legislation.gov.au/Details/F2014L00471>

Periodic limb movement disorder – No. 27 of 2014

<https://www.legislation.gov.au/Details/F2014L00314>

Periodic limb movement disorder – No. 26 of 2014

<https://www.legislation.gov.au/Details/F2014L00313>

Thoracic spondylosis – No. 65 of 2014

<https://www.legislation.gov.au/Details/F2018C00482>

Thoracic spondylosis – No. 64 of 2014

<https://www.legislation.gov.au/Details/F2018C00481>

Vascular dementia – No. 79 of 2014

<https://www.legislation.gov.au/Details/F2014L01141>

Vascular dementia – No. 78 of 2014

<https://www.legislation.gov.au/Details/F2014L01140>

Warts – No. 71 of 2014

<https://www.legislation.gov.au/Details/F2014L00927>

Warts – No. 70 of 2014

<https://www.legislation.gov.au/Details/F2014L00926>

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