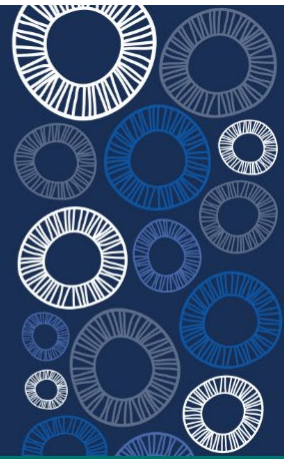




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 05/2024

11 March 2024

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 LPExtFeedback@aat.gov.au.

Contents

AAT Recent Decisions	3
Child Support	3
Citizenship	4
Compensation	5
Freedom of Information	6
Industrial Law	6
Migration	6
National Disability Insurance Scheme	9
National Security	10
Passports	10
Practice and Procedure	10
Refugee	12
Social Security	13
Taxation	14
Appeals	15
Appeals lodged	15
Appeals finalised	15

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

[Abrams and Child Support Registrar](#) (Child support) [2023] AATA 4001 (13 October 2023); D Tucker, Member

CHILD SUPPORT – refusal to grant an extension of time to object – no satisfactory explanation for the delay – no merit – weighing all factors the extension of time was correctly refused – decision under review affirmed

[Curfman and Curfman](#) (Child support) [2023] AATA 4281 (6 November 2023); K Dordevic, Senior Member

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

[FFTS and Child Support Registrar](#) (Child support second review) [2024] AATA 338 (21 February 2024); A Poljak, Senior Member

CHILD SUPPORT – Percentage of care – Care period – Whether there has been a change in the pattern of care – Whether existing care percentage determination should be revoked – Whether care for child ceased – Child support terminating event – Decision under review set aside and substituted

[Gundy and Zachry](#) (Child support) [2023] AATA 4291 (24 October 2023); K Synon, Deputy President

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

[Handley and Handley](#) (Child support) [2023] AATA 4293 (26 October 2023); M King, 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

[Kemp and Gilliam](#) (Child support) [2023] AATA 4287 (24 November 2023); S Irvine, 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 varied

[SVKT and Child Support Registrar](#) (Child support second review) [2024] AATA 307 (29 February 2024); A Maryniak KC, Member

CHILD SUPPORT – objection to date of effect of percentage of care determination – where mother applied for second tier review outside the 28-day period – whether there were special circumstances that prevented lodgement – Tribunal not satisfied of special circumstances which prevented lodgement within the requisite time period – decision under review affirmed

[TQGD and Child Support Registrar](#) (Child support second review) [2024] AATA 263 (28 February 2024); Dr L Kirk, Senior Member

CHILD SUPPORT – percentage of care – care period – consideration of actual care – adhering to parenting plan – determination of new percentages of care – conflicting evidence – decision under review affirmed

[XQTJ and Child Support Registrar](#) (Child support second review) [2024] AATA 328 (4 March 2024); R Cameron, Senior Member

CHILD SUPPORT – appeal from decision of the Social Services and Child Support Division of the Administrative Appeals Tribunal – percentage of care – care period – pattern of care – Federal Circuit and Family Court of Australia interim consent order – decision affirmed

Citizenship

[Broide and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2024] AATA 387 (16 February 2024); Dr N A Manetta, Senior Member

CITIZENSHIP – application for citizenship refused – whether the applicant satisfies the residence criteria under section 22B(1)(c) of the Australian Citizenship Act 2007 (Cth) – statutory interpretation – when citizenship application is ‘made’ – whether an application is ‘made’ on the day it is posted or the day it is received in the post – different outcome depending on method of lodgement somewhat illogical and arbitrary – dicta in Wang not applied – decision in Somai followed – decision under review set aside

[Chen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 308 (29 February 2024); A Younes, Deputy President

CITIZENSHIP – Approval of Australian citizenship by conferral – Whether to cancel the approval of citizenship under subsection 25(2) of the Australian Citizenship Act 2007 (Cth) - Where Applicant has an Australian business with cousin – Whether Applicant is likely to reside in Australia or maintain a close and continuing association with Australia – Decision under review affirmed

[Leo and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 357 (7 March 2024); J C Kelly, Senior Member

CITIZENSHIP – application for citizenship by conferral – citizenship application refused – whether the Applicant is a person of good character – meaning of good character – enduring moral qualities – criminal history – migration history – Tribunal not satisfied as to good character of Applicant – reviewable decision affirmed

[Molla and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 311 (29 February 2024); A Nikolic AM CSC, Senior Member

CITIZENSHIP – decision to refuse citizenship application under s 24(6)(a) of the Australian Citizenship Act 2007 (Cth) – pending criminal charges since August 2022 – contested trial scheduled for October 2024 – prohibition against granting citizenship enlivened – reviewable decision affirmed

[Razak and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2024] AATA 391 (10 January 2024); S Evans, Member

CITIZENSHIP – Applicant citizen of Fiji – Application for Citizenship conferral refused – ISSUE: whether the Applicant is of ‘good character’ under section 21(2)(h) of the Australian Citizenship Act 2007 (Cth) - lengthy history of criminal offending – convictions for violent crimes including domestic violence related offences – multiple failures to declare criminal convictions – determining questions of character – serious nature of certain repeat offending – lack of candour in relation to Applicant’s dealings with the Australian government – decision under review affirmed

[Yamacli and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2024] AATA 353 (7 March 2024); A Nikolic AM CSC, Senior Member

CITIZENSHIP – application for conferral of Australian citizenship – citizen of the Republic of Turkey – whether the Tribunal is satisfied of the Applicant’s good character – Australian Citizenship Act 2007 (Cth) – Applicant’s criminal history considered – family violence and other offending – multiple convictions between 2016 and 2022 – decision affirmed

Compensation

[Scarmozzino and Telstra Corporation Limited](#) (Compensation) [2024] AATA 388 (8 March 2024); R West, Member

WORKERS COMPENSATION -- Safety, Rehabilitation and Compensation Act 1988 – lower back strain – chronic adjustment disorder with anxiety and depression – microdiscectomy surgery – refusal of compensation for household services pursuant to section 29 – gardening services – whether the household services sought by the Applicant reasonably required – decision affirmed

[WQLR and Comcare](#) (Compensation) [2024] AATA 337 (22 February 2024); A Poljak, Senior Member

WORKERS COMPENSATION – clerical assistant – Services Australia – compensation for bilateral 1st carpometacarpal injections – compensation for a rheumatology consultation – compensation for MRI of both hands and wrists – Denial of liability – Whether injury is work related – Conflicting medical evidence – Decision affirmed

Freedom of Information

[Bachelard and Australian Federal Police](#) (Freedom of information) [2024] AATA 312 (29 February 2024); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION - review of decision to refuse access to documents related to an investigation under Part V of the Australian Federal Police Act 1979 - claim that documents are exempt under s 37 of the Freedom of Information Act 1982 because documents would disclose the identity of confidential sources of information in relation to the enforcement or administration of the law - whether sources remain confidential - further exemptions under sections 47E and 47F - whether disclosure of documents would have a substantial adverse effect on management of personnel and operations of the Australian Federal Police - whether disclosure would involve unreasonable disclosure of personal information - whether disclosure is in or contrary to the public interest - whether parts of a document are irrelevant to the access request - decision affirmed

Industrial Law

[Dooley and Secretary, Department of Employment and Workplace Relations](#) [2024] AATA 266 (27 February 2024); Emeritus Professor P A Fairall, Senior Member

FAIR ENTITLEMENTS GUARANTEE – Redundancy entitlement – Whether agreement is a ‘governing instrument’ – whether agreement is a contract – where employee gave valuable consideration – where contract prevails over enterprise agreement – decision under review set aside

Migration

[2212750](#) (Migration) [2023] AATA 4362 (17 November 2023); James Silva, Member

MIGRATION – cancellation – Bridging A (Class WA) visa – Subclass 010 (Bridging A) – granted in association with application for review of refusal of visitor visa – incorrect answers and bogus document in visa applications – previous name, visas, travel and overstay not declared – passport in different identity – forensic facial image examination and signatures – non-compliance denied and documents supporting current identity provided – at least one and possibly both passports bogus, but not possible or necessary to find which – discretion to cancel visa – vague and unsubstantiated evidence – visa and migration history – possible breaches of conditions – wife in third country and application for contributory parent visa in progress, with applicant as dependant – application for judicial review of refusal of visitor visa in progress – Bridging E visa granted – mandatory legal consequences of cancellation – decision under review affirmed

[Brooke and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 389 (8 March 2024); A Nikolic AM CSC, Senior Member

MIGRATION - Mandatory visa cancellation – citizen of New Zealand – Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – violent offending against former partner – failure to pass good character test – whether another reason to revoke visa cancellation – Ministerial Direction no. 99 applied – decision affirmed

[CHCY and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 334 (5 March 2024); A E Burke AO, Member

MIGRATION – applicant is a citizen of New Zealand – applicant held a Class TY Subclass 444 Special Category (Temporary) visa – visa mandatorily cancelled under Migration Act – substantial criminal record – delegate of Minister decided not to revoke mandatory cancellation – serious offence – consideration of the Ministerial Direction 99 – primary considerations – protection of the Australian community – nature and seriousness of the conduct – conduct found to be very serious – risk to the Australian community – best interests of minor children in Australia – special consideration – expectations of the Australian community – extent of impediments if applicant removed to New Zealand – links to the Australian community – negligible risk of reoffending found – decision under review set aside and new decision substituted that there is another reason for visa not be revoked

[Davidson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 243 (14 February 2024); T Tavoularis, Senior Member

MIGRATION – non-revocation of mandatory cancellation of a 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 - Applicant convicted for sexual crimes against women and children – offending conduct spanning a period of years – where the Applicant has been a resident of Australia for almost seven decades – where the Applicant is of an advanced age - strong protective factors in the community – Tribunal finding the risk of reoffending moderated by the protective factors and the Applicant's age – Tribunal finding very strong ties for the Applicant in Australia- additional other considerations found to be relevant to the case - protection and expectations of the Australian community outweighed by ties to Australia, interests of minor children, impediments upon return and additional other considerations- Tribunal finding another reason to revoke the mandatory cancellation decision- decision under review set aside and substituted

[El Rahi](#) (Migration) [2023] AATA 4342 (18 December 2023); N Goetz, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – family support during medical operation – family medical issues – previous compliant family visits – offer of a security deposit – security situation in Lebanon – decision under review remitted

[Elvidge and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 356 (6 March 2024); A George, Senior Member

PRACTICE AND PROCEDURE – application for summary dismissal under s 42B(1)(b) – whether application has reasonable prospects of success – application dismissed

[HVLJ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]
AATA 246 (9 February 2024); S Burford, Senior Member

MIGRATION – decision of delegate of Minister to refuse to grant the Applicant a bridging visa – character test – Direction No 99 – primary and other considerations – protection of Australian community – nature and seriousness of criminal offending – risk to the Australian community should the Applicant commit further offences or engage in other serious conduct – strength, nature and duration of ties to Australia – expectations of the Australian community – extent of impediments if removed – Applicant is a 23 year old man who arrived in Australia as a 19 year old – extent of impediments if returned to Vietnam – decision of the delegate of Minister to refuse to grant the Applicant a bridging visa is affirmed

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

(Migration) [2024] AATA 242 (25 January 2024); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of visa – whether ‘another reason’ for revocation of cancellation decision – Direction 99 – conviction of grievous bodily harm – offence extremely serious – trend of increasing seriousness – risk of recidivism assessed as low tending towards medium – alcohol and drug misuse – instances of family violence and other antisocial conduct – interests of minor children weigh strongly in applicant’s favour – decision set aside and revocation of cancellation decision substituted

Karanja (Migration) [2023] AATA 4273 (12 December 2023); M Sheargold, Member

MIGRATION – Skilled (Provisional) (Class VC) visa – Subclass 485 (Temporary Graduate) – Post-Study Work stream – Australian study requirement – two academic years of relevant study – courses completed within 6 months of visa application – applicant delayed in home country arranging new passports – decision under review affirmed

Lam (Migration) [2023] AATA 4335 (17 December 2023); J Cripps Watts; Senior Member

MIGRATION – Partner (Residence) (Class BS) visa – Subclass 801 (Partner) – genuine and continuing partner relationship – joint social activities and family events – shared finances, assets and liabilities – shared care of merged family – joint travel – decision under review remitted

MGMZ and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024]

AATA 333 (5 March 2024); R Cameron, Senior Member

MIGRATION – decision of delegate of Minister not to revoke mandatory cancellation of Class TY Subclass 444 Special Category (Temporary) visa – substantial criminal record – failure to pass the character test – whether there is another reason to revoke the visa cancellation – Direction No. 99 – recklessly causing serious injury – use of heavily bladed weapon – common law assault on son – protection of the Australian community – family violence – expectations of the Australian community – strength, nature and duration of ties to Australia – best interests of minor children – extent of impediments if removed – decision under review affirmed

Ngatoko and Minister for Immigration, Citizenship and Multicultural Affairs (Migration) [2024]

AATA 359 (7 March 2024); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – non-revocation of mandatory visa cancellation – Direction No.99 – where application remitted from Federal Court of Australia – protection of Australian community – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if removed – domestic violence – where applicant has strong connection to nieces and nephews in Australia – decision under review set aside

[Tanehohaia and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 331 (1 March 2024); Dr M Evans-Bonner, Senior Member

MIGRATION – mandatory visa cancellation – decision of delegate of Minister not to revoke mandatory cancellation of the Applicant’s Visa – character test – substantial criminal record – offences include possessing prohibited drugs, assault offences including family violence, property damage, breaches of suspended imprisonment orders, driving offences – Applicant is a 31-year-old citizen of New Zealand who arrived in Australia as a 19 year old adult – Direction No 99 – primary and other considerations – protection of the Australian community – nature and seriousness of the conduct – risk to the Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor son, nieces and nephews – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed to New Zealand – impact on victims – Reviewable Decision set aside and substituted

[To](#) (Migration) [2023] AATA 4331 (19 December 2023); C Cartwright, Member

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – validly married – money transfers – sponsor’s multiple visits to Vietnam – joint social activities and family events – plan to purchase a home – decision under review remitted

[Waqavakatoga and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 264 (26 February 2024); Hon. J Rau SC, Senior Member

MIGRATION – mandatory cancellation of Class BB Subclass 155 Five Year Resident Return 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 is affirmed

National Disability Insurance Scheme

[Coventry and National Disability Insurance Agency](#) [2024] AATA 259 (26 February 2024); M Mischin, Deputy President

NATIONAL DISABILITY INSURANCE AGENCY – access to scheme – disability requirements – Ankylosing Spondylitis – whether the Applicant meets the disability requirements in section 24 or the early intervention requirements in section 25 of the National Disability Insurance Scheme Act 2013 (the NDIS Act) – whether the Applicant’s impairments result in substantially reduced functional capacity to undertake one or more of the activities listed in section 24(1)(c) of the NDIS Act – whether there are other service systems that would be more appropriate to provide the assistance the Applicant seeks – decision under review affirmed

[FBHL and National Disability Insurance Agency](#) [2024] AATA 304 (27 February 2024); P J Clauson AM, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – supports – home modifications – reasonable and necessary criteria - private carers room – whether the funding or provision of the support takes account of what it is reasonable to expect families, carers and the community to provide – storage room - value for money — decision under review set aside and remitted for reconsideration

[Ryan and National Disability Insurance Agency](#) [2024] AATA 310 (29 February 2024); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – application for a review of a reviewable decision – participant supports – review of supports in plan – whether particular supports are reasonable and necessary within the meaning of section 34 of the National Disability Insurance Scheme Act 2013 (Cth) - whether the supports represent value for money - whether the supports are effective and beneficial for the Applicant – whether the supports are related to disability – decision under review (as remade following remittal) affirmed

[Smith and National Disability Insurance Agency](#) [2024] AATA 265 (27 February 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether the applicant has a disability - whether conditions are permanent – weight to be given to competing expert opinions – whether there is substantially reduced functional capacity – whether impairment affects capacity for social or economic participation – whether likely to require support under the NDIS for lifetime - decision set aside and substituted

National Security

[NKFV and Director-General of Security](#) [2024] AATA 269 (9 February 2024); The Hon. J Pascoe AC CVO, Deputy President, A Poljak, Senior Member and S Evans, Member

NATIONAL SECURITY – review of adverse security assessment – whether direct or indirect risk to security – recommendation that visa be cancelled – decision under review affirmed

Passports

[TYRQ and Minister for Foreign Affairs](#) [2024] AATA 316 (29 February 2024); G Lazanas, Senior Member

PASSPORT – Australian citizen refused a passport – where applicant is a child – where applicant is residing with mother in China – consent for child to be issued with a passport refused by the father – where parents divorced – where no court orders in relation to parental responsibility for child – whether exceptions apply for issue of passport to child without parental consent or court order – whether substantial period of no contact between child and non-consenting parent – whether evidence of family violence – whether abduction of child – whether child requires passport to continue to legally reside overseas – whether child's welfare (physical or psychological) would be adversely affected if unable to travel internationally – whether discretion should be exercised – decision under review affirmed

Practice and Procedure

[Australian Conservation Foundation Incorporated and Secretary, Department of Climate Change, Energy, the Environment and Water](#) (Freedom of information) [2024] AATA 309 (29 February 2024); A Maryniak KC, Member

PRACTICE AND PROCEDURE – joinder – procedural fairness – interests affected – whether reasonable delay in making joinder application – nature of business interests of affected party – consequence of delay to proceeding – nature of freedom of information decision subject of review – whether ulterior purpose of joinder application – joinder granted

[Balbir Singh and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 260 (27 February 2024); D J Morris, Senior Member

SOCIAL SECURITY – applicant applied for national health emergency crisis payment – application rejected as being made outside required timeframe – applicant did not lodge claim when she contended she had – applicant lodged later claim but found not to be facing financial hardship – rejection affirmed by authorised review officer – applicant sought review by Tribunal – Tribunal at First Review affirmed rejection decision – applicant sought Second Review – respondent asked for matter to be dismissed as no reasonable prospect of success – application dismissed

PRACTICE AND PROCEDURE – dismissal of an application under s 42B(1) of AAT Act – whether application has no reasonable prospect of success – on own evidence applicant did not meet requirement in Determination of financial hardship at time of claim – no utility in Second Review because no relief available to the applicant

[Hadden and Decision Maker](#) [2024] AATA 360 (29 January 2024); D J Morris, Senior Member

PRACTICE AND PROCEDURE – application for review of various decisions – some of decisions not made by Commonwealth entities – some of grievances of the applicant are general in nature – tribunal unable to distill a reviewable decision – applicant also requested extension of time – tribunal decided it does not have jurisdiction to review the decisions sought – not necessary therefore to consider whether to enlarge time – application dismissed for want of jurisdiction

[King and K & S Freighters Pty Limited](#) (Compensation) [2024] AATA 244 (20 February 2024); Dr M Evans-Bonner, Senior Member

PRACTICE AND PROCEDURE – interlocutory orders – workers' compensation

CONFIDENTIALITY ORDER – Respondent applied for confidentiality order under s 35(4) of the Administrative Appeals Tribunal Act 1975 (Cth) over video surveillance and associated materials (surveillance evidence) – ex-parte hearing in the absence of the Applicant to determine whether confidentiality order should be granted – procedural fairness – application for confidentiality order made by Respondent six business days before substantive hearing listed to commence – confidentiality order refused – Applicant previously unaware of existence of surveillance evidence and has not seen the evidence – Hayes and Bessey distinguished – trend in the case law towards a “cards on the table” approach

LEAVE TO RELY ON SURVEILLANCE EVIDENCE – further interlocutory hearing to determine whether Respondent should be given leave to rely on surveillance evidence – Respondent sought to rely on surveillance evidence less than 28 days before substantive hearing listed to commence – leave for Respondent to rely on surveillance evidence refused – unnecessary to decide whether surveillance evidence attracts legal professional privilege because leave refused

[Paschke and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 241 (26 February 2024); A Nikolic AM CSC, Senior Member

PRACTICE AND PROCEDURE – Applicant seeks review of general policy of Services Australia – decision made by Authorised Review Officer – Applicant did not seek review of Authorised Review Officer decision by AAT1 – issue of jurisdiction arises – parties consent to jurisdiction being determined on the papers – no jurisdiction – application dismissed

[PRLT and National Disability Insurance Agency](#) [2024] AATA 390 (8 March 2024); P Smith, Member

PRACTICE & PROCEDURE - NATIONAL DISABILITY INSURANCE SCHEME – Request to issue summonses for the production of documents from Applicant’s medical specialists – objection lodged by the Applicant that the Respondent not be given leave to inspect the documents and that the Tribunal set the summonses aside – whether the Respondent’s request is an abuse of process – whether the Respondent’s request amounts to a fishing expedition – whether the documents have relevance or apparent relevance to the substantive issue on the review – whether consent of the Applicant is required to be obtained by the Respondent before requesting medical records – whether the Applicant has been denied procedural fairness to prosecute her case on the summons issue – significant delays caused by the Applicant to determine the result of the summons issue and the overarching proceeding – whether the Respondent breached their model litigant obligations – leave granted to the Respondent to inspect the documents that have relevance or apparent relevance to the substantive issue on the review

[Singh and DHL Supply Chain \(Australia\) Pty Ltd](#) (Compensation) [2024] AATA 317 (1 March 2024); Dr S Fenwick, Senior Member

COMPENSATION – failure to undertake rehabilitation program – suspension of employee’s right to institute proceedings under s 37(7) Safety, Rehabilitation and Compensation Act 1988 – new claim for compensation – further applications for review lodged with Tribunal – Tribunal’s jurisdiction following suspension decision considered

PRACTICE AND PROCEDURE – application for a stay of the implementation of decision – effect of stay of implementation, public interest, consequences for parties considered – stay refused

Refugee

[1826067](#) (Refugee) [2023] AATA 4367 (2 October 2023); G Hamilton, Member

REFUGEE – protection visa – Iran – political opinion – involvement in the Green Movement – family member of imprisoned journalist – departed Iran without difficulty – connection with the anti-regime community in Australia – religion – Christianity – decision under review remitted

REFUGEE – protection visa – Iran – arrival in Australia by sea – Territory of Ashmore and Cartier Islands – section 91K bar not applicable – validity of second visa application – section 48A bar not lifted – invalid visa application – decision under review substituted

[1801118](#) (Refugee) [2023] AATA 4605 (24 November 2023); K Chapple, Member

REFUGEE – protection visa – Malaysia – violence by brother – unable to marry without brother’s permission – first form of wedding in Australia not official – non-recognition of marriage and illegitimacy of children – children not included in any application despite attempts to add – recent Islamic and Australian weddings – visa application completed by student lawyer and contained false claims – applicant’s lack of knowledge of process – credible evidence – country information – marriage likely to be recognised but children likely to be regarded as illegitimate – no jurisdiction to decide on children’s claims – best interests of children – referred for ministerial consideration – decision under review affirmed

[1727623](#) (Refugee) [2023] AATA 4584 (28 November 2023); S Kamandi, Member

REFUGEE – protection visa – Malaysia – small business operators – economic conditions – employment – harassment from debt collectors – children will suffer educational disadvantage – decision under review affirmed

[2314053](#) (Refugee) [2023] AATA 4644 (7 December 2023); J Silva, Member

REFUGEE – protection visa – Timor-Leste – particular social group – homosexual man – social disapproval – employment – economic conditions – state protection – decision under review affirmed

[1731095](#) (Refugee) [2023] AATA 4657 (13 December 2023); S Durvasula, Member

REFUGEE – protection visa – China – imputed political opinion – petition against corruption – land resumption without compensation – physical assault – demolition of home – decision under review affirmed

Social Security

[Aviles Venegas and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 319 (29 February 2024); L M Gallagher, Member

SOCIAL SECURITY – Parental Leave Pay – whether work test satisfied – primary claimant – permissible break – wrist injury – COVID 19 – premature birth or pregnancy related complications or illness – decision under review affirmed

[Howe and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 262 (26 February 2024); Brigadier A G Warner, AM LVO (Retd), Member

SOCIAL SECURITY – Carer Payment debt - distinction between Carer Allowance and Carer Payment – constant care – whether Applicant has a Carer Payment debt – debt period – whether write off or waiver provisions are available – sole administrative error - good faith - special circumstances – notional entitlement - Carer Payment debt affirmed – debt period varied – debt to be recalculated – recalculated debt to be recovered

[Lyll and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 332 (4 March 2024); Hon J Rau SC, Senior Member

Social security – recovery of overpayment – recoverable debt – absence of financial hardship – write off of debt – waiver of debt – waiver for special circumstances – waiver for sole administrative error – reimbursement – good faith – the decisions under review are affirmed

[Mrgic; Secretary, Department of Social Services and](#) (Social services second review) [2024] AATA 261 (28 February 2024); D J Morris, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – whether claimant eligible for disability support pension – date of claim – relevant period for eligibility – where claimant has not completed a program of support – where claim rejected by agency – where rejection affirmed by authorised review officer – where Tribunal at First Review set aside rejection and remitted matter for reconsideration with finding that claimant allocated 25 impairment points – Secretary sought second review – Tribunal finds 20 or more points cannot be allocated under a single table – claimant has not undertaken program of support – decision set aside and substituted with new decision affirming rejection of claim

[Rasekh Fard and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 358 (7 March 2024); L M Gallagher, Member

SOCIAL SECURITY – disability support pension – whether Applicant’s spinal condition and mental health condition were fully diagnosed, fully treated and fully stabilised – whether Applicant’s impairments attracted an impairment rating under the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 – whether Applicant has a severe impairment – whether Applicant has a continuing inability to work – decision under review affirmed

[Saville and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 355 (7 March 2024); P Ranson, Member

Social Security – disability support pension – whether employment income reported correctly – whether under reporting of income resulted in debt due to the Commonwealth – whether entitlement to DSP calculated correctly – whether debt should be written off or waived – consideration of special circumstances – decision under review affirmed

Taxation

[Quy and Commissioner of Taxation](#) (Taxation) [2024] AATA 245 (26 February 2024); D Mitchell, Member

TAXATION – residency of taxpayer – taxpayer worked overseas – whether Australian resident according to the Ordinary Concepts Test – whether Australian resident according to the Domicile Test – decisions 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
Active Sports Management Pty Ltd and Industry Innovation & Science Australia	[2023] AATA 4078
King and K & S Freighters Pty Limited	[2024] AATA 244
Wardhana and Minister for Immigration, Citizenship and Multicultural Affairs	[2024] AATA 52

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Fahy v Administrative Appeals Tribunal	[2021] AATA 3258	[2024] FCA 170
HDYP v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 1269	[2024] FCA 103
NDBR v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 4042	[2024] FCA 168
QDWQ v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 2012	[2024] FCA 178
Reid v Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 79	[2024] FCAFC 16 [2023] FCA 1076
Stern v Commissioner of Taxation	[2023] AATA 2010	[2024] FCAFC 21



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 [AustLII](#).

