



Administrative  
Appeals Tribunal

AAT  
Bulletin

# AAT Bulletin

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

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

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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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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

[PCJN and Child Support Registrar](#) (Child support second review) [2023] AATA 403 (17 March 2023); A Nikolic AM CSC, Senior Member

CHILD SUPPORT – percentage of care – whether parent continues to provide care where child living with grandmother – whether parent has responsibility for making decisions in relation to the welfare of the child – whether parent continues to provide financial and emotional support – special circumstances in time taken to lodge objection – decision under review set aside

[Hollyer and Johnstone](#) (Child support) [2023] AATA 196 (12 January 2023); S De Bono, Senior Member

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

[Frampton and Lemer](#) (Child support) [2023] AATA 277 (18 January 2023); F Zuccala, Member

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

[Bestall and Thorn](#) (Child support) [2023] AATA 278 (19 January 2023); S Letch, Member

CHILD SUPPORT – departure determination – costs of education – a ground for departure established – decision to depart - decision under review set aside and substituted

[Burwick and Layley](#) (Child support) [2023] AATA 274 (23 January 2023); J Leonard, Member

CHILD SUPPORT – particulars of the administrative assessment – estimate of income – estimate of income accepted – decision under review affirmed

[McLachlan and McLachlan](#) (Child support) [2023] AATA 275 (25 January 2023); T Hamilton-Noy, Member

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

CHILD SUPPORT – date of effect of the tribunal's decision – late application for review – no special circumstances exist that prevented the application for review being lodged in time – tribunal declines to make a determination under [subsection 95N\(2\)](#)

CHILD SUPPORT – percentage of care – date of effect provisions – whether there were special circumstances that prevented the objection being lodged in time – no special circumstances exist – decision under review affirmed

## Citizenship

[QXSC and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Citizenship) [2023] AATA 368 (23 February 2023); Dr P McDermott RFD, Deputy President

Application for Australian Citizenship by conferral – identity requirement – where approval is prohibited unless identity requirement is satisfied – where applicants made false declaration as to national identity documents or citizenship – inconsistent and implausible evidence – lack of documentary identification evidence – decision under review affirmed

[Sachdeva and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 400 (17 March 2023); D J Morris, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – where applicant is a citizen of the Republic of Singapore and a permanent resident of Australia – general residence requirement – absences from Australia in twelve month period immediately before applying for citizenship – where applicant regularly travels abroad for work – where applicant's work not of a kind which may be considered in regard to special residence requirement – where applicant travelled abroad to care for sick relative – supervening event of national and international travel restrictions owing to pandemic – no discretionary power under legislation – applicant not eligible for grant of citizenship at this time – reviewable decision is affirmed

## Compensation

[Hogan and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 418 (13 March 2023); M Williams, Member

COMPENSATIO – Defence-related claims – whether the Applicant suffered an injury or disease – claim for depressive disorder – claim for post-traumatic stress disorder – claim for alcohol abuse disorder – whether the Applicant's injuries arise out of or in the course of his employment – whether employer induced the Applicant to participate in activity – decision under review affirmed

[Mitchell and Comcare](#) (Compensation) [2023] AATA 482 (24 March 2023); B W Rayment OAM KC, Deputy President

WORKERS' COMPENSATION – s 42B of the Administrative Appeals Tribunal Act 1975 (Cth) – previous application for review to the Tribunal – previous application affirmed by the Tribunal – assertion that an irregularity affected the earlier proceedings – application for dismissal refused

[Petersen and Comcare](#) (Compensation) [2023] AATA 456 (22 March 2023); R Cameron, Senior Member

WORKER'S COMPENSATION – Applicant claimed psychological injury under s 14 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – perception of overworking and/or bullying – whether aggravation/exacerbation of the applicant's pre-existing psychological injury/condition significantly contributed to by employment – whether aggravation/exacerbation caused as a result of reasonable administrative action taken in a reasonable manner – decision set aside and substituted

[Tipping and Comcare](#) (Compensation) [2023] AATA 457 (22 March 2023); W Frost, Member

WORKERS' COMPENSATION – where the Respondent determined no liability pursuant to section 14 of the Safety, Rehabilitation and Compensation Act 1988 – employment with Defence – 'injury' or 'disease' – two claims – multitude of claimed physical injuries – back, neck and right knee injury – primary injuries – consequential injuries – ergonomic workplace assessments and support – soft tissue injuries – myofascial pain syndrome – nerve entrapment – where medical evidence overwhelming – employment did not contribute – 'to a significant degree' – decisions under review affirmed

## Corporations

[MEC Resources Ltd and Industry Innovation and Science Australia](#) [2023] AATA 399 (15 March 2023); S Boyle, Deputy President

POOLED DEVELOPMENT FUNDS – Pooled Development Funds Act 1992 – Revocation of registration declaration under s 47(1) – ultimate sanction of revocation of registration not appropriate – claimed breaches do not subvert the objects of the Act – no other power applicable in present case – breaches occurred when Applicant under different management – procedures for compliance now in place – procedural fairness – ground for cancellation argued not referred to in SFIC – revocation order set aside and substituted

## Freedom of Information

[Cox; Secretary, Department of Agriculture, Water and the Environment and](#) (Freedom of information) [2023] AATA 375 (9 March 2023); P Britten-Jones, Deputy President

FREEDOM OF INFORMATION – access sought to documents relating to the native grasslands in the south eastern highlands of New South Wales – exceptions claimed under ss 34, 37(2)(b), 47C, 47E(d) and 47F – Secretary bears the onus under s 61 – whether documents brought into existence for the dominant purpose of briefing a Minister on a Cabinet document – whether disclosure would reveal a Cabinet deliberation or decision – whether documents would disclose deliberative processes – whether disclosure of documents would affect enforcement of law – whether disclosure of documents would affect operational conduct – whether disclosure is in the public interest or whether disclosure is contrary to the public interest – decision under review in proceeding 2021/9890 is set aside – decisions under review in proceedings 2022/0671 and 2022/0672 are affirmed

[Wilson AM and Office of the Australian Information Commissioner](#) (Freedom of Information) [2023] AATA 458 (21 March 2023); Britten-Jones, Deputy President

FREEDOM OF INFORMATION – access sought to documents consisting of correspondence and transcripts of meetings relating to a privacy complaint made to the Australian Information Commissioner – whether documents are exempt from disclosure under s 47E(d) – whether documents are exempt from disclosure under s 47F – Respondent bears onus under s 61 – access would involve unreasonable disclosure of personal information – public interest against disclosure significantly outweighs the public interest factors in favour of disclosure – decision under review affirmed

## Migration

[Ahmed and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2022] AATA 5110 (21 November 2022); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a XB Subclass 202 Global Special Humanitarian 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

[Dau and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 472 (23 March 2023); Britten-Jones, Deputy President

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether there is ‘another reason’ to revoke mandatory cancellation decision – applicant spent his formative years in Australia and has a nine year old daughter and family in Australia - he would face significant impediments and serious risk of harm if removed to South Sudan – the primary considerations of the protection and expectations of the Australian community are outweighed by the countervailing considerations – a consequence of non-revocation is indefinite detention – the decision under review is set aside

[El Ghouli and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 397 (16 March 2023); K Raif, Senior Member

MIGRATION – failure to pass character test – whether there is another reason to exercise direction – Ministerial Direction 90 – evidence of rehabilitation – assessment of future risk – protection of the Australian community – best interests of minor children – expectations of the Australian community – nature and seriousness of offending conduct – links to Australian community – strength, nature and duration of ties – decision under review set aside and substituted

[HKRC and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 450 (14 March 2023); Emeritus Professor P A Fairall, Senior Member

MIGRATION – mandatory cancellation of visa – Migration Act 1958 (Cth), subsection 501CA(4) – Direction No. 99 – child sexual offences – long period of abuse – protection of the Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – extent of impediments if removed – impact on victims – decision affirmed

[Mateo and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 391 (24 February 2023); Dr N A Manetta, Senior Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant does not satisfy character test – whether another reason for cancellation decision to be revoked – Direction No. 90 – frequent offending – alcohol misuse – potentially serious risk to the Australian community if applicant reoffends while drunk – family violence but none directed to the partner’s person – low risk of reoffending – links to Australian community – best interests of applicant’s three Australian children – impact of removal on applicant’s fiancée – decision under review set aside and cancellation decision revoked

[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 392 (15 March 2023); J Owen, 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. 99 – protection of the Australian community – nature and seriousness of conduct – risk of reoffending – family violence – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – impact on victims – impact on Australian business interests – decision under review set aside and substituted

[Grima and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 449 (2 January 2023); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – whether the Applicant passes the character test – 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

[Riscuta and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 471 (28 February 2023); George, Senior Member

MIGRATION – Class BF Transitional (Permanent) visa – where Applicant does not pass the character test – decision under review affirmed

[Thornton and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 470 (23 March 2023); Dr L Bygrave, Member

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

[VBPF and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Migration) [2023] AATA 396 (14 March 2023); R Cameron, Senior Member

MIGRATION – refusal of an application to become an Australian citizen by conferral - delegate not satisfied of the applicant’s identity as required by s 24(3) of the Australian Citizenship Act 2007 (Cth) – meaning of good character in s 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – misleading and deceptive conduct in dealing with immigration authorities – decision affirmed

[Kamatham Sandeep Kumar](#) (Migration) [2023] AATA 106 (9 January 2023); A McMurrin, Member

MIGRATION – Skilled Independent (Permanent) (Class SI) visa – Subclass 189 (Skilled - Independent) – software engineer – points test – relevant overseas employment experience in related occupation – limited documentation and salary paid in cash – most given to father for family expenditure – additional information and documentation provided to tribunal, including statements from work supervisors – no suggestion of incorrect information or bogus documents – positive skills test – tasks of position – members of family unit – decision made without hearing necessary – decision under review remitted

[Access Seminars Australia Pty Ltd](#) (Migration) [2023] AATA 124 (9 January 2023); D Kelly, Member

MIGRATION – approval of a nomination – Direct Entry nomination stream – position of Events Manager – genuine need for the employment – position could be conducted from any location – actively and lawfully operating a business in Australia – financial capacity to employ the nominee for at least two years – terms and conditions of employment no less favourable – tasks of the position – decision under review set aside

[Muhammad](#) (Migration) [2023] AATA 71 (9 January 2023); W Shum, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 (Employer Nomination Scheme) – temporary residence transition stream – cook – English language proficiency – exemption for persons who have completed five years of secondary or higher education delivered in English – study at secondary school, college and university in home country – country information on educational system – ‘higher education institution’ – decision under review remitted

[Atif](#) (Migration) [2023] AATA 125 (11 January 2023); K Chapman, Member

MIGRATION – Temporary Skill Shortage (Class GK) visa – Subclass 482 (Temporary Skill Shortage) – Short-term stream – occupation of Education Adviser – no approved nomination – nominator ceased trading – new employer willing to nominate applicant – referral for Ministerial Intervention – strong compassionate circumstances – one child acquired Australian citizenship – decision under review affirmed

[Huynh](#) (Migration) [2023] AATA 92 (7 February 2023); J L Redfern PSM, Deputy President

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – delegate not satisfied about genuine relationship – sponsor in previous relationship – Tribunal satisfied about genuine relationship at time of application – claims corroborated by oral evidence of witnesses at hearing – relationship breakdown – family violence claim – DNA testing – ongoing legal obligations in respect of a child – child exception established – no substantive visa at of the time of application – Schedule 3 – compelling circumstances established – decision under review remitted

PROCEDURE – whether application valid – requirements should be construed broadly – application valid



## National Disability Insurance Scheme

[HRZI and National Disability Insurance Agency](#) [2023] AATA 481 (24 March 2023); Mr S. Webb, Member

NATIONAL DISABILITY INSURANCE SCHEME – participant – reasonable and necessary supports – grant of access as a participant qualified by disability – disability attributable to impairment – ongoing relevance of disability requirement or early intervention requirement to status as a participant – reasonable and necessary supports in relation to disability – supports not limited to accepted impairment – ‘participant’s impairment’ defined for purposes of recovery provisions – narrow construction of ‘disability’ and ‘supports’ not justified – requirement for probative materials – specialist disability accommodation – short term accommodation – transport – private business start-up – in vitro fertilization – sex therapist and assistive devices – legal supports – additional supports not established to be reasonable and necessary – plan management arrangement – decision varied

JURISDICTION – statement of participant supports – approved supports confirmed by reviewer – jurisdiction to review all matters before reviewer – review not confined to matters in dispute between the parties – reasonable and necessary supports not limited to impairments which meet disability requirements – jurisdiction to consider supports raised in proceedings

PRACTICE AND PROCEDURE – fact finding to be based on probative material – Tribunal not bound by party concessions – practical approach consistent with statutory objectives – requirement for satisfaction on available materials – discretion to act on partial agreement in proceeding in respect of previously approved supports – consideration of power and appropriateness – appropriate to act on partial agreement

[Jalaudin and National Disability Insurance Agency](#) [2023] AATA 448 (21 March 2023); The Honourable Pru Goward AO, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Access criteria – Disability requirements – Crohn’s disease – Spondylarthritis – Whether the impairment or impairments result in substantially reduced functional capacity to undertake one or more activities specified in s 24(1)(c) of the National Disability Insurance Scheme Act 2013 (Cth) – Whether the Applicant is likely to require lifetime support under the National Disability Insurance Scheme – needs of a child with disability – Decision under review affirmed

[Tralongo and National Disability Insurance Agency](#) [2023] AATA 447 (21 March 2023); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – access to the scheme – disability requirements – early intervention requirements – consideration of medical history – Churg Strauss disease – permanency – available treatments – remedy for impairments – decision affirmed

## Practice and Procedure

[Fahey and Secretary, Department of Employment and Workplace Relations](#) [2023] AATA 419 (8 March 2023); B W Rayment OAM KC, Deputy President

PRACTICE AND PROCEDURE – application for extension of time to apply for review – whether there are reasonable prospects of success – issue unable to be determined without hearing evidence – extension of time granted

[Hazel Scott Pty Ltd and Tax Practitioners Board](#) [2023] AATA 404 (25 January 2023); B J McCabe, Deputy President

STAY – tax agent – misbehaviour – regulatory regime – financial consequences – application refused

[Harris and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 483 (24 March 2023); The Hon. Matthew Groom, Senior Member

DEFENCE-RELATED CLAIMS – suitable employment – whether deeming decision of actual earnings is within the scope of the Tribunal’s review – extent of Tribunal’s jurisdiction to consider facts and circumstances – inspection of summons material – leave granted.

[Heffernan and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AAT 416 (20 March 2023); T Tavoularis, Senior Member

PRACTICE AND PROCEDURE – MIGRATION – whether the Tribunal has jurisdiction to review a refusal of a section 501(1) refusal of a Return (Residence) (Class BB) (Subclass 155) visa – whether the decision is a Part-5 Reviewable Decision – requirements for application for review – where the Applicant is offshore at the time of lodgement to the Tribunal – dismissed for no jurisdiction

[Lee and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 393 (16 March 2023); D Mitchell, Member

SOCIAL SECURITY – Suspension of JobSeeker Payment – failure to enter into an employment pathway plan – failure rectified – payments resumed from date of suspension

PRACTICE AND PROCEDURE – jurisdiction of the Tribunal – was a reviewable decision made by the Respondent – no reviewable decision – application dismissed

PRACTICE AND PROCEDURE – role of the Tribunal – application for dismissal of application for review – on the basis of being frivolous – no utility in review – no practical benefit available to the Applicant – application dismissed

[O’Hara and Australian Postal Corporation](#) (Compensation) [2023] AATA 402 (2 March 2023); C J Furnell, Senior Member

PRACTICE AND PROCEDURE – application for extension of time within which to lodge application for review – principles regarding whether extension should be granted – length of delay – explanation for delay – whether fault of solicitors constitutes an adequate explanation for delay – prejudice to Respondent – merits of underlying application – extension of time application refused

[Potts and Commissioner of Taxation](#) (Taxation) [2023] AATA 415 (16 March 2023); O’Donovan, Senior Member

PRACTICE AND PROCEDURE – JURISDICTION – Commissioner of Taxation – Tax assessment decisions – where Applicant requested Tribunal review of the decisions to impose shortfall penalties – where relevant notices do not provide Tribunal jurisdiction to review the imposition of such penalties – application dismissed for no jurisdiction

## Refugee

[2209523](#) (Refugee) [2022] AATA 4808 (13 October 2022); M McAdam, Member

REFUGEE – protection visa – Democratic Republic of Congo – particular social group – girls or young women in the DRC – young female with no family or other support – conflict with adopted family – gender-based harm – high risk of sexual and other physical violence to children – refugee status in third country lost after moving to Australia – lack of state resources for orphans – lack of access to accommodation, financial support or other welfare support – jurisdiction issues regarding validity of application for review – decision under review remitted

[1914106](#) (Refugee) [2022] AATA 4807 (18 October 2022); K Chapple, Member

REFUGEE – protection visa – Eritrea – political opinion – member of Eritrean Democratic Party (EDP) – underground Eritrean opposition movement – anti-regime activities – particular social group – Eritrean citizens forcibly returned to Eritrea – shared contents of sensitive government documents – arrest of son and EDP colleague – incidences of arbitrary arrest and detention – mental health condition due to trauma – limited mental health support available – decision under review remitted

[1731938](#) (Refugee) [2022] AATA 4881 (31 October 2022); S Roushan, Senior Member

REFUGEE – Protection Visa – Lebanon – Sunni Muslims – fear harm from Shi'a Muslims, Alawis and supporters of the Syrian regime – anti-Assad political views – membership of the particular social group – people with mental illness or mental health disorders – there is a real chance that applicant will be seriously misjudged and subjected to physical harassment, mistreatment, violence or threats of violence – State protection is not available to the applicant – lack of general security, sectarian conflict and political instability is faced by the population generally – strong compassionate circumstances – Referral to the Minister – decision under review remitted for the first named applicant – decision under review affirmed for the second named applicant

[2109281](#) (Refugee) [2022] AATA 5036 (10 November 2022); S Roushan, Senior Member

REFUGEE – protection visa – Poland – Federal Circuit Court remittal – theft of boxes containing sensitive intelligence files – fear of former communist Party leaders, members of the Solidarity Party, members of the current government and various criminal groups – threats of harm by criminal gangs – serious injuries inflicted by criminal associates – likelihood of further charges and incarceration – repeat drug offender – risk of harm associated with arrest and incarceration – subject of extradition request – Tribunal's power to determine s 36(2C) issues – complementary protection – decision under review remitted

[1838195](#) (Refugee) [2022] AATA 4884 (16 November 2022); S Lee, Member

REFUGEE – protection visa – Myanmar – Federal Circuit Court remittal – race – Rohingya – particular social group or group – single mothers – failed asylum seekers – attacks on homes – domestic violence – employment – decision under review remitted

[1727092](#) (Refugee) [2022] AATA 5063 (18 November 2022); J Meyer, Member

REFUGEE – protection visa – Sri Lanka – political opinion – LTTE intelligence operative member – implicated in murder of two STF officers – persecution from Special Taskforce of the Sri Lankan police (STF) and Karuna Group – family members' links to LTTE – arrest warrant issued – active in the Tamil diaspora in Australia – creative content related to political opinion – decision under review remitted

[2118846](#) (Refugee) [2022] AATA 4880 (21 November 2022); M Bishop, Senior Member

REFUGEE – protection visa – Ethiopia – request for adjournment refused – Amhara ethnicity – political opinion – opposition to the government’s treatment of the Wolkayte Amhara – previous experience of detention, interrogation and torture – ongoing persecution of wife and family – political and security situation in Ethiopia post 2020 – interethnic violence – shortage of grain – decision under review remitted

## Social Services

[Cole and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 398 (16 March 2023); R Bellamy, Senior Member

Social Security – Disability Support Pension – Australian foreign aid worker – post traumatic stress disorder – Lump sum workers compensation settlement – obligation to repay compensation affected benefits received during preclusion period – whether to exercise discretion to exempt Applicant from having to pay – whether appropriate to treat compensation payment as not having been made – decision under review affirmed

[Fullick and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 401 (17 March 2023); Mrs J C Kelly, Senior Member

SOCIAL SECURITY – disability support pension – whether the applicant satisfied the qualification criteria at the date of her claim or during the qualification period – whether applicant has impairments that had been fully diagnosed, treated and stabilised – whether impairment rating was 20 points or more under the impairment tables – reviewable decision affirmed

[Gorman and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 371 (13 March 2023); D Mitchell, Member

SOCIAL SECURITY – parenting payment, carer payment and rent assistance – overpayments – where assets were not disclosed and rent ceased being paid – where not appropriate to write off debts – where no sole administrative error – where special circumstances established – where Respondent concedes the application – decision under review set aside and substituted

[Gorman-Ewing and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 371 (13 March 2023); D Mitchell, Member

SOCIAL SECURITY – rent assistance – overpayment – where ceased paying private rent – where not appropriate to write off – where no sole administrative error – where special circumstances established – where Respondent concedes the application – decision under review set aside and substituted

[McInnes and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 369 (13 March 2023); A McLean Williams, Member

SOCIAL SECURITY – Newstart allowance – overpayment – debt due to the Commonwealth – where conceded debt attributable solely to administrative error and recovery of debt waived – previous Tribunal decision set aside – Meaning of “setting aside” of a decision – question as to whether the setting aside of a decision extends to include the elimination of prior facts used in the formulation of the decision set aside – Question as to whether a subsequent decision maker can reconsider the same set of prior facts – Tribunal answer in the affirmative – decision under review affirmed

[Naumovski and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 395 (15 March 2023); A Nikolic AM CSC, Senior Member

SOCIAL SECURITY – refusal of disability support pension – whether applicant's medical conditions were fully diagnosed, treated, and stabilised – whether impairments rated 20 points or more under the Impairment Tables – decision under review affirmed

[Taverner and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 390 (15 March 2023); R Bellamy, Senior Member

Social Security – Disability Support Pension – Where Respondent concedes but Applicant reluctant to accept terms of settlement – decision under review set aside and substituted

## **Taxation**

[Bloom and Commissioner of Taxation](#) (Taxation) [2023] AATA 417 (20 March 2023); I R Molloy, Deputy President

Taxation – Income tax – taxpayer's onus to prove assessment is excessive or otherwise incorrect – lack of substantiation – whether administrative penalties were correctly applied at 75% – whether administrative penalties were correctly increased by 20% – 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
<b>FNPQ and LFHF; Secretary, Department of Social Services and</b>	<a href="#">[2023] AATA 42</a>
<b>LMSL and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 173</a>
<b>Mamatta and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 133</a>
<b>Reid and Minister for Immigration, Citizenship, and Multicultural Affairs</b>	<a href="#">[2023] AATA 79</a>
<b>TJHG and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 22</a>
<b>WQKK and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 4773</a>
<b>XFKR and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 95</a>
<b>ZXXZ and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2910</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>CRNL v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 2382</a>	<a href="#">[2023] FCA 252</a>
<b>Garland v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2022</a>	<a href="#">[2023] FCA 247</a>
<b>GWRV v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2021] AATA 2803</a>	<a href="#">[2023] FCAFC 39</a> <a href="#">[2022] FCA 602</a>
<b>Kamal v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2020] AATA 959</a>	<a href="#">[2023] FCA 200</a>
<b>Nguyen v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2021] AATA 4308</a>	<a href="#">[2023] FCA 180</a>

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

[\[2021\] AATA 142](#)

[\[2023\] HCATrans 35](#)

[\[2022\] FCAFC 142](#)

[\[2021\] FCA 1307](#)

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