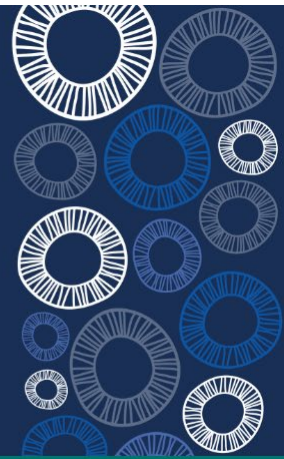




Administrative
Appeals Tribunal

AAT Bulletin



AAT Bulletin

Issue No. 7/2023

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

Contents

Recent developments	3
New online application form for Migration and Refugee Division Reviews	3
AAT Recent Decisions	4
Archives	4
Child Support.....	4
Citizenship.....	5
Compensation	6
Education and Research	6
Freedom of Information	7
Migration	7
National Disability Insurance Scheme	9
Practice and Procedure	10
Refugee.....	13
Social Security.....	14
Taxation	16
Veterans' Affairs	17
Appeals	18
Appeals lodged.....	18
Appeals finalised	18

Recent developments

New online application form for Migration and Refugee Division Reviews

Updates have been made to the [online application form](#) for reviews in the AAT's Migration and Refugee Division.

The updates are to address the new jurisdiction of the AAT to review a refusal to approve a critical technology related study (visa condition 8208) and to update the details sections of the form.

The new online application form is now available on our [website](#).

Corresponding updates will be made to our paper application forms for the Migration and Refugee Division in the near future. These will also be available on our [website](#).

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.

Archives

[Patrick and Director-General, National Archives of Australia](#) (Freedom of information) [2023] AATA 676 (31 January 2023); P Britten-Jones, Deputy President

National Archives – request for access to Cabinet record relating to Timor Gap Negotiations – request refused under s 33(1)(a) of the National Archives Act 1983 – public interest certificate issued under s 36 of the Administrative Appeals Tribunal Act 1975 – the Cabinet record contains information the disclosure of which could reasonably be expected to cause damage to the international relations of the Commonwealth – the Cabinet record contains advice that would be privileged from production on the ground of legal professional privilege – the disclosure of the Cabinet record would be contrary to the public interest – finding that the Cabinet record is an exempt record under s 33(1)(a) and s 33(2) – the decision of the Director-General is affirmed

Child Support

[FJLV and Child Support Registrar](#) (Child support second review) [2023] AATA 713 (5 April 2023); W Frost, Member

CHILD SUPPORT – percentage of care – actual care – whether payee was providing actual care – whether payee received an overpayment in child support – whether no parent was providing actual care for the child – decision under review set aside and substituted

[Hanchett and Hanchett](#) (Child support) [2023] AATA 426 (14 February 2023); D Tucker, Member

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

[McMillan and Farrow](#) (Child support) [2023] AATA 273 (6 February 2023); R Ellis, Senior Member

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

[Ranford and Kendle](#) (Child support) [2023] AATA 425 (14 February 2023); C Breheny, Member

CHILD SUPPORT – particulars of the administrative assessment – whether the adjusted taxable incomes for past periods for the liable parent should be changed – conditions for changing the incomes to lower amounts are not met - decisions under review affirmed

[Sanders and Wakeford](#) (Child support) [2023] AATA 427 (3 February 2023); J Prentice, 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 - court orders not complied with - reasonable action taken - interim period applied - decision under review set aside and substituted

[Timmins and Mayhall](#) (Child support) [2023] AATA 420 (3 February 2023); P Jensen, Member

CHILD SUPPORT – non-agency payment - payment correctly credited - decision under review affirmed

Citizenship

[Hussaini and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 655 (31 March 2023); D J Morris, Senior Member

CITIZENSHIP – where applicant applied for Australian citizenship by conferral – where there are different pathways to citizenship – where applicant contends permanent or enduring physical or mental incapacity – legislative provisions – citizenship policy – medical evidence – where Tribunal accepts applicant suffers from certain medical conditions – where illiteracy by itself generally not sufficient to satisfy exemption – where Tribunal satisfied there is sufficient medical evidence that enduring mental incapacity provision is met – decision under review is set aside and matter remitted with a direction

[JMWX and CVDK and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023] AATA 526 (28 March 2023); S Boyle, Deputy President

CITIZENSHIP – refusal of applications for Australian citizenship - statelessness – “entitled to acquire citizenship of a foreign country” – Australian Citizenship Act 2007 s 21(8)(d) – requirements of Sri Lanka for grant of citizenship - procedures do not constitute barriers that make it impossible, in any practical sense, for the Applicants to acquire Sri Lankan citizenship – AP and KKRK applied - not satisfied that the Applicants are not “entitled to acquire” the citizenship of Sri Lanka – decisions affirmed

Compensation

[Griffin and K & S Freighters Pty Limited](#) (Compensation) [2023] AATA 535 (31 March 2023); B J Illingworth, Senior Member and Dr L Stephan, Member

Workers Compensation – Sexual Harassment – Harassment – Allegations – Reasonable Administrative Action in a Reasonable Manner – Stress – Disease – Illness – Psychological Ailment – Aggravation of Psychological Ailment – decision under review affirmed

[Heldt and Comcare](#) (Compensation) [2023] AATA 534 (30 March 2023); A Nikolic AM CSC, Senior Member

Workers' Compensation – Commonwealth employee – whether Applicant suffered a right shoulder disease – whether disease contributed to a significant degree by employment – whether work related disease contributed significantly to aggravation of a pre-existing disease – working from home setup contributing to compensable disease – competing expert evidence regarding causation – decision set aside and substituted – costs awarded

[Singh and Comcare](#) (Compensation) [2023] AATA 720 (28 March 2023); G Lazanas, Senior Member and Dr L Bygrave, Member

COMPENSATION – whether injury or disease – whether ailment – whether either or both of the falls occurring during course of employment aggravated and or accelerated pre-existing osteoarthritis in the hip that was contributed to, to a significant degree by employment – decisions affirmed

[Tierney and Comcare](#) (Compensation) [2023] AATA 674 (5 April 2023); Ms A E Burke AO, Member

COMPENSATION – where quality online checking requirement of employee found to be significant contributing factor to onset of psychiatric injury – whether quality assurance procedure constituted “administrative action...in respect of the employee’s employment” within the meaning of s 5A of the Safety, Rehabilitation and Compensation Act 1988 (Cth) – whether condition arose from reasonable administrative action undertaken reasonably – decision affirmed

Education and Research

[Walker and Secretary, Department of Education](#) [2023] AATA 540 (30 March 2023); R Bellamy, Senior Member

Withdrawal without penalty after failure to complete tertiary education course requirements – re-credit of FEE-HELP loan – whether special circumstances apply – whether medical conditions made it impracticable to successfully complete assignments – where symptoms fluctuated and Applicant undertook work for her employer on some days during relevant period – decisions under review are affirmed

Freedom of Information

[Wilson and Chief Executive Officer, Services Australia](#) (Freedom of information) [2023] AATA 533 (30 March 2023); R I Hanger AM KC, Deputy President

FREEDOM OF INFORMATION – access to Department of Human Services documents and correspondence – request for documents over 20 years – Freedom of Information FOI Act 1982 (Cth) section 15AC(3) – deemed refusal – no reasonable identification of documents sought – if ‘all reasonable steps’ taken by Respondent’ to locate documents requested – partial release of documents to Applicant – Decision under review varied

Migration

[1920335](#) (Migration) [2023] AATA 293 (9 February 2023); J Meyer, Member

MIGRATION – Other Family (Residence) (Class BU) visa – Subclass 836 (Carer) – carer of an Australian relative – care could be provided by relatives and services in Australia – extended family unable to provide care – sponsor’s lengthy absences for employment – assistance with medication – heavy reliance on the visa applicant – health and aged care service limitations – professional and ongoing therapeutic medical advice – decision under review remitted

[Chen](#) (Migration) [2023] AATA 216 (27 January 2023); R Anderson, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 (Business Innovation and Investment (Provisional) – significant investor stream – complying significant investment – funds unencumbered and lawfully acquired – bank loans by applicant and brother secured by property owned by them, with brother giving rights and interest in his loan to applicant – other funds from applicant’s father – father’s funds sourced from repayment of private business loan – original investment withdrawn, with intention to make another complying investment when allowed – decision under review remitted

[DBKX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 673 (4 April 2023); Dr L Bygrave, Member

MIGRATION – decision to refuse to grant a protection visa – Migration Act 1958 (Cth) s 36(1C) – whether Applicant convicted by a final judgement of a particularly serious crime – whether Applicant a danger to the Australian community – definition of ‘danger’ – criminal history – prospects of rehabilitation – decision affirmed

[FFVW and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 532 (16 March 2023); A George, Senior Member

MIGRATION – Class BC Subclass 100 Spouse visa – where Applicant does not pass the character test – consideration of Ministerial Direction No.99 – offending serious – decision under review set aside – decision to revoke the mandatory cancellation of the Applicant’s visa substituted

[Filippo Silva](#) (Migration) [2023] AATA 164 (20 January 2023); W Shum, Member

MIGRATION – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 Regional Sponsored Migration Scheme – Direct Entry stream – position of Office Manager – skill requirements – occupation not exempt – office-based business with office personnel – business’s primary service providing cleaning services – decision under review affirmed

[Full Tilt Transport Pty Ltd](#) (Migration) [2023] AATA 171 (1 February 2023); D Kelly, Member

MIGRATION – approval of a nomination – Direct Entry nomination stream – position of Fleet Manager – genuine need for the employment – contracted work to commence 3 months after visa grant – business founder planning to retire – duties of the position – position unfilled for lengthy period – position responsible for employees on greater salaries – decision under review affirmed

[Jackson and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 518 (28 March 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 – where the Applicant is not Indigenous but has close ties with the Aboriginal community - where children are recognised as Indigenous - Direction no. 99 considered – reviewable decision set aside and remitted

[Kaio and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 633 (25 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

[Mokeni and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 670 (5 April 2023); The Hon. J Pascoe AC CVO, Deputy President

MIGRATION – visa cancellation – mandatory cancellation under s 501(3A) of the Migration Act 1958 – where applicant does not pass the character test – whether there is ‘another reason’ to revoke the cancellation – consideration of Direction No. 99 – protection of the Australian community – whether the applicant committed family violence – links to the Australian community – the best interests of minor children in Australia – expectations of the Australian community – impediments to removal – reviewable decision set aside

[Moli and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 666 (3 April 2023); S Burford, Senior Member

MIGRATION – decision of delegate of Minister to refuse not to revoke mandatory cancellation of 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 – best interests of children – expectations of the Australian community – extent of impediments if removed – Applicant is a 38 year old man who arrived in Australia as a 24 year old – extent of impediments if returned to New Zealand – Non-Revocation Decision is set aside and substituted with a decision that the cancellation of the Visa be revoked

[Nathanson and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs](#) (Migration) [2023] AATA 656 (2 March 2023); T Tavoularis, Senior Member

MIGRATION – Non-revocation of a mandatory cancellation of Applicant’s Class TY (Subclass 444) Special Category (Temporary) visa – where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 90 – decision under review set aside and substituted

[Weerasinghe Mudiyansele](#) (Migration) [2023] AATA 212 (3 February 2023); D Kelly, Member

MIGRATION – Employer Nomination (Permanent) (Class EN) visa – Subclass 186 Employer Nomination Scheme – position of Registered Nurse (Mental Health) – vocational English – English language test result – new policy implemented later than the time of application – impressive educational and professional achievements – Registered Nurse (Mental Health) employed by a regionally based healthcare facility – referral for Ministerial Intervention – decision under review affirmed

National Disability Insurance Scheme

[BHXJ and National Disability Insurance Agency](#) [2023] AATA 513 (3 February 2023); The Hon. M Groom, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – review of supports in plan – whether plan should be self-managed, plan-managed or Agency managed – whether plan funding is being appropriately expended – whether family member should be paid from plan funding – whether exceptional circumstances apply – decision under review remitted

[Crossley and National Disability Insurance Agency](#) [2023] AATA 667 (30 March 2023); Ms T Bubutievski, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – plantar fasciitis – osteoarthritis – lower back pain – anxiety and depression – obsessive compulsive disorder - hoarding disorder – permanence - whether substantially reduced functional capacity – whether best funded by the NDIS – decision under review affirmed

[Parrey and National Disability Insurance Agency](#) [2023] AATA 672 (4 April 2023); I Thompson, Member

NATIONAL DISABILITY INSURANCE SCHEME – review of statement of participant supports – reasonable and necessary supports – applicant sought review of statement of participant supports – applicant received mobility allowance prior to becoming an NDIS participant – claim for transport allowance – whether transport funding is available under the no disadvantage principle – decision affirmed

[Wilson and National Disability Insurance Agency](#) [2023] AATA 528 (29 March 2023); J Collins, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – whether an Applicant meets disability requirements – section 24(1) – chronic fatigue syndrome – nerve impingement – functional neurological disorder – central sensitisation syndrome – secondary depression – whether applicant has a disability for the purposes of section 24(1)(a) – whether impairment is permanent or likely to be permanent – whether known, available and appropriate treatments undertaken – decision under review affirmed

Practice and Procedure

[Clifford and Tax Practitioners Board](#) [2023] AATA 527 (29 March 2023); B W Rayment OAM KC, Deputy President

PRACTICE AND PROCEDURE – request for stay order – interests of clients – stay order granted

[Corkish and National Disability Insurance Agency](#) [2023] AATA 539 (30 March 2023); D Connolly, Senior Member

PRACTICE AND PROCEDURE – request for access to the National Disability Insurance Scheme – dismissal application pursuant to paragraph 42B(1)(b) – no reasonable prospect of success – application made on 65th birthday – age requirements not met – whether Applicant sought internal review of an earlier decision – application dismissed

[Crocker and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 499 (27 March 2023); D Mitchell, Member

EXTENSION OF TIME – Application for Review of Decision filed out of time – Application for Extension of Time considered – Extension of Time Refused

[El Masri and Optus Administration Pty Ltd](#) (Compensation) [2023] AATA 525 (20 March 2023); D J Morris, Senior Member

PRACTICE AND PROCEDURE – application lodged outside prescribed period with application to extend time – general principles to be considered in exercising discretion – where applicant had retained legal representatives – where legal representatives failed to lodge application for review of reconsideration decision – where applicant assumed application had been lodged on his behalf – where lateness also affected by holiday period – consideration of actions of applicant – applicant not found to have rested on his rights – legal representative admits oversight – applicant should not in this case face detriment because of non-performance by his legal representatives – time extended to lodge application for review – written reasons

WORKERS' COMPENSATION – where application lodged claim – where claim denied – where applicant sought reconsideration – where reconsideration officer affirmed denial of claim – where applicant sought review by Tribunal – application outside prescribed period

[FFTS and Child Support Registrar](#) (Child support second review) [2023] AATA 634 (31 March 2023); The Hon. J Pascoe AC CVO, Deputy President

PRACTICE AND PROCEDURE – objection to the issue of summons to give evidence – whether the requested summons would materially assist the Tribunal in determining the issues – request to issue summons refused

[Fry and National Disability Insurance Agency](#) [2023] AATA 537 (27 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

[Girouard and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 669 (3 April 2023); R West, Member

PRACTICE AND PROCEDURE – request for stay order – social security – disability support pension (DSP) – decision to deny indefinite portability of DSP – application to stay decision pending appeal – utility of a stay – factors relevant to the granting of a stay – stay application refused

[Leahy and Tax Practitioners Board](#) [2023] AATA 632 (31 March 2023); K James, Senior Member

PRACTICE AND PROCEDURE – application for recusal on grounds of apprehended bias (extraneous information) – application granted

[Lual and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023]
AATA 531 (29 March 2023); D J Morris, Senior Member

CITIZENSHIP – application for Australian citizenship by conferral – applicant applies under general citizenship requirement – applicant satisfies certain requirements – applicant sat citizenship test once and did not pass – applicant rescheduled or failed to attend several subsequent test appointments – mandatory requirement for grant of citizenship not met – delegate of minister refused application – decision is reviewable

PRACTICE AND PROCEDURE – where applicant applied for review within time – where application dismissed for non-payment of prescribed fee – where applicant alleges she applied again within time – no record of application – where application applied and sought extension of time – where applicant rested on her rights – whether dismissal because of non-payment of prescribed fee and then fresh application a factor relevant to extending time – application in any event cannot succeed on substantive review – extension of time refused

[NJCT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023]
AATA 524 (29 March 2023); P Britten-Jones, Deputy President

PRACTICE AND PROCEDURE – application for reinstatement – both parties consent -application for review withdrawn by applicant – reinstatement application lodged by respondent – whether the respondent is ‘a party to the proceeding’ who may apply to the Tribunal for reinstatement for the purposes of section 42A(8) of the Administrative Appeals Tribunal Act 1975 – consideration of how the applicant found himself bound by a deemed dismissal – consideration of whether any useful purpose could be served by reinstating the application – reinstatement granted under s 42A(9)

[Skiba and Secretary, Department of Employment and Workplace Relations](#) [2023] AATA 538
(13 March 2023); B W Rayment OAM KC, Deputy President

PRACTICE AND PROCEDURE – JobSeeker Payments suspended – suspension set aside on internal review – statement of reasons requested under section 28 of the Administrative Appeals Tribunal Act 1975 (Cth) – statement already provided – no applicable internal review decision – application dismissed under section 42A(4)

[Ta and Migration Agents Registration Authority](#) [2023] AATA 500 (27 March 2023); B J McCabe, Deputy President

Inherent risk – Regulated occupation – Migration agents – Automatic continuation of registration – application refused

Refugee

[1805956](#) (Refugee) [2022] AATA 4980 (5 December 2022); M Moustafine, Member

REFUGEE – protection visa – Pakistan – fear of harm because of brother’s work for coalition country government agency – threat to brother from unknown person, assumed to be Taliban – fear of harm from extremist individuals or groups – ethnicity and religion – Hazara Shi’a – credibility – delay in applying for protection – applied two years after arriving and just before temporary visa due to expire – marriage to Australian permanent resident and Australian-born child – country information – passage of time and significantly changed political/security circumstances – decision under review affirmed

[1825268](#) (Refugee) [2022] AATA 4965 (22 November 2022); K Millar, Senior Member

REFUGEE – protection visa – Ethiopia – member of particular social group – single mother – one child with autism spectrum disorder, intellectual and language impairments, another waiting for assessment for ADHD – mental health – capacity to subsist – race – Tigrayan – country information – bogus document – birth certificate for oldest child, claimed to be the child of ex-de facto partner and another woman – reasonable explanation – provided by father in circumstances of leaving third country – prevalence of gender-based violence – lack of support services – state of emergency – decision under review remitted

[1837954](#) (Refugee) [2022] AATA 4979 (2 December 2022); J Pennell, Senior Member

REFUGEE – Protection Visa – Iran – religion – rejection of Islam – conversion to Christianity – a member of a particular social group – departed Iran illegally – has a tattoo of a Christian symbol in Iran – there is a real chance that the applicant will suffer serious harm – perceived anti-government political opinion – failed asylum seeker – decision under review remitted

[1915344](#) (Refugee) [2022] AATA 4971 (5 December 2022); A Murphy, Member

REFUGEE – protection visa – Sierra Leone – particular social group – women in Sierra Leone – older widow and fatherless young unmarried woman – past harm from female genital mutilation/cutting (FGM/C) – fear of harm from brother-in-law/uncle, forced marriage, gender-based violence, societal discrimination, customary law and repeat of FGM/C after corrective surgery in Australia – capacity to subsist – physical and mental health – country information – FGM/C legal and prevalent, and customary child marriage and polygamy widespread – effective state protection not available and treaty right to enter and reside in third countries limited in practice – passports expired and no international health certificates held – decision under review remitted

[1924718](#) (Refugee) [2022] AATA 5092 (25 November 2022); K Chapple, Member

REFUGEE – protection visa – South Africa – applicants face considerable difficulties due to age, health, isolation, financial and housing issues – likelihood of physical, mental and economic harm – widespread adverse conditions in South African society – harm does not amount to persecution – strong compassionate circumstances – Ministerial intervention requested – decision under review affirmed

[2018602](#) (Refugee) [2022] AATA 4959 (22 November 2022); S Roushan, Senior Member

REFUGEE – protection visa – Afghanistan – Federal Circuit Court remittal – imputed political opinion – family links to the former government – particular social group – divorced men in Afghanistan – perceived Western affiliation – Taliban takeover of the country – state protection – decision under review remitted

[2119079](#) (Refugee) [2022] AATA 4889 (30 November 2022); M Bishop, Senior Member

REFUGEE – protection visa – Ethiopia – member of particular social group – child of father with leprosy – social discrimination and violence and attacks and threats from husband's family – fear of forced separation and loss of capacity to subsist – ethnicity – Amhara – delay in applying for protection – members of family unit – new claim for daughter on grounds of female genital mutilation – focus on major claim and socio-cultural unease at raising and discussing this issue – country information – lack of state protection and inability to relocate – significant deterioration of security situation – decision under review remitted

[2203872](#) (Refugee) [2022] AATA 5138 (8 December 2022); M McAdam, Member

REFUGEE – protection visa – South Korea – Federal Court remittal – compulsory military service obligations – conscientious objector – alternative service options – breach of overseas travel permission rules – laws of general application – particular social group – gay men in South Korea – discrimination, intimidation, violence, and isolation – decision under review remitted

Social Security

[Aycha and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 721 (6 April 2023); Dr S Fenwick, Senior Member

SOCIAL SECURITY – Newstart allowance – Disability Support Pension – alleged overpayments – whether Applicant a member of a couple – reporting of income and assets – consideration of Islamic marriage and divorce – waiver or write-off of debt – decision affirmed

[Bailey and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 653 (31 March 2023); L Benjamin, Member

Disability Support Pension – Social Security Act – section 94 – chronic pain condition; decision under review set aside and substituted

[BJFP and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 514 (27 March 2023); R West, Member

SOCIAL SECURITY – disability support pension – right ear sensorineural hearing loss, bilateral tinnitus and left ear hyperacusis – whether condition fully treated and stabilised in the qualification period – whether impairment attracts rating of 20 points or more under Impairment Tables – whether continuous inability to work – decision set aside and matter remitted for reconsideration with direction that Applicant qualifies for DSP

[Brenton and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 662 (24 March 2023); B Cullen, Senior Member

Family Tax Benefit – FTB – was there a change in the pattern and percentage of care of child – determination of percentage of care – decision under review varied

[Gilbertson and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 718 (6 April 2023); K Millar, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant's conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant's conditions attracted an impairment rating of at least 20 points – decision under review affirmed

[GJCN and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 495 (17 February 2023); A E Burke AO, Member

SOCIAL SECURITY – newstart allowance – disability support pension – whether application for disability support pension should have been deemed – decision not to exempt from activity test – decision to require activity agreement – reinstatement refused as application futile – decision affirmed

[Oughton and Secretary, Department of Social Services](#) (Social services second review) [2023]
AATA 719 (6 April 2023); K Millar, Senior Member

SOCIAL SECURITY – disability support pensions – claim for disability support pensions rejected – applicant meets 94(1) (a) (b) and (c) of the Social Security Act 1991 (Cth) – date of effect of decision – decision of the authorised review officer does not meet the requirements of s 138 of Social Security (Administration Act) 1991 (Cth) – date of effect provisions in the Social Security (Administration Act) 1991 (Cth) do not apply – date of effect is the date of claim – decision under review is set aside

[Peake and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 645 (31 March 2023); J Rau SC, Senior Member

SOCIAL SECURITY – pensions, benefits and allowances – claim for Disability Support Pension rejected – whether applicant’s conditions were fully diagnosed, treated and stabilised during the qualification period – whether applicant’s conditions attracted an impairment rating of at least 20 points – decision under review is affirmed

[TBWY and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 654 (27 March 2023); A McLean Williams, Member

SOCIAL SECURITY – Applicant Jobseeker Payment – Payment Cancelled – Review of Decision of SSCSD Member – Decision affirmed that of SDSS Delegate – Whether Applicant Payment should have been cancelled due to failure to comply with requirement – STEPS – Mutual Obligation Requirements – Voluntary Requirements – Compulsory Requirements – Reconnection requirement – Insufficient evidence to demonstrate reconnection – Applicant failure to comply with a Mutual Obligation Requirement – Jobseeker Payment correctly suspended – Does not satisfy exemption – Decision affirmed

Taxation

[DQTB and Commissioner of Taxation](#) (Taxation) [2023] AATA 515 (28 March 2023); R Olding, Senior Member

TAXATION – INCOME TAX – where applicants provided agistment for stock owned by their related company – whether agistment activities constituted carrying on a business – consideration of indicia of a business – whether legal expenses related to claim against former employer deductible – whether legal expenses related to claim for future economic loss capital in nature – whether legal expenses related to claim for future expenses and past special damages of a private or domestic nature – whether amount of legal expenses related to past economic loss and interest on past economic loss proven – decision set aside and remitted for reconsideration with direction that legal expenses relating to past economic loss and interest on past economic loss are allowable deductions

TAXATION – ADMINISTRATIVE PENALTIES – whether shortfall due to recklessness or lack of reasonable care – whether penalty should be wholly or partly remitted – decision set aside and remitted for reconsideration

Veterans' Affairs

[Kuhn and Repatriation Commission](#) (Veterans' entitlements) [2023] AATA 536 (28 March 2023); J Sosso, Deputy President

VETERANS' ENTITLEMENTS — War widows' pension — Operational service — Veteran killed while in a plane crash — Hypothesis that veteran's service-caused PTSD contributed to plane crash — Standard of reasonable hypothesis applies — material pointing to a connection between PTSD and service— Hypothesis reasonable — Whether veteran's death resulted from serious default or wilful act on his part — No evidence of a wilful act — Decision under review set aside and substituted

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
Asare Appiah Johnson and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 251
Cortes and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 284
Molla and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 170
Nolutshungu and Minister for Immigration, Citizenship and Multicultural Affairs	[2023] AATA 265
Zafari and Minister for Immigration, Citizenship, and Multicultural Affairs	[2023] AATA 337

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
HBMH v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2022] AATA 2825	[2023] FCA 275
Jama v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs	[2021] AATA 134	[2023] FCA 263
MQGT v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 3228	[2023] FCA 291
Okoh v Minister for Immigration, Citizenship and Multicultural Affairs	[2021] AATA 1662	[2023] FCAFC 53 [2022] FCA 1011
Singh v Minister for Immigration, Citizenship and Multicultural Affairs	[2022] AATA 264	[2023] FCAFC 46 [2022] FCA 1046



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