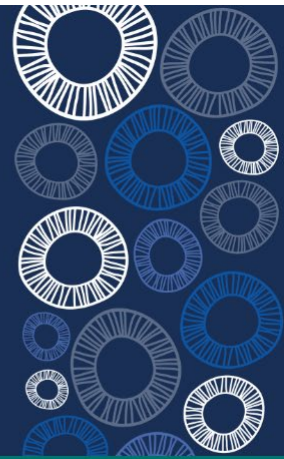




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 9/2023**

**8 May 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](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.

## Citizenship

[Ahmadi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023]  
AATA 1013 (2 May 2023); Senior Member D J Morris

CITIZENSHIP – where applicant applied for Australian citizenship through general eligibility pathway – where applicant satisfied certain requirements – where applicant not exempted from citizenship test requirement – where applicant had not successfully completed citizenship test after seven attempts – where successful completion of test a mandatory requirement in this pathway – where prescribed time for lodging application for review is 28 days – where applicant lodged application for review late – no prospect of success

PRACTICE AND PROCEDURE – where prescribed time for lodging application for review is 28 days – where application lodged late – general principles considered relevant to extending time – applicant admits received notice in writing of timeframe for review of decision – lateness not significant – no prospect of success on substantive review – application for extension of time refused

[Ahmadi and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023]  
AATA 1028 (5 May 2023); S Evans, Member

CITIZENSHIP – Application for citizenship by conferral – Eligibility – Refusal of citizenship – Whether Tribunal satisfied of Applicant's identity – Whether Tribunal satisfied of good character – Three pillars of identity – Inconsistencies in Applicant's life story and in documentation submitted to the Department – Applicant provided inconsistent information of family composition – Applicant failed to rectify false information provided to Minister – Tribunal not satisfied as to identity and good character of Applicant – Reviewable decision affirmed

[Elddin and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Citizenship) [2023]  
AATA 1026 (5 May 2023); Senior Member A Poljak

CITIZENSHIP – application for citizenship by conferral – whether the applicant is of good character for the purposes of conferral of Australian citizenship pursuant to paragraph 21(2)(h) of the Australian Citizenship Act 2007 (Cth) – relevant law, policy and material considered – decision under review affirmed

[Mei and Minister for Immigration, Citizenship, and Multicultural Affairs](#) (Citizenship) [2023]  
AATA 1029 (5 May 2023); Senior Member R Bellamy

CITIZENSHIP – refusal of applications for Australian citizenship by conferral – section 24(3) of Australian Citizenship Act 2007 – where identity of Applicants not sufficiently established – limited documentary evidence and biometric data – unverified life stories – failure to make reasonable enquiries to obtain further evidence – decision under review affirmed

## Child Support

[Frith and Scrubb](#) (Child support) [2023] AATA 852 (10 March 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 – decision under review affirmed

[Gilson and Gilson](#) (Child support) [2023] AATA 840 (28 February 2023); M Douglas, Member

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

[Marich and Witsel](#) (Child support) [2023] AATA 833 (17 March 2023); K Dordevic, Senior Member, Presiding and K Synon, Deputy President

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 set aside and substituted

[Potts and Child Support Registrar](#) (Child support) [2023] AATA 847 (10 March 2023); P Jensen, Member

CHILD SUPPORT – refusal to grant an extension of time to object - weighing all factors the extension of time was correctly refused - decision under review affirmed

[Saines and Child Support Registrar](#) (Child support) [2023] AATA 830 (13 March 2023); K Dordevic, Senior Member

CHILD SUPPORT – dismissal of application for review – no reasonable prospect of success - application for review dismissed

## Compensation

[Gadzikwa and Comcare](#) (Compensation) [2023] AATA 951 (28 April 2023); Senior Member R Cameron

COMPENSATION – extension of time to lodge reconsideration request – multiple extensions of time granted – whether reasonable explanation for delay – prospects of success – reasonable administrative action – extension of time refused – decision affirmed

[Hewitt and Comcare](#) (Compensation) [2023] AATA (2 May 2023); Senior Member R Cameron

WORKERS' COMPENSATION – review of decision denying liability for medical expenses under section 16 of the Safety, Rehabilitation and Compensation Act 1988 – injury to lower back – L4/5 disc replacement – left lumbar pain – full patient history not furnished to some medical experts – multilevel degenerative change of lumbar spine – disc aggravation occurred due to coughing incident in 2005 – long history of musculoskeletal complaints – alternative condition of hypermobility – Tribunal satisfied that L4/5 disc protrusion or aggravation was an injury – Tribunal not satisfied that injuries occurred in the course of applicant's employment – allegations of failed disc replacement surgery or failed back surgery syndrome not established – chronic pain not contributed to a significant degree by applicant's employment – decision affirmed

## Migration

[Foster and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 864 (24 April 2023); Dr D Dragovic, Deputy President

MIGRATION – visa refusal on character ground – foreign conviction – sentence of a term of imprisonment of more than 12 months – whether s 501(7)(c) of Migration Act 1958 (Cth) applies to a sentence imposed by a foreign court – crime of sexual nature against a child – allegations of corruption in the foreign judicial system – decision affirmed

[JZJR and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 1027 (5 May 2023); The Hon. J Pascoe AC CVO

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

[Toala and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 949 (25 April 2023); Senior Member T Tavoularis

MIGRATION – Cancellation of a Class TY Subclass 444 Special Category (Temporary) visa under section 501(2) of the Migration Act 1958 (Cth) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the power to cancel should be exercised under section 501(2) – consideration of Ministerial Direction No. 99 – decision under review set aside and substituted

[WKJD and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 950 (28 April 2023); A McLean-Williams, Member

MIGRATION – discretionary refusal to grant Safe Haven Enterprise (Class XE) Visa under section 501(1) – where Applicant does not pass the character test – Applicant has substantial criminal record – whether the power to refuse the visa should be exercised pursuant to section 501(1) – consideration of Ministerial Direction No. 99 – decision under review is set aside and substituted

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

(Migration) [2023] AATA 998 (28 April 2023); Deputy President Britten-Jones

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record – whether there is ‘another reason’ to revoke mandatory cancellation decision – applicant has strong links to the Australian community – primary considerations of strength, nature and duration of ties to Australia, the best interests of minor children and other considerations extent of impediments if removed and impact on Australian business interests outweigh the countervailing considerations – decision set aside and substituted

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

AATA 979 (21 April 2023); R West, Member

MIGRATION – mandatory cancellation of applicant’s visa – applicant has substantial criminal record and does not pass the character test – whether discretion to revoke mandatory cancellation should be exercised – application of Ministerial Direction 99 - primary considerations – protection of the Australian community from criminal or other serious conduct – whether conduct constituted family violence – strength, nature and duration of ties to Australia – best interests of minor children in Australia – expectations of the Australian community – protection finding – legal consequences of the decision – extent of impediments if removed – impact on victims – impact of Australian business interests – other considerations – decision affirmed

[2106740](#) (Migration) [2023] AATA 414 (3 January 2023); S Roushan, Senior Member

MIGRATION – cancellation – Return (Residence) (Class BB) visa – Subclass (155) (Five Year Resident Return) – satisfied as to the applicant’s identity – bogus document – family composition – Pakistan nationality – name erroneously recorded by the Department – false death certificates for parents – spelling variations of Afghan names – sufficient documentary and other evidence – power to cancel the visa does not arise – decision under review set aside

[2217601](#) (Migration) [2023] AATA 726 (9 March 2023); N Goetz, Member

MIGRATION – Visitor (Class FA) visa – Subclass 600 (Visitor) – genuine temporary entrant – sponsored by a settled Australian permanent resident relative – family relationship – identification documents – birth certificates – DNA evidence – offer to pay a security deposit – decision under review remitted

[Syed](#) (Migration) [2023] AATA 386 (27 February 2023); M Cooke, Senior Member

MIGRATION – Child (Migrant) (Class AH) visa – Subclass 102 (Adoption) – adoption requirements – at least one adoptive parent overseas for more than 12 months before application made – impliedly immediately before – sponsor’s physical health – condition exacerbated by operation in home country and return to Australia as soon as COVID travel restrictions lifted – wife’s pregnancy complications – 16 months residence in home country and 4 months in Australia before application made – decision under review remitted

[Wang](#) (Migration) [2023] AATA 468 (8 March 2023); M Sripathy, Member

MIGRATION – Medical Treatment (Visitor) (Class UB) visa – Subclass 602 (Medical Treatment) – genuine temporary stay for medical treatment – workplace injury in Australia – regular and multiple treatments from various specialists including spinal treatment – treatments covered by the insurer – no incentive to return home – substantial compliance with visa conditions – periods of unlawful residence – accessing medical treatment in Taiwan – decision under review remitted

[Woolley](#) (Migration) [2023] AATA 484 (14 March 2023); M Sripathy, Member

MIGRATION – Confirmatory (Residence) (Class AK) visa – Subclass 808 (Confirmatory) – holder of a substantive visa – request for Ministerial intervention – present in Australia at the time of the COVID 19 pandemic – applicant’s partner passed away – beneficiary of a trust – proximity to the late partner’s grave – decision under review affirmed

## **National Disability Insurance Scheme**

[NVRV and National Disability Insurance Agency](#) [2023] AATA 1019 (4 May 2023); Senior Member D Connolly

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – disability requirements – fibromyalgia – whether there is substantially reduced functional capacity – decision affirmed

## **Practice and Procedure**

[Abley and Comcare](#) (Compensation) [2023] AATA 989 (1 May 2023); L M Gallagher, Member

PRACTICE AND PROCEDURE – recusal application – apprehended bias – application by Applicant for recusal of Member constituted to hear substantive application – test for apprehended bias in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 – whether a fair-minded lay observer would reasonably apprehend that the Member might not bring an impartial mind to the resolution of the issues to be decided – Applicant alleged bias due to alleged conduct by Member – recusal grounds alleged by Applicant included alleged interruptions by the Member – Applicant’s previous Counsel alleged inappropriate facial expressions were made by the Member – missing portion of the transcript – non-disclosure of the Member’s qualifications/experience – asserted relationship between Member and Respondent’s Counsel – Applicant’s claims of apprehended bias not firmly established – no logical connection between alleged conduct and ability to determine the issues on their merits – application for recusal refused

[Daff and Comcare](#) (Compensation) [2023] AATA 1025 (20 April 2023); W Frost, Member

PRACTICE AND PROCEDURE – where there was a request by the Applicant to issue summons to a decision maker – original decision makers to give evidence – Comcare – whether or not there is relevance of the evidence – whether or not there is legitimate forensic purpose – Tribunal not bound by previous decisions made by the Respondent – Tribunal to consider the material before it – request refused

[Lopez and National Disability Insurance Agency](#) [2023] AATA 997 (3 May 2023); P Hunter, Member

PRACTICE AND PROCEDURE – application for extension of time – application for review filed out of time – whether reasonable in all circumstances to grant extension of time – length of delay in making the application – explanation for delay – prejudice – alternative avenues for relief – importance of enforcing statutory timeframes – interests of justice – utility in granting extension – application refused

[NLLQ and Child Support Registrar](#) (Child support second review) [2023] AATA 867 (20 April 2023); Senior Member D O'Donovan

PRACTICE AND PROCEDURE – application for extension of time – AAT second review – no satisfactory explanation for the lengthy delay – weak merit – prejudice to the other parent due to long delay – extension of time refused

[SGTX and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 5219 (14 July 2022); Deputy President Britten-Jones

PRACTICE AND PROCEDURE – whether the applicant should be directed to participate by video – where Tribunal has no power to require the respondent to arrange transfer of the applicant – significant impediments to the transfer of the applicant – procedural fairness can be afforded to the applicant by means of a video link from Christmas Island – applicant to participate by video under s 33A of the Administrative Appeals Tribunal Act 1975

[The Australian Steel Company \(Operations\) Pty Ltd and Minister for the Environment and Water](#) [2023] AATA 1021 (2 May 2023); Senior Member Dr D Cremean

PRACTICE AND PROCEDURE – whether a video/inspection should be taken before hearing – industrial facility – located interstate – no evidence heard – view will not assist Tribunal to understand questions raised and to follow evidence – occupational health and safety issues – Applicant's offer to pay out-of-pocket costs of each party and Tribunal declined – application refused

[Williams and National Disability Insurance Agency](#) [2023] AATA 1039 (4 May 2023); Senior Member R Cameron

PRACTICE AND PROCEDURE – complaints about respondent agency – choice of occupational therapist – lack of contact from complex planner – dissatisfaction with support coordination – all requested supports provided to applicant – no reviewable decision falling within s 99 of the NDIS Act – application dismissed

## Refugee

[1714169](#) (Refugee) [2022] AATA 5117 (14 December 2022); C Cody, Member

REFUGEE – Protection Visa – Afghanistan – race – Hazara – religion – Shia Islam – failed relationship with husband – fake Iranian passport – failed asylum seeker – a member of a particular social group – a member of a group of women alone in Afghanistan without a male supporter – harm from the Taliban government – State protection is not available to the applicant – decision under review remitted



[1726639](#) (Refugee) [2023] AATA 727 (9 January 2023); S Roushan, Senior Member

REFUGEE – protection visa – Iraq – particular social group – single, divorced women without male protection – women perceived to transgress moral codes – independence discouraged by conservative family members – academic career – consent of a male relative required for travel – pressured to accept arranged marriage to protect family’s honour – risk of honour killing – high risk of gender-based violence – risk of physical abuse, harassment and discrimination – decision under review remitted

[1731473](#) (Refugee) [2022] AATA 5167 (16 December 2022); D Dragovic, Deputy President

REFUGEE – protection visa – Iraq – political opinion – Western cultural view of women’s rights – religion – imputed anti-Islamic – perceived as un-Islamic and Westernised – chooses not to conform to social and cultural expectations – pressured to wear Hijab to ensure safety – applicant’s vehicle exploded in front of their house – son kidnapped and released after ransom paid – anonymous threats received by email and phone – high risk of gender-based violence – decision under review remitted

[1818044](#) (Refugee) [2023] AATA 463 (20 January 2023); J Pennell, Senior Member

REFUGEE – protection visa – Turkey – religion – non-religious – Alevi – ethnic Kurd – imputed political opinion – anti-government – particular social group – member of an Alevi Kurdish family – member of the Tezcan tribe – relationship with a Sunni Muslim girl – honour killing – mental health – decision under review affirmed

[1904113](#) (Refugee) [2022] AATA 5153 (6 December 2022); S Lee, Member

REFUGEE – protection visa – Turkey – religion – Alevi – particular social group – women who seek protection from family violence – victims of family violence with mental health issues – child in the care of a victim of family violence – physically and sexually abused by husband – fears harm from husband, husband’s family and own brothers and father – widespread gender-based violence – domestic abuse widely tolerated by the state – poor mental health – decision under review remitted

[1930270](#) (Refugee) [2022] AATA 5118 (21 December 2022); D James, Senior Member

REFUGEE – protection visa – Ethiopia – ethnicity and political opinion – Oromo and member of opposition party – first applicant wounded in demonstration, arrested, beaten and interrogated – harassment and threats at university and in workplace – relatives arrested and questioned – continued party membership and social media activity in Australia – detailed and credible evidence – members of family unit – applicant child born in home country and non-applicant child born in Australia – country information – recent deterioration in security and political tensions – decision under review remitted

[1931553](#) (Refugee) [2023] AATA 454 (4 January 2023); P Katsambanis, Member

REFUGEE – Protection visa – Zimbabwe – member of the opposition Movement for Democratic Change (MDC) party – family’s actual and imputed political opinion as members and supporters of the MDC – applicant had provided conflicting, inconsistent and contradictory information over time – applicant does not have a well-founded fear of persecution – credibility concerns – decision under review affirmed

[2005266](#) (Refugee) [2022] AATA 5122 (19 December 2022); P Haag, Member

REFUGEE – Protection Visa – Pakistan –religion – Ahmaddi Muslims – membership of Ahmadiyya Muslim Community – exceptionally vulnerable applicant – chronic state of health – State protection is not available to the applicant – second-named applicant is now deceased – no jurisdiction – applicant has a well-founded fear of persecution – decision under review remitted

[2008000](#) (Refugee) [2022] AATA 5163 (14 December 2022); S Roushan, Senior Member

REFUGEE – protection visa – Iraq – Federal Circuit Court remittal – religion – secularist imputed to be an atheist or apostate – imputed political opinion – supporter of Ba'ath Party due to father's affiliation and applicant's profession as academic – engaged in criticism of and debate about Islam on social media – attempted kidnapping – risk of retribution due to previous social media activity – decision under review remitted

## Social Security

[Engineer and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 948 (3 April 2023); A Maryniak KC, Member

SOCIAL SECURITY - Family Tax Benefit – Family Tax Benefit Top Up – Requirement to lodge tax return on time – Whether special circumstances exist – Whether special circumstances prevented the lodgement of income tax return on time – Decision affirmed

[Janssen and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 1030 (1 May 2023); W Frost, Member

SOCIAL SECURITY – alleged debt – Disability Support Pension – Family Tax Benefit – Child Care Benefit – income notification obligation – where the Applicants did not report a change in income – Applicants contended they were not informed regarding reporting separate incomes – overpayment – debts not to be waived – debts not to be written off – recalculation – decision set aside and remitted

[KCFY and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 983 (11 April 2023); Senior Member Dr Linda Kirk

SOCIAL SECURITY – Compensation preclusion period – receipt of lump sum compensation payment – whether "special circumstances" justifying treating some of compensation as if it had not been paid – meaning of special circumstances – whether Tribunal can consider applicant's financial management – special circumstances not found beyond those identified by authorised review officer – Decision Affirmed

[Pullicin and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 865 (24 April 2023); Senior Member G Lazanas

SOCIAL SECURITY – rate of age pension – whether excess curtilage around principal home is unrealisable asset – whether financial hardship provisions apply – decision under review affirmed

[Tonkin and Secretary, Department of Social Services](#) (Social services second review) [2023] AATA 943 (27 April 2023); Senior Member R Bellamy

SOCIAL SECURITY – suspension of Disability Support Pension for being outside Australia – length of portability period – whether discretion to extend period on the basis of recipient’s medical conditions, COVID pandemic or ill health of a parent – decision under review is affirmed

[Vos and Secretary, Department of Education](#) (Social services second review) [2023] AATA 942 (26 April 2023); Senior Member D J Morris

SOCIAL SECURITY – benefits, entitlements and pensions – financial assistance for full-time students – youth allowance – where applicant’s youth allowance cancelled – where First Review affirmed cancellation – where applicant was enrolled as a full-time student – where applicant changed his academic course – where applicant continued to study full-time – where legislation requires study to be in an approved course – where course applicant enrolled in was an approved course – where second course applicant enrolled in was also an approved course – where second course was contingent on the first course – whether two approved courses studied in parallel constitute an approved course – where legislation permits a student only to be enrolled in one course – where the one course can be a double degree course – where Tribunal finds applicant’s study of principal degree with other degree contingent on principal degree is not within strict terms of the legislation one course or a combined degree course – where respondent contends date of original cancellation wrong – where debt not raised – where applicant not eligible for Youth Allowance from a specified period but Tribunal considers imposition of debt in this particular case would be manifestly unjust – reviewable decision set aside and new decision substituted with direction

## Superannuation

[WZWK and Commissioner of Taxation](#) (Taxation) [2023] AATA 872 (26 April 2023); Senior Member D K Grigg

SUPERANNUATION – where member of self-managed superannuation fund received payments from fund; where member of fund was also director of the trustee of the fund; whether benefits appropriately paid; where fund subsequently wound up; statutory construction - meaning of non-commutable life pension and “market value”; consideration of “ordinary meaning” and relevance of context in statutory interpretation; whether conditions of release and cashing restrictions prescribed in Schedule 1 of the Superannuation Industry (Supervision) Regulations 1994 applied; whether market value of superannuation funds assets appropriately calculated; where member registered tax agent and chartered accountant; where ASIC disqualified applicant from continuing as a self-managed superannuation fund auditors; where Tax Practitioners Board terminated the Applicant’s tax agent registration; whether applicant should be disqualified from acting as a trustee of self-managed superannuation fund pursuant to section 126A of the Superannuation Industry (Supervision) Act 1993 (Cth); whether applicant was reckless; whether “intent” relevant to a finding of recklessness; whether administrative penalties should be remitted – decision under review affirmed

## Taxation

[HNQH and Commissioner of Taxation](#) (Taxation) [2023] AATA 980 (28 April 2023); Deputy President Boyle

TAXATION – applications for review of objection decisions – whether income tax assessments issued under s 167 of ITAA 1936 were excessive or otherwise incorrect – applicant failed to discharge onus of proof pursuant to s 14ZZK of TAA 1953 – applicant failure to keep adequate records s 262A of ITAA 1936 – objection to penalty assessments – whether penalty assessments issued pursuant to ss 284-75 of TAA 1936 were incorrect or excessive – whether any basis for penalties to be remitted pursuant to ss 298-20 of TAA 1936 – Applicant’s circumstances not appropriate to remit any part of penalties – concession by Respondent 2011 and 2012 reviewable decisions varied – 2013 and 2014 decisions affirmed

[Earlmist Pty Ltd as the Trustee for the Earlmist Unit Trust and Commissioner of Taxation](#) (Taxation) [2023] AATA 978 (28 April 2023); Deputy President Bernard J McCabe and Senior Member Dr M Evans-Bonner

GOODS AND SERVICES TAX (GST) – whether creditable acquisitions made – A New Tax System (Goods and Services Tax) Act 1999 (Cth) – whether Applicants entitled input tax credits of \$7.2 million – applications relate to five property developments undertaken by the ‘Westpoint group’ controlled by property developer Mr Norman Carey – Applicants were members of interrelated companies and trusts in the Westpoint group – whether the evidence establishes taxable acquisitions were made by the Applicant entities – tax invoices generated on or around appointment of receivers and managers to the trustee companies of the Applicant – where documentation said to evidence supplies was sometimes inconsistent with evidence of Mr Carey – Applicants had difficulty obtaining documentation seized by Australian Securities and Investments Commission – Applicants’ unable to meet burden of proof in s 14ZZK of the Taxation Administration Act 1953 (Cth) – Reviewable Decisions in all applications affirmed

STAMP DUTY – numerous documents the Applicants sought to rely on were unstamped – whether Applicants can rely on unstamped documents – undertaking letter to Commissioner – issues of provenance and reliability of record-keeping from failure to stamp documents

## Veterans’ Affairs

[Crawford and Military Rehabilitation and Compensation Commission](#) (Compensation) [2023] AATA 944 (27 April 2023); Deputy President J Sosso

VETERANS’ ENTITLEMENTS – claim in respect of lumbar spondylosis condition – whether defence-related – whether in the course of employment – date of clinical onset – significant or material degree – 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>Chen and Secretary, Department of Social Services</b>	<a href="#">[2023] AATA 344</a>
<b>FFTS and Child Support Registrar</b>	<a href="#">[2023] AATA 634</a>
<b>Heffernan and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 416</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs</b>	<a href="#">[2021] AATA 2224</a>	<a href="#">[2023] FCAFC 64</a> <a href="#">[2022] FCA 810</a>
<b>Morgan v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 189</a>	<a href="#">[2023] FCA 392</a>
<b>Phan v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 2894</a>	<a href="#">[2023] FCA 427</a>
<b>RBKG v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3434</a>	<a href="#">[2023] FCA 405</a>
<b>Secretary, Department of Employment and Workplace Relations v Bhagwandas</b>	<a href="#">[2021] AATA 3509</a>	<a href="#">[2023] FCA 398</a>
<b>SXNC v Minister for Immigration, Citizenship, and Multicultural Affairs</b>	<a href="#">[2021] AATA 4510</a>	<a href="#">[2023] FCA 390</a>
<b>Transcon Holding Pty Ltd v Aged Care Quality and Safety Commissioner</b>	<a href="#">[2022] AATA 94</a>	<a href="#">[2023] FCAFC 60</a>

# Statements of Principles

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

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

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

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

## Notification of Investigations (where there is no existing Statement of Principles)

The AAT was advised that the RMA intends to carry out investigations under subsection 196B(4) of the VEA to determine whether a Statement of Principles may be determined in respect of the following conditions (where there is no existing Statement of Principles):

**Tardive Dyskinesia** - <https://www.legislation.gov.au/Details/C2023G00476>

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 23 May 2023:

**Albinism (Reasonable Hypothesis) – No. 31 of 2023**

<https://www.legislation.gov.au/Details/F2023L00497>

**Albinism (Balance of Probabilities) – No. 32 of 2023**

<https://www.legislation.gov.au/Details/F2023L00498>

**Alpha-1 antitrypsin deficiency (Reasonable Hypothesis) – No. 33 of 2023**

<https://www.legislation.gov.au/Details/F2023L00495>

**Alpha-1 antitrypsin deficiency (Balance of Probabilities) – No. 34 of 2023**

<https://www.legislation.gov.au/Details/F2023L00496>

**Autosomal dominant polycystic kidney disease (Reasonable Hypothesis) – No. 35 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00483>

**Autosomal dominant polycystic kidney disease (Balance of Probabilities) – No. 36 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00484>

**Chickenpox (Reasonable Hypothesis) – No. 29 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00468>

**Chickenpox (Balance of Probabilities) – No. 30 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00469>

**Chronic myeloid leukaemia (Reasonable Hypothesis) – No. 57 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00486>

**Chronic myeloid leukaemia (Balance of Probabilities) – No. 58 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00487>

**Decompression illness (Reasonable Hypothesis) – No. 23 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00464>

**Decompression illness (Balance of Probabilities) – No. 24 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00465>

**Gaucher disease (Reasonable Hypothesis) – No. 37 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00518>

**Gaucher disease (Balance of Probabilities) – No. 38 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00517>

**Haemophilia (Reasonable Hypothesis) – No. 39 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00514>

**Haemophilia (Balance of Probabilities) – No. 40 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00515>

**Hereditary spherocytosis (Reasonable Hypothesis) – No. 41 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00470>

**Hereditary spherocytosis (Balance of Probabilities) – No. 42 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00471>

**Huntington disease (Reasonable Hypothesis) – No. 49 of 2023**  
<https://www.legislation.gov.au/Details/F2023L00499>

Huntington disease (Balance of Probabilities) – No. 50 of 2023

<https://www.legislation.gov.au/Details/F2023L00500>

Marfan syndrome (Reasonable Hypothesis) – No. 51 of 2023

<https://www.legislation.gov.au/Details/F2023L00480>

Marfan syndrome (Balance of Probabilities) – No. 52 of 2023

<https://www.legislation.gov.au/Details/F2023L00481>

Melioidosis (Reasonable Hypothesis) – No. 55 of 2023

<https://www.legislation.gov.au/Details/F2023L00488>

Melioidosis (Balance of Probabilities) – No. 56 of 2023

<https://www.legislation.gov.au/Details/F2023L00489>

Multiple osteochondromatosis (Reasonable Hypothesis) – No. 43 of 2023

<https://www.legislation.gov.au/Details/F2023L00478>

Multiple osteochondromatosis (Balance of Probabilities) – No. 44 of 2023

<https://www.legislation.gov.au/Details/F2023L00479>

Osteogenesis imperfecta (Reasonable Hypothesis) – No. 53 of 2023

<https://www.legislation.gov.au/Details/F2023L00502>

Osteogenesis imperfecta (Balance of Probabilities) – No. 54 of 2023

<https://www.legislation.gov.au/Details/F2023L00504>

Plantar fibromatosis (Reasonable Hypothesis) – No. 21 of 2023

<https://www.legislation.gov.au/Details/F2023L00472>

Plantar fibromatosis (Balance of Probabilities) – No. 22 of 2023

<https://www.legislation.gov.au/Details/F2023L00473>

Retinal burn (Reasonable Hypothesis) – No. 25 of 2023

<https://www.legislation.gov.au/Details/F2023L00466>

Retinal burn (Balance of Probabilities) – No. 26 of 2023

<https://www.legislation.gov.au/Details/F2023L00467>

Shingles and postherpetic neuralgia (Reasonable Hypothesis) – No. 27 of 2023

<https://www.legislation.gov.au/Details/F2023L00477>

Shingles and postherpetic neuralgia (Balance of Probabilities) – No. 28 of 2023

<https://www.legislation.gov.au/Details/F2023L00476>



Von Willebrand disease (Reasonable Hypothesis) – No. 45 of 2023

<https://www.legislation.gov.au/Details/F2023L00512>

Von Willebrand disease (Balance of Probabilities) – No. 46 of 2023

<https://www.legislation.gov.au/Details/F2023L00513>

Wilson disease (Reasonable Hypothesis) – No. 47 of 2023

<https://www.legislation.gov.au/Details/F2023L00474>

Wilson disease (Balance of Probabilities) – No. 48 of 2023

<https://www.legislation.gov.au/Details/F2023L00475>

### **Amended Statements of Principles**

The AAT has been advised that the RMA has made the following instruments amending the Statements of Principles for the specified conditions. These take effect from 23 May 2023:

**External burn (Balance of Probabilities) – No. 60 of 2023**

<https://www.legislation.gov.au/Details/F2023L00508>

**External burn (Reasonable Hypothesis) – No. 59 of 2023**

<https://www.legislation.gov.au/Details/F2023L00507>

### **Statements of Principles to be revoked**

The AAT has been advised that the following Statements of Principles determined by the RMA **will be revoked** on **23 May 2023**:

**Albinism – No. 19 of 2015**

<https://www.legislation.gov.au/Details/F2014L01823>

**Albinism – No. 20 of 2015**

<https://www.legislation.gov.au/Details/F2014L01825>

**Alpha-1 antitrypsin deficiency – No. 29 of 2015**

<https://www.legislation.gov.au/Details/F2014L01837>

**Alpha-1 antitrypsin deficiency – No. 30 of 2015**

<https://www.legislation.gov.au/Details/F2014L01840>

**Autosomal dominant polycystic kidney disease – No. 40 of 2015**

<https://www.legislation.gov.au/Details/F2015L00005>

**Autosomal dominant polycystic kidney disease – No. 39 of 2015**

<https://www.legislation.gov.au/Details/F2015L00004>

**Chickenpox – No. 88 of 2015**

<https://www.legislation.gov.au/Details/F2015L00920>

**Chickenpox – No. 87 of 2015**

<https://www.legislation.gov.au/Details/F2015L00919>

**Chronic myeloid leukaemia – No. 47 of 2014**

<https://www.legislation.gov.au/Details/F2014L00479>

**Chronic myeloid leukaemia – No. 48 of 2014**

<https://www.legislation.gov.au/Details/F2014L00480>

**Decompression sickness – No. 14 of 2015**

<https://www.legislation.gov.au/Details/F2014L01832>

**Decompression sickness – No. 13 of 2015**

<https://www.legislation.gov.au/Details/F2014L01830>

**Gaucher's disease – No. 27 of 2015**

<https://www.legislation.gov.au/Details/F2014L01843>

**Gaucher's disease – No. 28 of 2015**

<https://www.legislation.gov.au/Details/F2014L01846>

**Haemophilia – No. 23 of 2015**

<https://www.legislation.gov.au/Details/F2014L01831>

**Haemophilia – No. 24 of 2015**

<https://www.legislation.gov.au/Details/F2014L01833>

**Hereditary spherocytosis – No. 68 of 2015**

<https://www.legislation.gov.au/Details/F2015L00650>

**Hereditary spherocytosis – No. 67 of 2015**

<https://www.legislation.gov.au/Details/F2015L00649>

**Huntington's chorea – No. 37 of 2015**

<https://www.legislation.gov.au/Details/F2014L01851>

**Huntington's chorea – No. 38 of 2015**

<https://www.legislation.gov.au/Details/F2014L01852>

**Osteogenesis imperfecta – No. 35 of 2015**

<https://www.legislation.gov.au/Details/F2014L01848>

**Osteogenesis imperfecta – No. 36 of 2015**

<https://www.legislation.gov.au/Details/F2014L01850>

**Marfan syndrome – No. 26 of 2015**

<https://www.legislation.gov.au/Details/F2014L01838>

**Marfan syndrome – No. 25 of 2015**

<https://www.legislation.gov.au/Details/F2014L01835>

**Melioidosis – No. 60 of 2014**

<https://www.legislation.gov.au/Details/F2014L00940>

**Melioidosis – No. 61 of 2014**

<https://www.legislation.gov.au/Details/F2014L00934>

**Multiple osteochondromatosis – No. 44 of 2015**

<https://www.legislation.gov.au/Details/F2015L00009>

**Multiple osteochondromatosis – No. 43 of 2015**

<https://www.legislation.gov.au/Details/F2015L00008>

**Herpes zoster – No. 48 of 2015**

<https://www.legislation.gov.au/Details/F2015L00254>

**Herpes zoster No. 47 of 2015**

<https://www.legislation.gov.au/Details/F2015L00253>

**Von Willebrand's disease – No. 41 of 2015**

<https://www.legislation.gov.au/Details/F2015L00006>

**Von Willebrand's disease – No. 42 of 2015**

<https://www.legislation.gov.au/Details/F2015L00007>

**Wilson's disease – No. 34 of 2015**

<https://www.legislation.gov.au/Details/F2014L01849>

**Wilson's disease – No. 33 of 2015**

<https://www.legislation.gov.au/Details/F2014L01847>



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