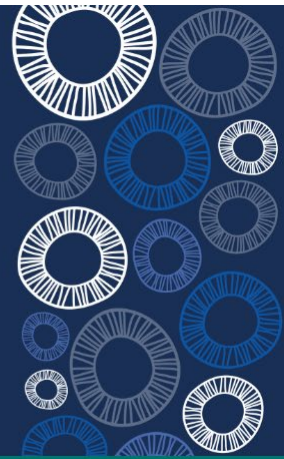




Administrative  
Appeals Tribunal

# AAT Bulletin



# AAT Bulletin

**Issue No. 09/2024**

**06 May 2024**

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

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

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

# Contents

<b>Recent developments .....</b>	<b>3</b>
<b>AAT Annual Survey .....</b>	<b>3</b>
<b>AAT Recent Decisions .....</b>	<b>4</b>
Child Support .....	4
Compensation.....	5
Corporations.....	5
Education and Research.....	6
Migration .....	6
National Disability Insurance Scheme .....	10
Practice and Procedure.....	11
Refugee .....	12
Social Security .....	13
Superannuation .....	14
Taxation .....	14
<b>Appeals .....</b>	<b>15</b>
Appeals lodged .....	15
Appeals finalised .....	15
<b>Statements of Principles .....</b>	<b>16</b>
New Statements of Principles .....	16
Amended Statements of Principles .....	17
Statements of Principles to be revoked .....	17

# Recent developments

## AAT Annual Survey

The AAT's annual survey has commenced, with most parties and representatives who had a review finalised between 1 December 2023 and 31 March 2024 invited to have their say. If you received an email or SMS, we strongly encourage you to complete the survey. By doing so you can help us identify where we can make improvements to the way we operate and the services we provide.

If you receive a link on behalf of someone else, can you please forward it to them as soon as possible.

The survey will close on 31 May 2024.

For more information visit our website, [www.aat.gov.au](http://www.aat.gov.au).

# 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

[Greeson and Perch](#) (Child support) [2024] AATA 885 (25 March 2024); P Noonan, Member

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

[Leith and Proctor](#) (Child support) [2024] AATA 883 (19 February 2024); M King, Member

CHILD SUPPORT – application for departure determination – income, property and financial resources of the child – income, property, financial resources and earning capacity of the parents – no ground for departure established – decision not to depart – decision under review affirmed

[Linney and Joplin](#) (Child support) [2024] AATA 881 (20 March 2024); S Hoffman, Member

CHILD SUPPORT – particulars of the administrative assessment – whether binding child support agreement terminated – whether eligible carer remained eligible carer of the child - binding child support agreement not terminated – decision under review set aside and substituted

[MJWZ and Child Support Registrar](#) (Child support second review) [2024] AATA 846 (24 April 2024); Dr M Evans-Bonner, Senior Member

CHILD SUPPORT – percentage of care decision – whether there was a change in care – dispute about percentage of care – Tribunal satisfied there was a change in care – existing care determination revoked – new care determinations made – Father notified Agency more than 28 days after the date of the change of care – date of effect of revocation – AAT1 decision set aside and substituted

[Murdoch and Crutcher](#) (Child support) [2024] AATA 884 (19 March 2024); C Breheny, Member

CHILD SUPPORT – non-agency payment – whether hospital costs paid should be credited – liable parent undertook to pay hospital costs in addition to child support liability – refusal to credit non-agency payment – decision under review affirmed

[VMDB and Child Support Registrar](#) (Child support second review) [2024] AATA 924 (2 May 2024); P Ranson, Member

Child Support – percentage care determination – where applicant out of time to appeal to General Division – extension of time granted – where no agreement reached on actual care arrangement – where evidence of actual care insufficient to establish change in care arrangement – where applicant out of time to appeal original decision – application of s87AA – date of effect of decision – decision under review set aside and substituted

[Werkheiser and Werkheiser](#) (Child support) [2024] AATA 873 (12 March 2024); H Moreland, Member

CHILD SUPPORT – non-agency payment – payments made to third parties from joint account – not satisfied of which portion of the funds in the joint bank account held for the benefit of which parent – refusal to credit non-agency payment - decision under review affirmed

[YBQB and Child Support Registrar](#) (Child support second review) [2024] AATA 888 (30 April 2024); Emeritus Professor P A Fairall, Senior Member

CHILD SUPPORT – percentage of care – where notification given more than 28 days after change of care – where change of care occurred in 2016 – whether current provisions apply with retrospective effect – decision under review set aside and substituted

## Compensation

[Kelk and OSM Australia Pty Ltd](#) (Compensation) [2024] AATA 913 (30 April 2024); L Benjamin, Member

COMPENSATION – Claim for compensation and permanent impairment and non-economic loss pursuant to Seafarers Rehabilitation and Compensation Act 1992 – where Applicant sustained injury during course of employment – where relevant conditions already in existence but asymptomatic prior to injury – whether conditions became symptomatic and caused incapacity for work – inconsistent medical and working histories provided to independent specialist doctors – where impairment consequence of injury – decision set aside and substituted

## Corporations

[Simeone Pty Ltd and Australian Securities and Investments Commission](#) [2024] AATA 819 (23 April 2024); D O'Donovan, Senior Member

Provision of financial product advice – which entity or person provided the advice – whether the person providing the advice was licensed to provide the advice – whether the person providing the advice was competent to provide the advice – whether the person was a fit and proper person to provide financial services or to perform any function as an officer of an entity that carries on a financial services business – Person not adequately trained and not competent to provide financial services – Ban period of five years for person appropriate – Australian Financial Services licensee's failure to have adequate arrangements in place for management for conflicts of interest in relation to activities undertaken by the licensee or a representative of the licensee in the provision of financial services as part of the financial services business of the licensee – Australian Financial Services licensee's failure to ensure representatives are adequately trained and competent to provide the financial services covered by the license – Cancellation of Australian Financial Services Licence – decisions under review affirmed

[Sweeney and Australian Securities & Investments Commission](#) [2024] AATA 872 (26 April 2024); B J McCabe, Deputy President

CORPORATIONS – Banning order – Dishonest conduct – Whether the applicant is a fit and proper person – Historical offending – The purpose of banning orders – Decision affirmed

## Education and Research

[Yu and Secretary, Department of Education](#) [2024] AATA 818 (23 April 2024); A Maryniak KC, Member

EDUCATION – HECS-HELP – debt remission – whether special circumstances apply – whether circumstances beyond applicant’s control – whether circumstances made it impracticable for applicant to complete requirements of course – where applicant enrolled in full-time course load of four units – where applicant satisfied three of the four units – where applicant seeks remission for unit not satisfactorily completed – applicant experience of mental health challenges during period – Tribunal not satisfied impracticable for applicant to complete requirements of units – decision affirmed

## Migration

[2100971](#) (Migration) [2024] AATA 335 (17 January 2024); K Raif, Senior Member

MIGRATION –Partner (Temporary) (Class UK) visa – Subclass 820 – applicant did not meet the health requirements – lengthy relationship of six years – significant family connections in Australia – applicant has social, emotional and family ties to Australia – cost of treatment is not significant – PIC 4007(1)(c) may be waived subject to the applicant satisfying all other requirements for the visa – decision under review remitted

[2120029](#) (Migration) [2023] AATA 4647 (17 November 2023); M Bourke, Member

MIGRATION – Partner (Migrant) (Class BC) visa – Subclass 100 – relationship with sponsor ceased – no finding that applicant experienced family violence during the spousal relationship – granting of intervention order does not meet evidentiary requirements – psychologist report – non-judicially determined claim of family violence made – applicant provided incorrect information in relation to allegations of family violence – independent expert opinion that applicant had not suffered relevant family violence – assessment properly and validly made – decision under review affirmed

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

(Migration) [2024] AATA 922 (1 May 2024); B W Rayment OAM KC, Deputy President

MIGRATION – refusal to revoke mandatory cancellation – applicant is US citizen – committed sexual offences against children – whether removal from Australia would undermine suspended sentence – options for rehabilitation – decision under review set aside and substituted

[Ash and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 890 (24 April 2024); S Boyle, Deputy President

MIGRATION – s 501CA(4) of Migration Act – decision not to revoke mandatory cancellation of visa – Applicant is a citizen of United Kingdom – Direction 99 considered – Applicant had lived in Australia for 15 years – arrived as a 16-year-old – extensive criminal record – repeated violent offences – family violence – serious driving record – long-standing methamphetamine addiction – risk of re-offending at high end of low to moderate – primary considerations of protection best interests of minor children and ties to the Australian community weigh in favour of revocation of cancellation – primary considerations of protection of the Australian community, family violence and expectations of the Australian community outweigh considerations in favour of revoking cancellation of visa – there is not another reason to revoke the decision to cancel the Applicant’s visa – reviewable decision affirmed

PRACTICE AND PROCEDURE – Administrative Appeals Tribunal Act 1975 – whether orders should be made under s 35 giving the Applicant a pseudonym and suppressing certain evidence – no evidence to support the Applicant’s assertion that he, his family or his children would face harm – information already in the public domain – no justification for the use of a pseudonym or the suppression of other information – orders refused.

[Assoum](#) (Migration) [2023] AATA 4738 (28 November 2023); K Malyon, Member

MIGRATION – Prospective Marriage (Temporary) (Class TO) visa – Subclass 300 (Prospective Marriage) – request for prior processing – security situation in Lebanon – met in person and known to each other personally – extensive photographic evidence provided – amenable to being satisfied after the time of application – decision under review remitted

[Banga](#) (Migration) [2023] AATA 4626 (13 December 2023); T Quinn, Member

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 – sponsor passed away – sponsor left all of his assets to the applicant – applicant has formed strong bonds to the family and friends of her late partner – sponsor’s will and the applicant’s medical authority are significant indicators of the couple’s commitment to each other – applicant has close cultural ties to Australia – satisfied that the applicant was in a de facto relationship with the sponsor from the time of the application until the time of the sponsor’s death – decision under review remitted

[BFBZ and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2023] AATA 4810 (23 November 2023); A McLean Williams, Member

MIGRATION – Mandatory cancellation of visa – substantial criminal record – failure to pass character test - whether another reason the mandatory cancellation should be revoked – Ministerial Direction No. 99 applied – Class TY Subclass 444 Special Category visa – citizen of New Zealand – protection of the Australian community – seriousness of offence – risk of reoffending – domestic violence – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of decision – extent of impediments if removed – decision set aside

[Clark and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 810 (19 February 2024); A Julian-Armitage, Member

MIGRATION – Non-revocation of mandatory cancellation of a Class TY Subclass 444 Special Category (Temporary) visa – where the Applicant does not pass the character test – where the applicant has a substantial criminal record - whether there is “another reason” why the decision to cancel the Applicant’s visa should be revoked – consideration of Ministerial Direction No. 99 – where Applicant’s offending included property offences, vehicle offences and violent offences – where Applicant’s conduct included family violence – decision under review affirmed

[HSCH PTY LTD](#) (Migration) [2023] AATA 4648 (1 December 2023); M Cooke, Senior Member

MIGRATION – Employer Nomination – approval of nominated position – Temporary Residence Transition stream – Supply and Distribution Manager – no adverse information known to the Department – breaches of the Fair Work Act 2009 – failure to properly pay employees minimum rates of pay – knowingly to create false or misleading records – whether reasonable to disregard it – remediation of errant employer practices – approved as a Standard Business Sponsor – decision under review set aside

[Kipkosgei and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 910 (22 January 2024); D Cosgrave, Member

MIGRATION – Mandatory visa cancellation – Kenyan citizen – Class TU Subclass 500 Student (Temporary) visa – failure to pass the character test – criminal record – victim kicked and stomped on the head – whether there is another reason why the mandatory visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate’s decision not to revoke is affirmed

[Mizikovsky](#) (Migration) [2024] AATA 289 (9 February 2024); P Ranson, Member

MIGRATION – Business Skills (Provisional) (Class EB) visa – Subclass 188 Business Innovation and Investment (Provisional) – Significant Investor Extension stream – continuing to hold a complying significant investment – bond investment returned at maturity – gap in investment – 30-day reinvestment rule – referral for Ministerial Intervention – decision under review affirmed

[MPML and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 807 (19 April 2024); D Cosgrave, Member

MIGRATION – Mandatory Visa cancellation – Malaysian citizen – Class WA Subclass 010 Bridging A Visa – failure to pass the character test – drug trafficker – drug possession - criminal record – whether there is another reason why the mandatory Visa cancellation should be revoked – Ministerial Direction No. 99 applied – delegate’s decision set aside and substituted with a decision revoking the original visa cancellation

[MRNF and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 848 (24 April 2024); A Nikolic AM CSC, Senior Member

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



[Nguyen and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 889 (30 April 2024); S Evans, Member

MIGRATION – Applicant citizen of Vietnam - visa mandatorily cancelled pursuant to section 501(3A) of the Migration Act 1958 (Cth) – substantial criminal record – offences relating to the cultivation of illicit drugs – sentenced to a term of imprisonment of 12 months or more – review of decision to refuse to revoke mandatory cancellation under section 501CA(4) – applicant does not pass the character test – whether another reason decision should be revoked – decision under review set aside

[Nunez and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 809 (22 April 2024); A Younes, Deputy President

MIGRATION – mandatory visa cancellation – failure to pass the character test – whether there is another reason why mandatory visa cancellation should be revoked – Ministerial Direction No.99 – protection of Australian community – family violence – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – extent of impediments if removed – decision under review affirmed

[NXLT and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 925 (29 April 2024); J C Kelly, Senior Member

MIGRATION – mandatory cancellation of visa under s 501CA(4) because applicant did not pass the character test – whether there is another reason why the cancellation decision should be revoked – Ministerial direction no.99 – protection of the Australian community – strength, nature, duration of ties to Australia – expectations of the Australian community – legal consequences of the decision – extent of impediments if removed – reviewable decision affirmed

[Peneha and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 930 (28 March 2024); R Maguire, Member

MIGRATION – non revocation of a mandatory cancellation of visa- where Applicant does not pass the character test – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – where Tribunal finding the Applicant’s recidivist risk remains unchanged – where Tribunal finding that factors in favour of revocation outweighed by factors against revocation – Tribunal finding there is no another reason to revoke the mandatory cancellation decision- decision under review affirmed

[Skipper and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 931 (11 April 2024); T Tavoularis, Senior Member

MIGRATION – non-revocation of mandatory cancellation of a visa – where Applicant does not pass the character test – where the visa was previously cancelled and subsequently revoked – whether there is another reason to revoke the mandatory cancellation decision – consideration of Ministerial Direction No. 99 – where the criminal offending history spans a decade – where level of Applicant’s rehabilitation cannot be ascertained – Tribunal finding Applicant’s recidivist risk as unchanged – factors against revocation outweigh factors in favour of revocation – Tribunal finding there is no another reason to revoke the mandatory cancellation decision – decision under review affirmed

[TJHG and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 812 (22 April 2024); Emeritus Professor P A Fairall, Senior Member

MIGRATION – Migration Act 1958 (Cth) – non-revocation of mandatory visa cancellation – Direction No.99 – protection of Australian community – strength, nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – legal consequences of decision – extent of impediments if removed – supply large commercial quantity of methylamphetamine – low risk of reoffending – where applicant at risk of double punishment upon return to Nigeria – decision under review set aside

[Warinda](#) (Migration) [2023] AATA 4611 (8 November 2023); M Bradford, Member

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – bogus document – bank statement – reasonable grounds to believe the document was genuine – invalid visa application – decision under review substituted

[Wilton and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024]  
AATA 926 (2 May 2024); A Younes, 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 – nature and seriousness of offending conduct – protection of the Australian community – conduct engaged in family violence – strength nature and duration of ties to Australia – best interests of minor children – expectations of the Australian community – impediments to removal – decision set aside and substituted

## **National Disability Insurance Scheme**

[Beaumont and National Disability Insurance Agency](#) [2024] AATA 891 (30 April 2024); K Bean, Member and N Purcell, Member

NATIONAL DISABILITY INSURANCE SCHEME – access – multiple myeloma – terminal illness – pain – palliative care – Rule 5.8 – deeming provision – assistive technology and equipment – commonly used items – usually requires assistance – section 24(1)(c) – whether substantially reduced functional capacity – substituted decision

[Bowden and National Disability Insurance Agency](#) [2024] AATA 847 (24 April 2024); D Connolly, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – access criteria – fatigue – depression – anxiety – whether longstanding impairments that require review and possible treatment can be considered permanent impairments – decision affirmed

[Jeftic and National Disability Insurance Agency](#) [2024] AATA 892 (29 April 2024); K Buxton, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – Application for Review of Decision – Access to Scheme – Applicant not having met the disability and early intervention requirements of the Act – Decision Under Review Affirmed

## Practice and Procedure

[Alaska Care Pty Ltd and National Disability Insurance Scheme](#) [2024] AATA 817 (22 April 2024); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – application for review lodged by a service provider who has delivered supports to a participant under the National Disability Insurance Scheme (NDIS) – payments officer refused to pay an amount to the Applicant for four outstanding invoices in respect of respite/short-term accommodation services – Tribunal is satisfied this type of decision, is not a “reviewable decision” under s 99(1) of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act), or under any other rules made under s 99(2) of the NDIS Act – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Brar and Minister for Immigration, Citizenship and Multicultural Affairs](#) (Migration) [2024] AATA 886 (29 April 2024); Dr N A Manetta, Senior Member

PRACTICE AND PROCEDURE – application for joinder under section 30(1A) of the AAT Act – joinder applicant a victim of visa holder’s criminal actions – visa holder’s visa cancelled – visa holder seeking review of decision not to reinstate his visa – Tribunal required by relevant statutory instrument to consider impact of its decision on victims – joinder applicant’s psychological wellbeing an interest that might be affected – joinder applicant seeking to be made a party to ensure she could observe entirety of proceedings – joinder applicant otherwise able to provide a statement of evidence as part of respondent’s case – application for joinder refused in Tribunal’s discretion

[Glasshouse Community Supports Pty Ltd and National Disability Insurance Scheme](#) [2024] AATA 816 (19 April 2024); K Parker, Senior Member

NATIONAL DISABILITY INSURANCE SCHEME – jurisdiction – application for review lodged by a service provider who has delivered supports to a participant under the National Disability Insurance Scheme (NDIS) – payments officer refused to pay an amount of \$90,475.24 to the Applicant for nine outstanding invoices in respect of services provided to the participant – Tribunal is satisfied this type of decision not a “reviewable decision” under s 99(1) of the National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act), or under any other rules made under s 99(2) of the NDIS Act – application dismissed under s 42A(4) of the Administrative Appeals Tribunal Act 1975 (Cth)

[Lim and Secretary, Department of Education](#) [2024] AATA 928 (1 May 2024); Honourable J Rau SC, Senior Member

PROCEDURE – application for extension of time – not granted – the decision is refused

[Visvis and Secretary, Department of Health](#) [2024] AATA 923 (29 April 2024); B W Rayment OAM KC, Deputy President

ADMINISTRATIVE – interlocutory application – request for extension of time – request for stay of decision of the respondent – where only minimal delay in request for extension – Extension of time granted – stay of application granted with condition

ADMINISTRATIVE – interlocutory application – request for extension of time – request for stay of decision of the respondent – where only minimal delay in request for extension – Extension of time granted – stay of application granted with condition

[WSNY and Child Support Registrar](#) (Child support second review) [2024] AATA 887 (29 April 2024); S Evans, Member

CHILD SUPPORT – Request for extension of time to review decision – calculation of Child Support - whether application made within 28 days of notification of objection decision – whether reasonable in all circumstances to grant extension of time – extension of time refused

## Refugee

[1714919](#) (Refugee) [2023] AATA 4812 (4 December 2023); A Mendes Da Costa, Member

REFUGEE – protection visa – Vietnam – membership of particular social group – divorced mother – discrimination and capacity to subsist – partner visa refused with no jurisdiction to review and unsuccessful request for ministerial intervention – family violence, separation and vulnerability to further abusive relationships – children Australian citizens and mixed race – emotional and financial support from husband’s family – country information – no legal barriers but traditional societal views about family, and stigma and discrimination in regional areas – complex social welfare system – decision under review remitted

[1824913](#) (Refugee) [2023] AATA 4768 (12 November 2023); P Haag, Member

REFUGEE – protection visa – Sierra Leone – particular social group – single woman – single mother – female subjected to female genital mutilation (FGM) – expected to assume leadership role in Bondo society – expected to promote and sustain tradition of FGM – applicant’s opposition to FGM – FGM widespread across ECOWAS region – impracticable for applicant to relocate with son within Sierra Leone and in ECOWAS region – decision under review remitted

[1837005](#) (Refugee) [2024] AATA 868 (25 January 2024); P Tyson, Member

REFUGEE – protection visa – China – religion – Christian – Local Church – fear of detention – evangelising – church activity in Australia – torture in custody – decision under review remitted

[1929870](#) (Refugee) [2023] AATA 4645 (1 December 2023); W Pennell, Senior Member

REFUGEE – protection visa – Nigeria – religion and political opinion – advocate for rights and education for girls and women – threatening notes and phone calls – return for mother’s funeral – delay in applying for protection – no corroborating statement from husband or any other supporting evidence, and no recent calls – membership and low-level activity in political party while in Australia – country information – fear of harm not well-founded – qualifications and professional employment in remote area – references and supporting statements, and national labour shortages – referred for ministerial consideration – decision under review affirmed

[2012700](#) (Refugee) [2023] AATA 4654 (30 November 2023); M Bishop, Member

REFUGEE – protection visa – Pakistan – ethnicity, membership of particular social group and political opinion – Pashtun, educated, employed woman and low-level member of secular nationalist party – threats and attacks by extremist groups – mental health and psychological consultations – returned failed asylum seeker – applicant’s responsibility to specify particulars of claim and provide sufficient evidence – insufficient detail and inconsistencies, and little corroborating evidence – authenticity of first information report and adequacy of translation – delay in applying for protection – applied after additional threats to parents and birth of first child, and shortly before previous visa due to cease – no religious or political activity in Australia – husband’s previous returns – increased state security and groups’ moves away from attacking civilians – no recent activity in local area – growth in provision of mental health services – women’s employment and gender-based violence – Pashtuns the majority in province – members of family unit – Australian-born children’s language and education – decision under review affirmed

[2311207](#) (Refugee) [2023] AATA 4591 (14 November 2023); N Burns, Member

REFUGEE – protection visa – Sri Lanka – complementary protection – divorced Tamil woman with no family support – sexually assaulted, harassed and threatened by a local shop owner – cruel or inhuman treatment or punishment – degrading treatment or punishment – state protection – internal relocation – lack of family support and networks – psychologically vulnerable – decision under review remitted

[2316637](#) (Refugee) [2024] AATA 628 (11 January 2024); D James, Senior Member

REFUGEE – protection visa – Solomon Islands – particular social group – threats from money lenders – economic conditions – fear of physical assault – fear of starvation – state protection – decision under review affirmed

[2317560](#) (Refugee) [2024] AATA 861 (19 January 2024); P Noonan, Member

REFUGEE – protection visa – India – older single man with chronic physical and mental health conditions and criminal history – long residence, no contact with immediate family and no other surviving relatives – return resident visa cancelled, imprisonment and immigration detention – medical history and current conditions and treatment – country information – health system – insufficient number of mental health workers – general societal discrimination – decision under review remitted

## Social Security

[Cambridge and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 952 (29 April 2024); A George, Senior Member

SOCIAL SECURITY – Newstart Allowance – whether Applicant failed to declare his income correctly – whether Applicant has a Newstart Allowance debt – whether the debt should be recovered in part or in full – whether special circumstances exist – decision under review set aside and substituted

[Greene and Secretary, Department of Social Services](#) (Social services second review) [2024] AATA 811 (19 April 2024); D Mitchell, Member

SOCIAL SECURITY – Family Tax Benefit – Child Care Benefit – overpayment – where no sole administrative error – where no special circumstances – decision under review affirmed

## Superannuation

[S&H Investments Pty Ltd and Commissioner of Taxation](#) [2024] AATA 893 (29 April 2024); Dr M Evans-Bonner, Senior Member

SUPERANNUATION – whether Applicant liable to make superannuation contributions on behalf of a worker – whether worker an “employee” under the extended definition in s 12(3) of the Superannuation Guarantee (Administration) Act 1992 (Cth) – extended definition of “employee” satisfied – Reviewable Decision affirmed

## Taxation

[Ionita and Commissioner of Taxation](#) (Taxation) [2024] AATA 808 (19 April 2024); Dr M Evans-Bonner, Senior Member

INCOME TAX – whether allowable deductions for income years ending 30 June 2015, 30 June 2017, 30 June 2018 and 30 June 2019 – Applicant was an overseas qualified dentist, working as a dental technician in Australia – Applicant claimed cost of written and practical exams undertaken to be registered to practise as a dentist in Australia as a self-education expense – associated meals, accommodation and flight expenses also claimed – whether self-education expenses incurred in gaining or producing assessable income – whether there is a sufficient connection between the Applicant’s expenses incurred and her income earning activities – whether self-education could have led to an increase in income – Reviewable Decisions affirmed

[SLDL and Commissioner of Taxation](#) (Taxation) [2024] AATA 912 (30 April 2024); B J McCabe, Deputy President

STATUTORY INTERPRETATION – GOODS AND SERVICES TAX – gambling supplies – gambling events – where there is a calculation of global GST amounts – total amounts wagered – total monetary prizes – decision under review is 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

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CASE NAME	AAT REFERENCE
<b>Pillay and Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2024] AATA 739</a>

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## Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Adefarakan v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 4216</a>	<a href="#">[2024] FCA 409</a>
<b>DGYT v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2022] AATA 3895</a>	<a href="#">[2024] FCA 438</a>
<b>FBLQ v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 2427</a>	<a href="#">[2024] FCA 397</a>
<b>Manebona v Minister for Immigration, Citizenship and Multicultural Affairs</b>	<a href="#">[2023] AATA 4123</a>	<a href="#">[2024] FCA 402</a>
<b>Pegasus Supply Solutions Pty Ltd v Collector of Customs</b>	<a href="#">[2020] AATA 4688</a>	<a href="#">[2024] FCA 450</a>

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# Statements of Principles

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

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

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

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

## New Statements of Principles

The AAT has been advised that the RMA has made the following new Statements of Principles. These take effect from 28 May 2024:

### **Malignant melanoma of the skin (Balance of Probabilities) – No. 35 of 2024**

<https://www.legislation.gov.au/F2024L00486/asmade/text>

### **Malignant melanoma of the skin (Reasonable Hypothesis) – No. 34 of 2024**

<https://www.legislation.gov.au/F2024L00485/asmade/text>

### **Malignant neoplasm of the gallbladder (Balance of Probabilities) – No. 37 of 2024**

<https://www.legislation.gov.au/F2024L00488/asmade/text>

### **Malignant neoplasm of the gallbladder (Reasonable Hypothesis) – No. 36 of 2024**

<https://www.legislation.gov.au/F2024L00487/asmade/text>

### **Myasthenia gravis (Balance of Probabilities) – No. 33 of 2024**

<https://www.legislation.gov.au/F2024L00484/asmade/text>

### **Myasthenia gravis (Reasonable Hypothesis) – No. 32 of 2024**

<https://www.legislation.gov.au/F2024L00483/asmade/text>



## 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 28 May 2024:

### **Seborrhoeic keratosis (Reasonable Hypothesis) – No. 38 of 2024**

<https://www.legislation.gov.au/F2024L00489/asmade/text>

## 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 **28 May 2024**:

### **Malignant melanoma of the skin (Balance of Probabilities) – No. 103 of 2015**

<https://www.legislation.gov.au/F2015L01318/asmade/text>

### **Malignant melanoma of the skin (Reasonable Hypothesis) – No. 102 of 2015**

<https://www.legislation.gov.au/F2015L01317/asmade/text>

### **Malignant neoplasm of the gallbladder – No. 90 of 2015**

<https://www.legislation.gov.au/F2015L00922/latest/text>

### **Malignant neoplasm of the gallbladder – No. 89 of 2015**

<https://www.legislation.gov.au/F2015L00921/latest/text>

### **Myasthenia gravis – No. 76 of 2015**

<https://www.legislation.gov.au/F2015L00908/asmade/text>

### **Myasthenia gravis – No. 75 of 2015**

<https://www.legislation.gov.au/F2015L00907/asmade/text>



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