



AAT Bulletin

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The *AAT Bulletin* is a weekly publication containing a list of recent AAT decisions and information relating to appeals against AAT decisions. The Bulletin occasionally includes information on legislative changes that affect the AAT and other important developments.

It is recommended that the Bulletin be read on-line. 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.

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AAT Recent Decisions

This section of the Bulletin provides information about decisions recently published by the AAT. 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.

Bankruptcy

[Yiasemides and Inspector-General in Bankruptcy](#) [2014] AATA 51; 3/2/2014; Senior Member N Bell

Refusal of Inspector General to enter on National Personal Insolvency Index – applicant claims administration of his estate was finalised – was the administration of the estate finalised – decision under review affirmed

Compensation

[Lotocka and Comcare](#) [2014] AATA 59; 6/2/2014; Senior Member J Toohey

Bilateral hearing loss – call centre operator – acoustic shock – ambient noise – whether employment contributed to a significant degree to hearing loss – decision under review affirmed

[Mayer and Anor and Comcare](#) [2014] AATA 55; 4/2/2014; Senior Member RM Creyke

Calculation of average weekly earnings (AWE) – Period for calculation – Rate of calculation – Calculation of overtime for purposes of AWE calculation – Australian Federal Police – Decisions under review set aside and varied

Immigration and Citizenship

[Zaher and Minister for Immigration and Border Protection](#) [2014] AATA 54; 4/2/2014; Deputy President RP Handley

Citizenship by conferral – Residence requirements – Ministerial discretion – Whether the applicant had a close and continuing association with Australia – Decision affirmed

[Sie and Minister for Immigration and Border Protection](#) [2014] AATA 60; 7/2/2014; Senior Member J Handley

Applicant a citizen of China – permanent resident of Australia - wife and daughters Australian citizens – general residence requirements not satisfied – whether discretion to treat period of absence as a period in which the applicant was present in Australia – whether close and continuing association with Australia – decision affirmed

Intellectual Property

[Wake and Commissioner of Patents and Anor](#) [2014] AATA 43; 30/1/2014; Deputy President K Bean and Dr G Hughes, Member

Patents – Whether patent application should proceed in the name of the applicant and/or the Other Party – Whether applicant is an inventor, either alone or jointly, of the relevant invention –

Whether applicant made a material contribution to that invention – Consideration of claims defining invention – No material contribution by the applicant – Decision under review affirmed

Practice and Procedure

[Iles and Secretary, Department of Social Services](#) [2014] AATA 57; 6/2/2014; Ms S Taglieri, Member

Extension of Time – Application for a review of decision of Social Security Appeals Tribunal – Application filed over 5 years after date of Reviewable Decision – Extension of time refused

[Melis and Australian Postal Corporation](#) [2014] AATA 58; 6/2/2014; Deputy President SD Hotop; 6/2/2014

Jurisdiction – compensation – applicant suffered injury in 1994 – respondent accepted liability to pay compensation to applicant in respect of injury – respondent required applicant to undergo medical examination in 2013 – applicant failed to undergo examination – respondent made determination that applicant failed to undergo medical examination without reasonable excuse – applicant's rights to compensation suspended – applicant requested reconsideration of determination – respondent made reviewable decision affirming determination – applicant made application to Tribunal for review of reviewable decision – respondent had no power to reconsider determination and make reviewable decision – applicant not authorised by enactment to request reconsideration – applicant not authorised by enactment to make application to Tribunal for review of reviewable decision – Tribunal does not have jurisdiction in respect of applicant's application for review

Social Security

[Mann and Secretary, Department of Social Services](#) [2014] AATA 61; 7/2/2014; Deputy President SA Forgie

Age Pension – assets test – home equity conversion agreement under which repayment of loan secured by mortgage on principal home – when proceeds treated as income – whether amount of loan deducted from value of assets other than principal home – value of home unit – decision affirmed

PRACTICE AND PROCEDURE – statutory interpretation – role of guidelines – role of Tribunal

[McGee; Secretary, Department of Social Services and](#) [2014] AATA 53; 4/2/2014; Deputy President RP Handley

Family assistance – Family Tax Benefit – Baby Bonus – FTB child – Meaning of living with – Child born in Cambodia – Applicant a citizen and resident of Australia – Child not living with the Applicant prior to the child's arrival in Australia – Child not a FTB child of the Applicant during the 26 week period – Decision under review set aside

[Melling and Secretary, Department of Social Services](#) [2014] AATA 52; 4/2/2014; Mr S Webb, Member

Age Pension – cancellation of pension – assets test – principal home exemption – meaning of 'principal home' – policy of assessing principal home on the basis of time when claimants have more than one home – use of a home for business purposes – indicia of the principal home of members of a couple who are both homeowners – decision affirmed

Veterans' Affairs

[McKenna and Repatriation Commission](#) [2014] AATA 56; 6/2/2014; Senior Member AF Cunningham

Pension – 12 months operational service in Vietnam – claims for PTSD, alcohol dependence, depressive disorder, erectile dysfunction – whether war-caused – experience of category 1A and 1B stressors – decision under review varied

Appeals

This section of the Bulletin provides information about appeals against AAT decisions that have been lodged or finalised. Only appeals in relation to AAT decisions that have been published on [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME	AAT REFERENCE
Comcare v Prater	[2014] AATA 7
Evans v Secretary, Department of Social Services	[2013] AATA 944

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Heffernan v Comcare	[2012] AATA 581	[2014] FCAFC 2 [2013] FCA 299
Iliffe v Comcare	[2013] AATA 631	[2013] FCA 1434

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