



## 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](mailto:aatweb@aat.gov.au).

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## AAT Recent Decisions

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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.

### Civil Aviation

[Maksimovic and Secretary, Department of Infrastructure and Regional Development](#) [2014] AATA 96; 27/2/2014; Deputy President JW Constance

Aviation security identification card (ASIC) – adverse criminal record – security controlled airport – discretion to approve the issue of an ASIC – approval subject to conditions – decision under review set aside

### Compensation

[Pettiford and Comcare](#) [2014] AATA 95; 27/2/2014; Senior Member AK Britton

Psychiatric injury – Whether injury is the result of reasonable administrative action taken in a reasonable manner – Reasonableness to be assessed with reference to the circumstances surrounding the action – Difference between administrative action and operational action – Whether the injury was contributed to, to a significant degree, by the employee's employment by the Commonwealth – Meaning of employment – Decision set aside and substituted

[Zdziarski and Telstra Corporation Limited](#) [2014] AATA 108; 28/2/2014; Senior Member AK Britton

Psychiatric condition – Nature of the psychiatric condition – Substance abuse – Whether employment contributed to psychiatric condition to a significant degree – Whether psychiatric condition is the result of medical treatment received in relation to an accepted injury

### Environment

[Zoubi and Minister for the Environment](#) [2014] AATA 86; 24/2/2014; Deputy President RP Handley

Export permit – Gang-gang Cockatoos – Glossy Black Cockatoos – CITES specimen – regulated native specimen – export must be for a non-commercial purpose – purpose of research – no relevant qualifications – decision affirmed

### Immigration and Citizenship

[Al Temimi and Minister for Immigration and Border Protection](#) [2014] AATA 97; 27/2/2014; Deputy President SD Hotop

Applicant's application for Australian citizenship refused on grounds of character and identity – applicant changed name by deed poll in Queensland in 2003 – applicant convicted of fraud in Western Australia in 2005 and sentenced to 2-year Intensive Supervision Order – applicant registered change of name in Western Australia in 2012 – applicant knowingly made false statements regarding name change in application for registration of name change and in application for citizenship – Tribunal satisfied of identity of applicant – Tribunal not satisfied that

applicant of good character – applicant not eligible to become Australian citizen – decision under review affirmed

[Herrmann and Minister for Immigration and Border Protection](#) [2014] AATA 105; 17/2/2014; Deputy President RP Handley

Citizenship by conferral – residence requirement – spousal discretion – spouse must be an Australian citizen – discretion only applies to periods where spouse was an Australian citizen – exercise of discretion would not satisfy the residence requirement – decision affirmed

Citizenship by conferral – close and continuing association – professional and community connections – requirement of a close and continuing association with Australia satisfied

[Supunyachotsakul and Minister for Immigration and Border Protection](#) [2014] AATA 103; 27/2/2014; Dr P McDermott RFD, Senior Member

Application for citizenship by conferral – Whether applicant meets residence requirements – Whether applicant likely to reside in Australia – Whether ministerial discretion enlivened – Whether applicant has a close and continuing association with Australia – Decision under review affirmed

[Wang and Minister for Immigration and Border Protection](#) [2014] AATA 89; 28/1/2014; Senior Member N Bell

Permanent resident – application for citizenship – applicant does not meet good character requirement – exercise of discretion – application of Australian Citizenship Instructions – decision under review affirmed

## **Practice and Procedure**

[Avetmiss Easy Pty Ltd and Australian Skills Quality Authority](#) [2014] AATA 99; 24/2/2014; Deputy President JW Constance

Application for extension of time – power of Tribunal to dismiss an application under s 42A(2) – whether extension of time application is a proceeding for the purposes of s 42A(2) – application dismissed by reason of the applicant's failure to appear at a directions hearing

[Burnett and Tax Practitioners Board](#) [2014] AATA 87; 24/2/2014; Deputy President K Bean

Tax agents – Application to stay refusal to renew registration as a tax agent – Public interest considerations – Severe adverse consequences to applicant if stay refused – Where substantive application may be rendered nugatory – Stay granted

Application for confidentiality orders – Whether cogent reasons to depart from norm – Damage to applicant's reputation – Declined to make confidentiality orders sought

[Estate of the late Vincent Godfrey and Secretary, Department of Social Services](#) [2014] AATA 107; 28/2/2014; Senior Member N Isenberg

Application for extension of time to lodge application for review – factors relevant to an extension of time – explanation of delay – prejudice to the respondent – prospects of success – application refused

[Moorabbin Airport Corporation Pty Ltd and Minister for Infrastructure and Regional Development and Ors](#) [2014] AATA 101; 27/2/2014; Deputy President SA Forgie

Applications for joinder – whether applicants are persons whose interests are affected by the decision – whether discretion should be exercised

## Social Security

[Bergan and Secretary, Department of Social Services](#) [2014] AATA 109; 28/2/2014; Senior Member AK Britton

Disability support pension – Compensation preclusion period – Lump sum preclusion period – Whether special circumstances exist – Health problems – Reduced cognitive function and decision-making capacity – Ongoing expenses – If so, whether discretion should be exercised to treat compensation payment as not being made – Whether assets can be realised – Decision set aside and remitted

[Chambers and Secretary, Department of Social Services](#) [2014] AATA 94; 25/2/2014; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Applicant is New Zealand citizen – Whether applicant ‘severely disabled’ in order to qualify for disability support pension – Whether 20 impairment points – Whether continuing inability to work – Applicant did not participate in Program of Support – Decision affirmed

[Dehen and Secretary, Department of Social Services](#) [2014] AATA 90; 10/1/2014; Senior Member N Bell and Professor R McCallum, Member

Disability support pension – applicant seeks indefinite portability of disability support pension – whether applicant has a severe impairment – decision under review affirmed

[Gilchrist and Secretary, Department of Social Services](#) [2014] AATA 111; 27/2/2014; Dr J Chaney, Member

Disability support pension (DSP) – qualification for DSP – applicant’s impairments total 10 points under Impairment Tables – applicant not qualified for DSP – decision under review affirmed

## Taxation

[Grosfeld and Tax Practitioners Board](#) [2014] AATA 100; 28/2/2014; Senior Member JL Redfern

Registration as tax agent – Renewal – Whether fit and proper person – Failure to respond to requests from the Board in “timely, responsible and reasonable manner” – Failure to lodge income tax returns and business activity statements – Failure to provide clients with a means of contact – Failure to maintain professional indemnity insurance – Failure to provide tax agent services competently – Findings in unrelated proceedings – Decision under review affirmed

[QHVV and Commissioner of Taxation](#) [2014] AATA 104; 27/2/2014; Dr P McDermott RFD, Senior Member

Failure to lodge tax return – default notice of assessment – whether 75% penalty should be remitted – decision under review remitted to enable assessment to be varied as to income – decision under review affirmed as to the rate of penalty

[The Taxpayer and Commissioner of Taxation](#) [2014] AATA 106; 28/2/2014; Senior Member RW Dunne

Income tax – quantum of assessable income – credit for PAYG withholding – applicant's dispute with officers of paying company – claims for work related car expenses and other work related expenses – administrative penalty – reasonable care – objection decision under review affirmed

[Thomas and Commissioner of Taxation](#) [2014] AATA 102; 27/2/2014; Deputy President SA Forgie

Taxation liability – release – whether payment of tax liability would cause serious hardship – factors relevant to exercise of discretion – decision affirmed

## **Veterans' Affairs**

[Forster and Repatriation Commission](#) [2014] AATA 91; 25/2/2014; Deputy President PE Hack SC

Veterans' entitlements – abuse suffered during apprenticeship – whether defence-caused – posttraumatic stress disorder – whether category 1A stressor – whether a serious physical attack or assault – whether torture – alcohol dependence – severe child abuse – whether senior apprentices 'care providers' – whether serious emotional, psychological or sexual harm – clinical onset – hypertension – decision under review affirmed

[Loughrey and Repatriation Commission](#) [2014] AATA 88; 24/2/2014; Senior Member RG Kenny

Benefits and entitlements – Disability pension payable at 100% of the general rate – Eligibility for special rate of pension – Incapacity from war-caused conditions sufficient to prevent the applicant from undertaking remunerative work for more than 8 hours per week – Accepted disabilities alone not responsible for inability to undertake remunerative work – Decision under review affirmed

[Scott and Repatriation Commission](#) [2014] AATA 98; 27/2/2014; Senior Member GD Friedman

Veterans' entitlements – ischaemic heart disease – hypertension – treatment by anti-inflammatory drugs – whether war-caused or defence-caused – decision affirmed

[Simos and Repatriation Commission](#) [2014] AATA 110; 28/2/2014; Miss EA Shanahan

Disability pension claim – operational service – generalised anxiety disorder – hypertension – atrial fibrillation – complex hypothesis – asthma – severity of stressors experienced – exposure to multiple stressors post-service – reasonable hypotheses – reliability of evidence – decision affirmed

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## Appeals

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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

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CASE NAME	AAT REFERENCE
<b>Byrt v Deputy Commissioner of Taxation</b>	<a href="#">[2014] AATA 30</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Pangilinan v Secretary, Department of Immigration and Border Protection &amp; AAT</b>	<a href="#">[2013] AATA 574</a>	<a href="#">[2014] FCCA 294</a>
<b>Kelk v Australian Postal Corporation</b>	<a href="#">[2013] AATA 75</a>	<a href="#">[2014] FCA 147</a>

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