



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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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.

Compensation

[McAullay and Comcare](#) [2014] AATA 163; 26/3/2014; Deputy President SD Hotop

Rehabilitation – applicant suffered compensable neck injury in July 2011 – applicant participated in various rehabilitation programs from August 2011 – respondent determined that approved program provider develop appropriate rehabilitation program for applicant – applicant physically capable of undertaking rehabilitation program – applicant should undertake appropriate rehabilitation program to be developed by approved program provider – decision under review affirmed

[McLellan and Comcare](#) [2014] AATA 166; 27/3/2014; Senior Member J Toohey and Dr W Isles, Member

Neck and shoulder injuries in 1989 and 1990 – liability for incapacity accepted – claim for permanent impairment made in 2012 – whether applicant has permanent impairment of neck and shoulder – whether related to employment – degree of permanent impairment – decision under review affirmed

[Ward and Swire Pacific Ship Management \(Australia\) Pty Ltd \(formerly Pacific Manning Company Pty Ltd\)](#) [2014] AATA 162; 26/3/2014; Senior Member D Letcher QC

Seamen's compensation – ciguatera poisoning – whether applicant sustained an injury arising out of, or in the course of, his employment – whether the applicant is entitled to compensation in relation to incapacity for work, medical and related expenses – amount of compensation payable for incapacity – suitable employment – decisions under review set aside

Corporations

[George and Australian Securities and Investments Commission](#) [2014] AATA 167; 27/3/2014; Deputy President RP Handley

Mortgage broker – dishonest conduct – permanent banning order – whether reason to believe the applicant is not of good fame or character – conduct out of character – no reason to believe that not of good fame and character – applicant not adequately trained to provide a financial service – protection of public – length of banning order – decision substituted

CONSUMER CREDIT PROTECTION – mortgage broker – dishonest conduct – permanent banning order – whether reason to believe the applicant is not a fit and proper person – reason to believe not a fit and proper person to engage in credit activities – conduct out of character – length of banning order – decision substituted

Immigration and Citizenship

[Nayeem and Minister for Immigration and Border Protection](#) [2014] AATA 171; 28/3/2014; Senior Member AK Britton

General residence requirement – whether the Minister was incorrect in assessing the Applicant as an unlawful non-citizen for part of the four year period prior to applying for citizenship – whether a delay in processing the Applicant’s visa can be construed as an “administrative error” – decision affirmed

Passports

[Lee and Minister for Foreign Affairs](#) [2014] AATA 159; 24/3/2014; Senior Member N Isenberg

Issue – date of birth given on passport application different to that on applicant’s birth certificate – discretion to include an endorsement – decision varied

Practice and Procedure

[Echelon National Security Agency Pty Ltd and Australian Skills Quality Authority](#) [2014] AATA 151; 25/2/2014; The Hon RJ Groom AO, Deputy President

Jurisdiction – applicant had applied for registration as a registered training organisation – application rejected because the applicant failed to satisfy certain conditions for registration – after application for review lodged by the applicant the respondent raised an entirely new ground for rejection of registration – whether Tribunal has jurisdiction to consider and determine this new ground for rejection of registration – Tribunal does have jurisdiction to consider and determine whether the applicant satisfies the Fit and Proper Person Requirements made pursuant to the *National Vocational Education and Training Regulation Act 2011*

[Hawkins and Minister for Infrastructure and Regional Development](#) [2014] AATA 152; 11/3/2014; The Hon RJ Groom AO, Deputy President and Ms S Taglieri, Member

Whether application should be dismissed pursuant to section 42B of the *Administrative Appeals Tribunal Act 1975* – proceedings have a collateral purpose – applicant agrees with the decisions under review - proceedings have no reasonable prospect of success - application frivolous or vexatious - application dismissed

[The Estate of the late Sarah Isabella Stewart and Repatriation Commission](#) [2014] AATA 161; 25/3/2014; Senior Member RG Kenny

Pensions and benefits – death of war widow - payments of Income Support Supplement and Bereavement Payment to estate of a war widow – request by executor of estate to review rates of those payments – executor of estate has no standing to seek review by the Repatriation Commission of the rates of those payments – the Administrative Appeals Tribunal has no jurisdiction to review the application

Social Security

[EI Mohammed and Secretary, Department of Social Services](#) [2014] AATA 160; 18/3/2014; Deputy President RP Handley

Disability Support Pension – impairment tables – whether conditions warranted 20 impairment points under one or more tables – combined impairment assessment of 25 points – continuing inability to work – program of support – completed 11 of the 18 months required – decision affirmed

[Fahmy and Secretary, Department of Social Services](#) [2014] AATA 164; 26/3/2014; Senior Member JL Redfern

Age Pension – Australian resident for purposes of social security payment – extended periods living outside Australia – length of working life as Australian resident – failure to comply with notice – failure to provide details of change in circumstances – whereabouts of applicant unknown – suspension of payment warranted – subsequent cancellation and affect on portability of pension — significant time lapse since original decision – matter to be determined as at the time decisions made – decisions to suspend and cancel affirmed.

PRACTICE AND PROCEDURE – jurisdiction to review ‘ruling’ of authorised review officer – whether ruling constituted a reviewable decision – statement made by authorised review officer considered to be advisory opinion – no final and operative decision – no jurisdiction to review decision

[Summers and Secretary, Department of Social Services](#) [2014] AATA 165; 27/3/2014; Senior Member N Bell

Disability support pension – DSP – impairment tables – applicant does not meet impairment rating requirement – decision under review affirmed

Taxation

[Macoun and Commissioner of Taxation](#) [2014] AATA 155; 20/3/2014; The Hon B Tamberlin QC, Deputy President

Income Tax – officer of international organisation – privileges and immunities of officer - tax exemptions - contributory benefit plan – mandatory participation and contributions - whether pension payments paid under plan are assessable income – characterisation of pension payment – meaning of “emolument” - whether pension payments form part of emolument – whether pension payments arise out of an office or employment – decision under review set aside and substituted

STATUTORY INTERPRETATION – meaning of terms used in domestic legislation as a result of International Convention – what regard can be paid to decisions of other national courts in interpreting terms of International Agreement

R.V. Investments (Aust) Pty Ltd as Trustee for the RV Unit Trust and Commissioner of Taxation [2014] AATA 158; 21/3/2014; Deputy President SA Forgie

GOODS AND SERVICES TAX – creditable acquisitions – whether acquired for creditable purpose – whether supply a taxable supply – whether consideration provided or liability to provide consideration incurred – objection decision varied

PENALTIES – recklessness – objection decision 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
Ayles v Tax Practitioners Board	[2014] AATA 112
Forster v Repatriation Commission	[2014] AATA 91
Zdziarski v Telstra Corporation Ltd & AAT	[2014] AATA 108

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
BHFC v Minister for Immigration and Border Protection & AAT	[2013] AATA 166	[2014] FCAFC 25 [2013] FCA 1049
Kim & Kim v AAT & Minister for Immigration and Border Protection	[2013] AATA 568	[2014] FCA 244
Richmond v Repatriation Commission	[2013] AATA 421	[2014] FCA 272

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