



## 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.

### Compensation

[Labuguen and Comcare](#) [2014] AATA 455; 7/7/2014; Senior Member AK Britton

Claim for adjustment disorder with anxiety and depression – Whether injury was a result of reasonable administrative action – Whether administrative action was taken in a reasonable manner

### Freedom of Information

[Tennant and Australian Broadcasting Corporation](#) [2014] AATA 452; 4/7/2014; Senior Member RM Creyke

Charges for providing access to documents – whether fee should be reduced or waived – matters to which Tribunal must take into account when exercising waiver power – whether payment of charge would cause financial hardship – whether giving of access to documents is in the public interest – decision under review affirmed

### Immigration and Citizenship

[Abouabd-Allah \(John Kennedy\) and Minister for Immigration and Border Protection](#) [2014] AATA 459; 8/7/2014; Senior Member G Ettinger

Applicant denied citizenship – he has a criminal conviction – did not disclose it on two occasions when applying for citizenship – states he did not know about the conviction as the interpreter at the Court hearing did not inform him correctly – the Tribunal notes he was legally represented at Court and assisted by an interpreter in the Arabic language – citizenship application denied – decision under review affirmed

[Alabsawi and Minister for Immigration and Border Protection](#) [2014] AATA 465; 13/6/2014; Deputy President JW Constance

[Nejat and Minister for Immigration and Border Protection](#) [2014] AATA 453; 7/7/2014; Senior Member AK Britton

Application for Australian citizenship – whether the Applicant is of “good character” – Applicant’s criminal history – lack of evidence of good conduct – weight to be given to character references – decision affirmed

[Rajaratnasarma and Minister for Immigration and Border Protection](#) [2014] AATA 406; 24/6/2014; Deputy President JW Constance

Whether applicant is of good character at the time of decision – applicant convicted of sexual assault – time elapsed since commission of offences – respect for Australian law – denial of offences – decision under review affirmed

[Tupkovic and Minister for Immigration and Border Protection](#) [2014] AATA 467; 10/7/2014; Deputy President RP Handley

Citizenship by conferral – good character – previous convictions for traffic offences – six years since last conviction – decision set aside and substituted

## Practice and Procedure

[Burston and National Disability Insurance Agency](#) [2014] AATA 456; 4/7/2014; Senior Member J Toohey

NATIONAL DISABILITY INSURANCE SCHEME – JURISDICTION – participant's plan – meaning of reviewable decision – whether the National Disability Insurance Agency made a decision that the Tribunal has jurisdiction to review – no jurisdiction to review

[Fiorentino and Members of the Companies Auditors and Liquidators Disciplinary Board and Anor](#) [2014] AATA 458; 3/7/2014; Senior Member AK Britton

Cancellation of registration of a liquidator under s 1292 of the *Corporations Act* – decision to publish the cancellation decision – power to stay or otherwise affect the operation or implementation of a decision under review – whether stay necessary to secure effectiveness of hearing and determination of the application for review – prospects of success of substantial application – public interest – stay refused

[Singh and Administrative Appeals Tribunal](#) [2014] AATA 460; 9/7/2014; Deputy President JW Constance

Frivolous and vexatious application – request for referral to Federal Court of Australia – request for referral refused – Tribunal has no power to review its own decisions – no jurisdiction – application dismissed

[Topalides and Tax Practitioners Board](#) [2014] AATA 470; 5/6/2014; Deputy President JW Constance

Repeated non-compliance – application for review dismissed

## Social Security

[Berkutow and Secretary, Department of Social Services](#) [2014] AATA 395; 20/6/2014; Dr I Alexander, Member

Disability support pension – physical and psychiatric impairments – permanent conditions – whether the Applicant had an impairment rating of 20 points or more under the impairment tables – whether the Applicant had a "continuing inability to work" – decision under review affirmed

[Chen and Anor and Secretary, Department of Social Services](#) [2014] AATA 457; 8/7/2014; Senior Member J Toohey

Special Benefit – applicants Chinese citizens – permanent residents – whether applicants were Australian residents at date of application – applicants spend majority of time in China – limited assets in Australia – assets in China – decision under review affirmed

[Featon and Secretary, Department of Social Services](#) [2014] AATA 454; 7/7/2014; Senior Member N Isenberg

Disability support pension – whether Applicant's conditions fully diagnosed, treated and stabilised – whether Applicant has a continuing inability to work – whether a condition satisfies a 'severe impairment' rating – whether requirement to participate in a program of support – decision under review set aside

[Mann and Secretary, Department of Social Services](#) [2014] AATA 450; 26/6/2014; Senior Member RW Dunne

Pensions, benefits and allowances – age pension – sale of property to son at below market value – assessment of disposal amount – income above allowable limit for age pension – cancellation of age pension – decision under review affirmed

[McKenna and Secretary, Department of Social Services](#) [2014] AATA 464; 10/7/2014; Ms S Taglieri, Member

Rejection of DSP claim. Permanent spinal condition and available impairment points

[O'Donnell and Secretary, Department of Social Services](#) [2014] AATA 388; 20/6/2014; Senior Member N Bell

Disability support pension – DSP – requirement to participate in a program of support – decision under review affirmed

[Pulham and Secretary, Department of Social Services](#) [2014] AATA 468; 11/7/2014; Deputy President RP Handley

Disability support pension — whether applicant's conditions fully diagnosed, treated and stabilised – lack of evidence of previous treatment – decision under review set aside and remitted

[Robinson and Secretary, Department of Social Services](#) [2014] AATA 446; 4/7/2014; Deputy President SD Hotop

Austudy – overpayment of austudy – debt due to Commonwealth – waiver of debt – special circumstances – notional entitlement to newstart allowance – no special circumstances that make it desirable to waive debt – debt recoverable – decision under review affirmed

[Stafford and Secretary, Department of Social Services](#) [2014] AATA 404; 24/6/2014; Senior Member N Bell

AGED CARE – aged care provider – asset assessment – aged care assessment – accommodation bond – financial hardship – whether financial hardship determination should be made – decision under review affirmed

[Stojanovski and Secretary, Department of Social Services](#) [2014] AATA 466; 8/7/2014; Professor R McCallum, Member

Disability Support Pension – portability of payments – whether Applicant qualifies for unlimited portability – severe impairment – whether no future work capacity – whether prevented from undertaking any work independent of a program of support because unable to work for two hours per week or more – meaning of two hours 'per' week – decision set aside and substituted

## **Taxation**

[Murphy and Commissioner of Taxation](#) [2014] AATA 461; 2/6/2014; Senior Member FD O'Loughlin

Income Tax – transfer of assets by husband to himself and his wife jointly – whether a CGT event happened denied – decision under review affirmed

## **Veterans' Affairs**

[Bawden and Repatriation Commission](#) [2014] AATA 462; 9/7/2014; Deputy President JW Constance, Senior Member GD Friedman

Veterans' entitlements – naval service in Vietnam – posttraumatic stress disorder – alcohol use disorder – whether war-caused – decision under review set aside

[Booth; Repatriation Commission and](#) [2014] AATA 322; 26/5/2014; Senior Member N Bell

VETERANS' AFFAIRS – Veteran lodges two claims for disability pension with Repatriation Commission – what constitutes finally determined claim – finally determined – whether Veteran's second claim validly made – decision under review set aside and remitted

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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>Fiorentino v AAT &amp; Company Auditors and Liquidators Disciplinary Board &amp; Australian Securities and Investments Commission</b>	<a href="#">[2014] AATA 458</a>
<b>Singh v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2014] AATA 37</a>

### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>El-Mohammed v Secretary, Department of Social Services</b>	<a href="#">[2014] AATA 160</a>	NSD384/2014
<b>Williams v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2013] AATA 923</a>	<a href="#">[2014] FCA 674</a>

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