



AAT Bulletin

ISSUE NO. 13/2014

7 APRIL 2014

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.

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.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

Contents

AAT Recent Decisions	2
Archives	2
Civil Aviation	2
Compensation.....	2
Customs.....	3
Immigration and Citizenship	3
Practice and Procedure	3
Social Security	4
Taxation	5
Appeals	6
Appeals lodged	6
Appeals finalised.....	6

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.

Archives

[Fernandes and National Archives of Australia](#) [2014] AATA 180; 2/4/2014; President D Kerr

Archives – exempt records – information or matter communicated in confidence – information or matter the disclosure of which could reasonably be expected to cause damage to the security, defence or international relations of the Commonwealth – degree of satisfaction required to conclude records “could reasonably be expected” to cause damage – construction of word “security” in Archives Act – role of Inspector-General of Intelligence and Security in review

Civil Aviation

[Walker and Civil Aviation Safety Authority](#) [2014] AATA 169; 28/3/2014; Deputy President PE Hack SC, and Dr W Isles, Member

Medical certificate – juvenile myoclonic epilepsy – extent to which relevant medical standard not met – whether a deficiency likely to endanger the safety of air navigation

Compensation

[Nicolas and Comcare](#) [2014] AATA 189; 4/4/2014; Deputy President RP Handley

Normal weekly earnings – normal hours – relevant period – whether because of the shortness of the relevant period it would not fairly represent the applicant’s normal weekly earnings – two years off work before the injury – had only worked for nine days on a graduated return to work program – relevant period would not fairly represent normal weekly earnings – such other period as is considered reasonable – intervening accident unrelated to the Applicant’s employment – normal hours discounted to take into account the impact on capacity to work – normal hours of 20 hours per week – decision set aside and remitted

[Tucker and Comcare](#) [2014] AATA 181; 3/4/2014; Senior Member J Handley

Diagnosis of adjustment disorder with mixed anxiety and depressed mood conceded – whether the result of reasonable administrative action – internal review process implemented – applicant’s complaint to manager ignored – applicant not advised she was the respondent in the process – findings made against applicant – published findings provided in heavily redacted form – the process was administrative action – was not taken in a reasonable manner – procedurally unfair – the disease not excluded by section 5A – contribution to it was by a significant degree – decision set aside, substituted and remitted

Customs

[Toro Australia Group Sales Pty Ltd and Chief Executive Officer of Customs](#) [2014] AATA 187; 4/4/2014; Senior Member E Fice

Tariff Concession Order – Tariff classification – interpretation of Tariff Concession Order – specialised trade meaning or ordinary meaning – composite goods – garden hoses – hoses with fittings – hoses with plastic fittings – hoses with metal fittings – decision affirmed

Immigration and Citizenship

[Qian and Migration Agents Registration Authority](#) [2014] AATA 185; 4/4/2014; Senior Member N Bell

Migration agents registration – immigration assistance – fit and proper person – person of integrity – failure to act in best interests of clients – competence – decision under review affirmed

[Wilson and Minister for Immigration and Border Protection](#) [2014] AATA 188; 4/4/2014; Senior Member AK Britton

Visa cancellation – protection of the Australian community – seriousness of offending behaviour – whether Tribunal can go behind facts of conviction – risk of recidivism – strength, duration and nature of ties to the Australian community – best interests of minor children – impact of cancelling visa on immediate family – decision affirmed

Practice and Procedure

[O’Connell and Australian Postal Corporation](#) [2014] AATA 179; 2/4/2014; Deputy President JW Constance

COMPENSATION – application for extension of time in which to lodge application for review – significant delay – applicant advised by then solicitors not to apply to Tribunal for review – whether prejudice to the respondent – merits of the substantial application – extension of time granted

[O’Riley and Australian Postal Corporation](#) [2014] AATA 175; 20/2/2014; Deputy President K Bean

Jurisdiction – apparent refusal by respondent to conduct independent review of circumstances leading to applicant's voluntary redundancy – no provision which confers jurisdiction on Tribunal to review respondent's decision – Tribunal does not have jurisdiction

[Vagulans and Thales Australia Limited](#) [2014] AATA 173; 28/3/2014; Senior Member RG Kenny

WORKER’S COMPENSATION – rejection of claim for compensation – application for review received by Administrative Appeals Tribunal outside legislated time frame – application for extension of time to lodge application for review – relevant factors – application for extension of time granted

Social Security

[Andreucci and Secretary, Department of Social Services](#) [2014] AATA 184; 4/4/2014; Senior Member RW Dunne

Pensions, benefits and allowances – age pension – applicant's change of home address – whether change to value of assets for pension purposes – overpayment of age pension – waiver – special circumstances – decision under review affirmed

[Buvari and Secretary, Department of Social Services](#) [2014] AATA 182; 1/4/2014; Senior Member G Ettinger

Applicant was in receipt of Newstart Allowance – Applicant not entitled to Newstart Allowance – debt raised – whether the applicant failed to declare his full assets – whether it is appropriate to waive or write-off the debt – decision under review affirmed.

[Cameron and Secretary, Department of Social Services](#) [2014] AATA 176; 1/4/2014; Dr M Denovan, Member

Pensions and benefits – applicant received Total and Permanent Disablement benefit from superannuation fund – whether benefit should be treated as income – whether the benefit should be treated as a lump sum payment or periodic payment – decision under review affirmed

[Francis and Secretary, Department of Social Services](#) [2014] AATA 183; 4/4/2014; Deputy President RP Handley

Disability support pension – eligibility – impairment tables – whether 20 impairment points could be assigned under one or more tables – whether conditions were fully diagnosed, treated and stabilised – conditions not fully treated, diagnosed and stabilised at the date of claim or the 13 weeks following – decision affirmed

[Hill and Secretary, Department of Social Services](#) [2014] AATA 177; 1/4/2014; Dr M Denovan, Member

Pensions, benefits and allowances – disability support pension – less than 20 points under the Impairment Tables – decision affirmed

[Tease and Secretary, Department of Social Services](#) [2014] AATA 172; 28/3/2014; Senior Member RG Kenny

Pensions, benefits and allowances – settlement of compensation claim – lump sum compensation payment includes component referable to lost earnings and capacity to earn – Imposition of preclusion period – use of Guide to Social Security Law (the Guide) – six year limitation period on debt recovery in Guide not relevant – special circumstances not established for part of settlement to be treated as not having been received – preclusion period not shortened – decision under review affirmed

[Tennant and Secretary, Department of Social Services](#) [2014] AATA 92; 25/2/2014; Senior Member RM Creyke

Application for suppression of applicant's name – whether publication of applicants name will impact on the applicant's ability to find employment

[Tennant and Secretary, Department of Social Services](#) [2014] AATA 174; 31/3/2014; Senior Member RM Creyke

Newstart allowance – single person not sharing accommodation – Guide to Social Security Law

Taxation

[Living Choice Australia Limited and Commissioner of Taxation](#) [2014] AATA 168; 28/3/2014; Senior Member RW Dunne

Goods and services tax – construction and operation of retirement villages – residential premises – extent of creditable purpose – input tax credits – extent to which acquisitions relate to supplies that are input taxed – objection decision under review varied in part

[Yerro and Commissioner of Taxation](#) [2014] AATA 186; 4/4/2014; Senior Member RG Kenny

Applicant not an Australia resident – claims for unsubstantiated deductions – tax shortfall – Lack of reasonable care by taxpayer in making claims – imposition of administrative penalty – partial remittal of penalty – Commissioner's objection decision affirmed

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

None finalised

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

Batchelor v Commissioner of Taxation

[\[2013\] AATA 93](#)

[\[2014\] FCAFC 41](#)

Mori v Secretary, Department of Social Services

[\[2013\] AATA 737](#)

[\[2014\] FCA 333](#)

Soames v Secretary, Department of Social Services

[\[2013\] AATA 945](#)

[\[2014\] FCA 295](#)

SZRTN v Minister for Immigration and Border Protection & AAT

[\[2013\] AATA 818](#)

[\[2014\] FCA 303](#)

© Commonwealth of Australia 2014



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.