



AAT Bulletin

ISSUE NO. 14/2013

8 APRIL 2013

The *AAT Bulletin* is a weekly publication containing a list of all recent Tribunal decisions and a list of all finalised appeals against Tribunal decisions that are not subject to confidentiality restrictions. The Bulletin may also include information on changes to the Tribunal's jurisdiction and other important developments.

The AAT is not liable for any reliance by any person on the summaries contained in this Bulletin.

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 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 any proceedings.

Please note that AAT published decisions may be affected by a later court decision.

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

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AAT Recent Decisions

The following decisions were recently delivered by the AAT. Recent decisions can also be viewed on the [AAT website](#). Matters that are subject to confidentiality restrictions are not included in the below list.

Compensation

[Quirk and Total Marine Services Pty Ltd](#) [2013] AATA 185; 28/3/2013; Deputy President SD Hotop and Dr J Chaney, Member

Seaman's compensation — Seafarers — Applicant suffered lower back injury and bilateral carpal tunnel injury in course of employment in 2004 — Medical treatment — Incapacity for work — Applicant continues to require medical treatment for injuries and to be incapacitated for work as result of injuries — Compensation continues to be payable to applicant for cost of medical treatment and for incapacity for work — Decisions under review set aside

[Fletcher and TNT Australia Pty Ltd](#) [2013] AATA 173; 27/3/2013; Senior Member AK Britton

Whether back and neck conditions were an injury (other than a disease) — Whether there was an aggravation of an injury — Contribution, to a significant degree, by employment — Causation — Decision affirmed

Immigration and Citizenship

[THHT and Minister for Immigration and Citizenship](#) [2013] AATA 175; 27/3/2013; Deputy President JW Constance

Cancellation of Class TY Subclass 444 Special Category (Temporary) visa — Direction [no. 55] — Visa cancellation under s 501 *Migration Act 1958* (Cth) — Character test — Substantial criminal record — Primary considerations — Protection of Australian community from criminal or other serious conduct — Nature and seriousness of the conduct — Risk to the Australian community should the conduct be repeated — Strength, duration and nature of ties to Australia — Best interests of minors in Australia — Other considerations — Impact on members of the Australian community, victim's family and friends — Decision under review set aside

[UI Hague and Minister for Immigration and Citizenship](#) [2013] AATA 118; 6/3/2013; Senior Member AK Britton

Citizenship by conferral — Residence requirement — Ministerial discretion — Whether there was a close and continuing association with Australia — Application of Australian Citizenship Instructions — Decision under review affirmed

[Do and Minister for Immigration and Citizenship](#) [2013] AATA 198; 5/4/2013; Senior Member J Handley

Visa cancellation — Applicant arrived in Australia in 1992 when 16 years of age — Previously detained for 4 years as a refugee from Vietnam in Malaysia — First offended at age 20 in 1996 — Multiple convictions for possession, use and trafficking of heroin — Applicant received warning letter in 2007 — Subsequently convicted on 3 occasions in 2010 for drug offences — Last convicted in 2010 — Minister decided applicant did not pass the character test and visa should be cancelled — Direction N° 55 — Applicant's history and the criteria within the Primary Considerations favoured affirmation of the decision under review

Mutual Recognition

[Agapis and Plumbers Licensing Board](#) [2013] AATA 187; 28/3/2013; Senior Member S Penglis

Whether *Mutual Recognition Act 1992* overrides requirement that a person being “fit and proper” — Whether local Registration Authority may refuse to grant registration on the grounds of the applicant being “not fit and proper” outside the period of one month provided for in section 21 of the *Mutual Recognition Act* — Reviewable decision to refuse licence affirmed

Practice and Procedure

[Frugniet and Tax Practitioners Board](#) [2013] AATA 188; 12/3/2013; Senior Member J Handley

Application to stay a decision to terminate registration as a tax agent and prohibit registration for 5 years — Previous findings elsewhere that the applicant is not a fit and proper person — Failure to make that declaration when applying for registration — Stay refused

[Samir Pty Ltd and Anor and Aged Care Standards and Accreditation Agency Ltd](#) [2013] AATA 194; 4/4/2013; Senior Member PW Taylor SC

Proceedings — Administrators appointed — Dismissal by consent — Interlocutory applications made by director of company in administration — Application for reinstatement — Whether application dismissed in error — Joinder application — whether applicant for joinder is a person whose interests are affected by the reviewable decision — Application for extension of time to apply for review of a decision — Applications refused

Social Security

[Alboaskar and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 183; 28/3/2013; Senior Member JF Toohey

Pensions, benefits and allowances — Special benefit — Newly arrived resident's waiting period — Whether waiting period that applies to applicant should be waived — Whether substantial change in applicant's circumstances beyond her control — Whether change must occur after arrival in Australia — Decision under review affirmed

David and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 181; 28/3/2013; Senior Member AK Britton

Pensions, benefits and allowances — Disability support pension and age pension — Rate of pensions determined by income — Whether overseas pension shortfall which is not received is “derived” income — Meaning of “derived” — Reviewable decision set aside

Lourandos and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 182; 28/3/2013; Mr S Webb, Member

Pensions, benefits and allowances — Age Pension — Members of a couple — Rate of pension — Investment property — Valuation — Encumbrance — Assets test — Rates of pension affected by value of asset less encumbrance — No error in calculations — No discretion to waive assets test — Decisions under review affirmed

Mentink and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 184; 28/3/2013; Dr KS Levy RFD, Senior Member

Pensions, benefits and allowances — Age pension — Australian residency at the time of application — Criteria for determining residency — Regaining of residency after period of absence — Decision under review affirmed

Kampf and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 189; 2/4/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances — Disability support pension — Portability — Australian resident — Reviewable decision made by computer — Decision under review affirmed

Sammut and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 95; 22/2/2013; Professor RM Creyke, Senior Member

Disability support pension — Person held in confinement following a charge — Later released as a mentally ill person to a mental health institution — Whether in ‘psychiatric confinement’ — Whether, while in ‘psychiatric confinement’ person was undertaking a ‘course of rehabilitation’ — Decision varied

Wells and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 195; 3/4/2013; Dr A Frazer, Member

Disability support pension — Qualification requirements— Applicant has impairments — Applicant’s impairments not considered permanent or sufficient rating — Applicant not qualified for disability support pension — Decision under review affirmed

Williams and Secretary, Department of Education, Employment and Workplace Relations [2013] AATA 192; 3/4/2013; Mr S Webb, Member

Youth Allowance — Full-time study — Full-time study load — Effect of extension of time in which to complete subject — Student not undertaking 75% of full-time study load during period of extension — Decision affirmed

Taxation

[Brookdale Investments Pty Ltd and Commissioner of Taxation](#) [2013] AATA 186; 27/3/2013; Senior Member CR Walsh

Goods and services tax — Dispute regarding quantum of “consideration” on “taxable supply” of land — Meaning of “consideration” considered — Meaning of “price” considered — Meaning of “money” considered — “Timing” of taxable supply considered — Failure by applicant to call any witnesses in support of application — Rule in *Jones v Dunkel* applied — Commissioner’s objection decision under review affirmed

[Altnot Pty Ltd and Commissioner of Taxation](#) [2013] AATA 140; 15/3/2013; Deputy President SA Forgie

Capital Gains Tax — Whether assessment excessive — Whether applicant meets maximum net asset value test to qualify for small business concessions — Whether assets above \$5,000,000 — Point in time test — Wife of sole director of applicant not an entity connected with it and so assets not to be included in test — Realty interest of applicant’s sole director to be included — His real property not “being used” solely for personal use and enjoyment just before the CGT event — Decision under review varied

[GOL-HUT Pty Ltd as trustee for the Helensvale Unit Trust and Commissioner of Taxation](#) [2013] AATA 199; 5/4/2013; Deputy President PE Hack SC

Goods and Services Tax — Input tax credits for acquisition not claimed — Applicant deregistered for GST — Acquisition sold without GST applying — Whether applicant entitled to decreasing adjustment for change of use — Whether applicant had further tax periods and adjustment periods applying to it after cancellation of GST registration — Applicant did not have tax period applying to it — Provisions relating to decreasing adjustments operate only where entity has tax periods applying to it — Decision under review affirmed

Veterans' Affairs

[Hair and Repatriation Commission](#) [2013] AATA 190; 3/4/2013; Senior Member J Handley

Service Pension — Applicant served for 6 months in South Vietnam in 1970 — Claim for acceptance of post-traumatic stress disorder (PTSD) — Examination of a number of claimed events failed to meet Part (A) of PTSD definition in DSM-IV — Whether his collection of symptoms pointed to depressive disorder — Factors in Statement of Principles concerning PTSD do not exist as a minimum — Decision under review affirmed

[Quinlivan and Repatriation Commission](#) [2013] AATA 191; 3/4/2013; Professor RM Creyke, Senior Member

Military compensation — Eligible service — Visual impairment — Congenital glaucoma — Macular degeneration — Myopia/loss of vision — Amblyopia — Question of diagnosis — Whether service-caused — Whether inability to obtain appropriate clinical management — Decision under review affirmed

Appeals Finalised

The appeals set out in the table below have been finalised since the last edition of the Bulletin.

The table records: the name of the Court judgment; the Tribunal reference number (including a hyperlink to the Tribunal's decision if available); the Court reference number (including a hyperlink to the Court's judgment if available); the name/s of the judge/s or magistrate/s who decided the appeal and the date on which the appeal was decided.

Appeals lodged

| CASE NAME | AAT REFERENCE |
|--|---------------------------------|
| Kelk v Australian Postal Corporation | [2013] AATA 75 |
| Haritos & Ors v Commissioner of Taxation | [2013] AATA 112 |
| Kalm v AAT & Minister for Immigration and Citizenship | [2013] AATA 87 |
| Mentink v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs | [2013] AATA 184 |
| Fletcher v TNT Australia Pty Ltd & Comcare & AAT | [2013] AATA 173 |
| Fajloun & Fajloun v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs | [2013] AATA 32 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|-----------------------|---------------|-----------------|
| None finalised | | |



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