



## 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

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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

[Holliss and Military Rehabilitation and Compensation Commission](#) [2013] AATA 400; 14/6/2013; Miss EA Shanahan, Member

Army officer – Arising out of or in the course of employment – Shoulder and thoracic back pain – Contribution of physical training – Disease or injury – Minor radiological changes – Possibly constitutional – Lack of supporting expert opinion – Decision under review affirmed

### Immigration and Citizenship

[Anochie and Minister for Immigration and Citizenship](#) [2013] AATA 391; 12/6/2013; Senior Member JF Toohey

Visa cancellation – Applicant imprisoned for importation of cocaine – Serious offence – No prior convictions – Whether unacceptable risk of harm to the community – Exemplary prison record – Applicant on work release – Current and former employers willing to employ applicant – Non-refoulement obligations under international Conventions – Construction of Direction 55 in respect of non-refoulement obligations – Decision under review set aside

[Liang and Minister for Immigration and Citizenship](#) [2013] AATA 392; 12/6/2013; Deputy President SA Forgie

Immigration – Visa – Failure to pass character test – Substantial criminal record – Exercise of discretion whether to cancel visa – Decision under review set aside

Immigration – Minister's Direction – Whether application came to an end when Minister's appointment as Minister came to an end and new appointee had not expressly adopted them or continued their application – Continuing application

Immigration – Minister's Direction – International non-refoulement obligations – Whether limited to those entitled to protection visas provided for under s 36 of the *Migration Act 1958* – Broader application

[WVKC and Minister for Immigration and Citizenship](#) [2013] AATA 393; 12/6/2013; Dr P McDermott RFD, Senior Member

New Zealand citizen – Failure to pass character test – Cancellation of visa – Discretion to cancel visa – Ministerial Direction No. 55 – Relevant considerations – On balance primary and other considerations favour cancellation – Decision under review affirmed

## **Practice and Procedure**

[Ayoub and Comcare](#) [2013] AATA 397; 13/6/2013; Deputy President RP Handley

Application for reinstatement of application – Application withdrawn by solicitor – No written authority to withdraw – Whether there was a misunderstanding between applicant and solicitor about withdrawing application – Whether application dismissed in error – Whether appropriate to reinstate application in circumstances of particular case – Application reinstated

[Staunton-Latimer and Comcare](#) [2013] AATA 389; 6/6/2013; Mr S Webb, Member

Stay of operation of decision – Discretion – Relevant factors – Change in policy based on interpretation of legislation governing weekly compensation for incapacity – Deemed receipt of superannuation results in reduction of weekly compensation – Adverse effect of Applicant's health – Financial hardship – Applicant under pressure to draw down his superannuation entitlements – Public interest in effective decision-making to be weighed against public interest in the lawful operation of the legislative compensation scheme for Commonwealth employees – Application undermined if Applicant is compelled to draw down superannuation entitlements – Capacity to recover over payments – Stay necessary to secure effectiveness of determination on review – Stay granted

[The Trustee for Andrew Garrett Family Trust No.3 and Commissioner of Taxation](#) [2013] AATA 395; 12/6/2013; Deputy President SA Forgie

GST – Whether Tribunal has jurisdiction to consider application for review of decision deemed to have been made by Commissioner – Whether decision deemed to have been made – Whether notice requiring Commissioner to make an objection decision given 60 days after taxation objection made – When taxation objection made – What are the “grounds” that must be specified in the taxation objection – No jurisdiction

## **Social Security**

[Hatibi and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 396; 13/6/2013; Miss EA Shanahan, Member

Age pension – Pension bonus scheme – Failure to satisfy 10 year residency requirement prior to 21 February 2012 – Ineligible for pension bonus scheme – ineligible for pension deferred bonus – Decision under review affirmed

**Mekaoui and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 398; 14/6/2013; Dr I Alexander, Member

Pensions – Disability support pension – Residence requirement – Whether continuing inability to work existed prior to applicant becoming a permanent resident – Decision under review set aside

**Nocon and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 390; 11/6/2013; Senior Member AK Britton

Age pension – Meaning of “income” – Whether overseas pension amounts to income – Reviewable decision set aside

**Skaf and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 378; 5/6/2013; Senior Member AK Britton

Overpayment and debt recovery – Whether the applicant was a member of a couple – Financial aspects – Travel – Living arrangements and household responsibilities – Social aspects – Credibility of witnesses – Whether the debt should be written off – Whether the debt should be waived – Whether there are special circumstances – Decision set aside and remitted

## **Taxation**

**Taxpayer and Commissioner of Taxation** [2013] AATA 394; 22/3/2013; Senior Member CR Walsh

Whether Applicant, who worked in Singapore and India during relevant tax year, was an “Australian resident” – Meaning of “resident” or “resident of Australia” considered – Ordinary meaning of “resides” considered – Whether Applicant a resident according to ordinary concepts – Domicile test discussed – Whether Applicant’s “domicile of choice” was in Australia – Whether Applicant acquired a “domicile of choice” in Singapore or India – whether Applicant had a “permanent place of abode” outside Australia – Double Taxation Agreements – Residence “tie-breaker” provisions considered – Whether Applicant a “resident of Singapore” under the Singapore/Australia Double Taxation Agreement – India/Australia Double Taxation Agreement considered – OECD Model Tax Convention – Commissioner’s objection decision affirmed

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## Appeals Finalised

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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>FTZK v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2012] AATA 312</a>
<b>Swire Pacific Ship Management (Australia) Pty Ltd v Bose</b>	<a href="#">[2013] AATA 307</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Phillips v Inspector-General in Bankruptcy</b>	<a href="#">[2012] AATA 788</a>	<a href="#">[2013] FCA 552</a>
<b>Commissioner of Taxation v Crown Insurance Services Ltd</b>	<a href="#">[2011] AATA 847</a>	<a href="#">[2013] HCATrans 129</a> <a href="#">[2012] FCAFC 153</a>

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