



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.

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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

[Carter and Transpacific Industries Pty Ltd](#) [2013] AATA 852; 29/11/2013; Senior Member J Toohey and Dr M Couch, Member

Whether effects of accepted back injury had ceased – Whether effects of accepted shoulder injury had ceased – Tribunal satisfied effects of shoulder and back conditions ceased in accordance with the reviewable decisions – Decisions affirmed – Whether respondent liable for psychological injury secondary to accepted conditions – Decisions under review affirmed

[Dawson and Comcare](#) [2013] AATA 836; 21/11/2013; The Hon B Tamberlin QC, Deputy President and Dr R Blakley, Member

Upper extremity function – Separate injuries to left and right upper limbs – Liability denied for permanent impairment and non-economic loss – Application of impairment table 9.14 of Comcare Guide – Application of American Medical Association Guide – Each injury to be separately assessed – Decision under review affirmed

Immigration and Citizenship

[Hembrow and Minister for Immigration and Border Protection](#) [2013] AATA 827; 22/11/2013; Deputy President SD Hotop

Visa – Cancellation of visa – Applicant a citizen of United Kingdom – Applicant has lived in Australia from 2005 when aged 22 years – Applicant convicted of sexual offences against child aged between 13 and 16 in 2011 – Applicant sentenced to 2 years' imprisonment – Applicant does not pass character test – Discretion to cancel visa – Primary consideration of protection of Australian community outweighs other relevant primary consideration of applicant's ties to Australia and other relevant considerations – Risk of future serious harm to Australian community by applicant unacceptable – Preferable decision is that visa be cancelled – Decision under review affirmed

[Matauaina and Minister for Immigration and Border Protection](#) [2013] AATA 844; 20/11/2013; Deputy President PE Hack SC

Application for citizenship – 2 years not passed since release from prison – Prohibited from granting citizenship – No utility in proceedings – Application dismissed

[Plange and Minister for Immigration and Border Protection](#) [2013] AATA 837; 25/11/2013; Senior Member N Bell

Permanent resident – Application for citizenship – Applicant married to Australian citizen – Applicant aged over 60 years of age – Applicant does not meet residence requirements – Exercise of discretion – Application of Australian Citizenship Instructions – Whether applicant has a close and continuing association with Australia – Decision under review set aside

[Veatufunga and Minister for Immigration and Border Protection](#) [2013] AATA 838; 25/11/2013; Senior Member N Bell

Visa cancellation – Character grounds – Substantial criminal record – Decision under review affirmed

Passports

[BLBS and Director-General of Security and Anor](#) [2013] AATA 820; 19/11/2013; President D Kerr, Deputy President JW Constance and Senior Member GD Friedman

NATIONAL SECURITY – Adverse security assessment – Request for Minister to cancel passport and to order surrender of foreign travel documents – Whether request must disclose relevant suspicion – Whether Tribunal required to or should defer to the assessments and opinions of ASIO and its officers – History of independent review – Standard of satisfaction required – ASIO Act – Director-General’s Security Assessment Determination No 2 as policy guidance – Interpretation of Determination

NATIONAL SECURITY – Cancellation of passport and surrender of foreign travel documents – Standard of satisfaction required for lawful request – “Suspects on reasonable grounds” – Well settled technical legal meaning – “Would be likely to engage in conduct” – Language not ambiguous or obscure – “Conduct that might prejudice the security of Australia or a foreign country” – No relevance to standard of satisfaction required – Conduct must be of that nature

NATIONAL SECURITY – Reviews of adverse security assessment and decisions to cancel passport and require surrender of foreign travel documents – Point of time at which Tribunal is to review – When a cancellation request made by ASIO expires and is no longer valid

NATIONAL SECURITY – “Speculation” not prohibited – Role of ASIO as national security organisation – Adverse assessment and decisions requiring cancellation of passport and surrender of foreign travel documents

PRACTICE AND PROCEDURE – Lies – As relevant to proof of a denied contention – Must relate to material issue and must be explicable only on the basis that the truth would implicate the person telling the lie

PRACTICE AND PROCEDURE – Requirements for reasoning to a circumstantial conclusion

Practice and Procedure

[Hawkins and Minister for the Arts](#) [2013] AATA 835; 25/11/2013; The Hon RJ Groom, Deputy President and Ms S Taglieri, Member

Jurisdiction – Whether Tribunal has jurisdiction to review decisions – Applicant agrees that decisions to be reviewed are correct – Tribunal has jurisdiction – Whether application should be dismissed pursuant to section 42A(4) of the *Administrative Appeals Tribunal Act 1975* – No basis for such dismissal – Whether application should be dismissed pursuant to section 42B of that Act as frivolous or vexatious – Parties to be given further opportunity to be heard on that question

[Khorrarnadel and Secretary, Department of Social Services](#) [2013] AATA 848; 29/11/2013;
Senior Member AK Britton

Proceedings – Summons – Whether the Tribunal has the power to summons protected information from the Australian Taxation Office – Whether an exemption to the protection applies – Whether the Tribunal’s general summons power overrides the secrecy provisions of the *Taxation Administration Act 1953* – Applicant’s request refused

[Momo and Minister for Immigration and Border Protection](#) [2013] AATA 840; 27/11/2013;
Senior Member BJ McCabe

Extension of time – Reasons for delay – Prospects of success – Lack of prospect of success in the substantive case – Application refused

[Walters and Commissioner of Taxation](#) [2013] AATA 834; 22/11/2013; Deputy President SA Forgie

FEDERAL COURT DECLARATION – By consent – No reasons explaining how jurisdictional error made by Tribunal – Relevant part of Tribunal’s decision not set aside – Tribunal able to implement Declaration because *Bhardwaj* principles mean that the Tribunal is treated as not having previously exercised its power on that issue and so is not *functus officio*

FEDERAL COURT DECLARATION – Declaration must be treated as judgment that Tribunal incorrect on each of alternative bases of reasoning – Judgment to be considered with other Federal Court authorities on the legal issue

Primary Industry

[Haslam and Australian Fisheries Management Authority](#) [2013] AATA 841; 27/11/2013;
Senior Member J Handley

AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY – Applicants hold a fishing concession permitting use of a gillnet not exceeding 2520 metres – Application to acquire another net of 1800 metres and amalgamate into one permit of 4200 metres – Amendment of a permit is permitted under the *Fisheries Management Act* – Application refused – Fishing is undertaken in the Australian Fishing Zone – Licensed to fish in Tasmanian coastal waters first acquired in 2011 – Concession holders are subject to the provisions of an Offshore Constitutional Settlement and a Memorandum of Understanding between the Commonwealth and Tasmania – Amendment of a term of a permit requires the consent of both parties to the MOU – Amendment opposed by Tasmania – Objects under the Act, the MOU and the Southern and Eastern Scalefish and Shark Fishery to preserve and sustain fish stocks reflected in the policy of the Commonwealth – Cooperative spirit between the Commonwealth and Tasmania should not be offended by departure from policy without cogent reason – Decision affirmed

Social Security

[Antoniadis and Secretary, Department of Social Services](#) [2013] AATA 842; 27/11/2013;
Mr C Ermert, Member

Disability support pension – Age pension – Overpayment – Failure to declare changes to income and assets – Special circumstances – Decision under review affirmed

[D’Couto and Secretary, Department of Social Services](#) [2013] AATA 843; 3/10/2013; Senior Member GD Friedman

Newstart allowance – Whether properties are realisable assets – Whether Applicant qualified under hardship provisions – Whether special circumstances exist – Sole administrative error – Decision under review affirmed

[Fernando and Secretary, Department of Social Services](#) [2013] AATA 826; 22/11/2013; Deputy President K Bean

Benefits and entitlements – Eligibility for parenting payment, family tax benefit and child care benefit – Whether applicant was an Australian resident during the relevant periods – Whether applicant should be treated as an Australian resident for the purposes of eligibility for child care benefit due to hardship or special circumstances – Application of *Child Care Benefit (Australian Resident) Guidelines 2000* – Decision under review affirmed

[Popov and Secretary, Department of Social Services](#) [2013] AATA 850; 29/11/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Disability support pension – Condition not fully diagnosed, treated and stabilised – Decision under review affirmed

[Sonter and Secretary, Department of Social Services](#) [2013] AATA 839; 27/11/2013; Senior Member D Letcher QC

Pensions – Age pension – Pension bonus scheme – Time for making a claim – Whether special circumstances exist to extend time to make a claim – Decision set aside

[Teddy and Secretary, Department of Social Services](#) [2013] AATA 828; 22/11/2013; Deputy President SD Hotop

Family tax benefit (FTB) – Applicant granted FTB from January 2010 – Applicant’s FTB cancelled in May 2012 – Applicant never eligible for FTB – Amount of FTB paid to applicant a debt due to Commonwealth – Debt not attributable solely to administrative error by Commonwealth – No special circumstances – Debt cannot be waived – Debt cannot be written off – Decision under review affirmed

Taxation

[Australian Style Investments Pty Ltd as Trustee for the Australian Style Investments Unit Trust and Commissioner of Taxation](#) [2013] AATA 847; 29/11/2013; Deputy President FJ Alpins

Goods and services tax – Financial supply – Execution of deed providing for appointment of proxy and other obligations – Proxy appointed irrevocably to vote against resolutions at meeting of unit holders in trusts constituting registered managed investment scheme – Nature of proxies – Whether interest supplied was an “interest in or under ... securities” for purposes of reg 40-5.09 of *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth) – Administrative penalties – False or misleading statement – Whether shortfall amount resulted from recklessness by applicant – Whether remission of penalty warranted – *Taxation Administration Act 1953* (Cth), ss 284-90 and 298-20 of Schedule 1 – Decision under review affirmed

[Stewart and Commissioner of Taxation](#) [2013] AATA 845; 28/11/2013; Justice Middleton and Senior Member FD O'Loughlin

Employee share options – amount to be assessed on exercise of options to acquire shares in employer company – Penalty – Decision under review set aside and objection allowed in part

Veterans' Affairs

[Kwiatkowski and Repatriation Commission](#) [2013] AATA 849; 29/11/2013; Senior Member J Toohey and Dr H Haikal-Mukhtar, Member

Special rate of pension – Intermediate rate – Whether applicant's accepted conditions alone rendered him totally and permanently incapacitated – Whether applicant prevented from continuing remunerative work by accepted conditions alone – Tribunal satisfied that applicant capable of remunerative work for eight or more but not 20 or more hours per week –Tribunal satisfied applicant qualified for intermediate rate – Decision under review set aside

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
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None lodged

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
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**Commissioner of Taxation v Cancer and
Bowel Research Association**

[\[2013\] AATA 336](#)

[\[2013\] FCAFC 140](#)

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