



## 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.

### Child Support

[Naboush and Child Support Registrar](#) [2014] AATA 930; 15/12/2014; The Hon B Tamberlin QC, Deputy President

Departure prohibition order – child support liability not wholly discharged – no satisfactory arrangements for discharge – whether criteria to revoke are satisfied – discretion to revoke – decision under review affirmed

### Compensation

[Bean and Military Rehabilitation and Compensation Commission](#) [2014] AATA 940; 18/12/2014; Deputy President SD Hotop

Commonwealth employees – applicant served in Australian Army from 1981 to 1984 – applicant suffered recurrent skin infections, respiratory infections and related ailments during Army service – applicant tested for blood glucose but not for glucose tolerance during Army service – applicant contracted diabetes mellitus in 2004 – applicant’s diabetes mellitus not contributed to by failure to test for glucose tolerance or otherwise by Army service – applicant’s diabetes mellitus not a compensable injury – decision under review affirmed

[Farrer and Comcare](#) [2014] AATA 943; 18/12/2014; Dr P McDermott RFD, Senior Member

Whether respondent liable for applicant’s neuropathy or chronic neuropathic pain – further investigation of condition required – decision set aside and remitted to respondent for re-determination, with costs incurred by applicant payable by the respondent

### Health

[Clare and Australian Community Pharmacy Authority](#) [2014] AATA 932; 15/12/2014; Senior Member BJ McCabe

PHARMACISTS – interpretation of ‘town’ – whether statutory exception can apply – ambiguity – consideration of extrinsic material – decision under review affirmed

### Immigration and Citizenship

[Faraq and Minister for Immigration and Border Protection](#) [2014] AATA 927; 12/12/2014; Deputy President JW Constance

Residence requirement – applicant an unlawful non-citizen for three days in the four years prior to his application – whether discretion should be exercised to treat the period as if the Applicant was not present in Australia as an unlawful non-citizen – whether administrative error – advice in grant of bridging visa incomplete and misleading – administrative error caused the Applicant to become an unlawful non-citizen – decision set aside and remitted

[Konneh and Minister for Immigration and Border Protection](#) [2014] AATA 950; 18/12/2014; Senior Member CR Walsh

Citizenship by conferral – eligibility – general residence requirement – Applicant convicted of a number of offences relating to driving without a licence and providing false information to the police – Applicant’s offences “minor” under the Australian Citizenship Instructions – insufficient period has passed since Applicant’s most recent convictions – decision under review affirmed

[Kumar and Minister for Immigration and Border Protection](#) [2014] AATA 944; 18/12/2014; Senior Member BJ McCabe

Applicant living in Fiji – failure to meet general residence requirement – discretion to treat periods of absence as time spent in Australia enlivened – no compelling reason to exercise the discretion – decision under review affirmed

[Mohamed Marzook and Minister for Immigration and Border Protection](#) [2014] AATA 934; 16/12/2014; Senior Member RW Dunne

Application for citizenship – refusal by the delegate – general residence requirement not met – whether applicant was unlawful non-citizen – exercise of discretion – discretion not exercised – decision under review affirmed

[Nguyen and Minister for Immigration and Border Protection](#) [2014] AATA 945; 19/12/2014; Senior Member J Handley

Application for citizenship by conferral; applicant a citizen of Vietnam granted permanent residency of Australia – married in 1999 to an Australian citizen; both have subsequently lived in Vietnam save for short visits to Australia – applicant has spent 96 days in Australia in the period of 4 years before the application was made – applicant assists and supports her husband in his commercial and charitable work – whether applicant likely to reside in Australia or maintain a close and continuing association with Australia if the application were to be approved – decision affirmed

[Waterman and Minister for Immigration and Border Protection](#) [2014] AATA 939; 18/12/2014; Senior Member N Isenberg

Eligibility – whether applicant is of good character – decision under review set aside and remitted

## **Practice and Procedure**

[Bates and Comcare](#) [2014] AATA 931; 28/11/2014; Senior Member GD Friedman

Failure to comply with a direction of the Tribunal – expert assessment appointment – support person – multiple applications

[Dennis and Secretary, Department of Employment](#) [2014] AATA 942; 18/12/2014; Senior Member BJ McCabe

APPLICATION FOR EXTENSION OF TIME – Considerations for exercise of the discretion – Merits of the application for review – Substantive application – Meaning of ‘spouse’ for purposes of relevant legislation – Applicant an ‘excluded employee’ under relevant scheme – Not reasonable in the circumstances to grant the extension of time – Application refused

[Queensland Nickel Pty Ltd and Great Barrier Reef Marine Park Authority](#) [2014] AATA 933; 16/12/2014; Deputy President PE Hack SC

LEGAL PROFESSIONAL PRIVILEGE – application to vary interim order permitting certain deletions of s 37 documents – whether privilege extends to subject matter of legal advice

[Queensland Nickel Pty Ltd and Great Barrier Reef Marine Park Authority](#) [2014] AATA 935; 8/12/2014; Deputy President PE Hack SC

Summons – Federal Court proceedings – direction that summons not be issued – direction that matter be held in abeyance if cannot be heard with Federal Court proceedings

[Westbrook and Secretary, Department of Social Services](#) [2014] AATA 929; 28/11/2014; Senior Member NA Manetta

Jurisdiction – review of varied decision of respondent – no new issue raised on resumed hearing – proceedings dismissed as "frivolous or vexatious"

## **Social Security**

[Angelevski and Secretary, Department of Social Services](#) [2014] AATA 947; 16/12/2014; Ms S Taglieri, Member

Age Pension eligibility – whether qualified residency requirements satisfied – failure to have 5 years continuous residence – decision to refuse claim for age pension was correct

[Confidential and Secretary, Department of Social Services](#) [2014] AATA 925; 12/12/2014; Mr C Ermert, Member

Disability Support Pension – whether conditions are fully diagnosed, treated and stabilised – whether impairments attract 20 impairment points – decision affirmed

[El Cheikh and Secretary, Department of Social Services](#) [2014] AATA 936; 17/12/2014; Professor R McCallum AO, Member

Pensions – disability support pension – whether applicant's impairment is of 20 points or more under the Impairment Tables – decision under review affirmed

[Evans and Secretary, Department of Social Services](#) [2014] AATA 941; 18/12/2014; Dr M Denovan, Member

Pensions, benefits and allowances – disability support pension – DSP – 20 points or more under the Impairment Tables – cerebral vascular accident – CVA – stroke – decision set aside, substituted and remitted to the respondent

[Giamboi and Secretary, Department of Social Services](#) [2014] AATA 951; 16/12/2014; Senior Member CR Walsh

Overpayment of family tax benefit and schoolkids bonus – whether recovery of debt should be written off or waived – debt not attributable solely to an administrative error made by Centrelink – no "special circumstances" – decision under review affirmed

[Keightley and Secretary, Department of Social Services](#) [2014] AATA 938; 17/12/2014; Senior Member BJ McCabe

AGED CARE – Assets assessment – Inclusion of monies paid to applicant by daughter in 1989 – Classification of that transaction – Actual intention of the parties – Not a gift or loan – Not an express, implied or resulting trust – Applicant’s unjust enrichment does not alter characterisation of transaction – No basis for excluding funds from assets assessment – Decision under review affirmed

[Kooyoufas and Secretary, Department of Social Services](#) [2014] AATA 924; 12/12/2014; Senior Member E Fice

Disability support pension – assets test – income test – excess of assets and income – debt due to the Commonwealth – repayment of debt – waiver – cancellation of DSP – decision affirmed

[Morton and Secretary, Department of Social Services](#) [2014] AATA 949; 16/12/2014; Senior Member CR Walsh

Unlimited portability period for disability support pension – none of applicant’s impairments (spinal disorder, lower limb deficiencies and shoulder and upper arm disorder) is a “severe impairment” – decision under review affirmed

## **Taxation**

[Pettiford and Commissioner of Taxation](#) [2014] AATA 937; 5/12/2014; Deputy President IR Molloy

Capital gains tax – Objection to Commissioners calculation – No evidence provided by applicant proving incorrect calculation – Applicant is not displaced by calculation – Decision under review affirmed

## **Trade and Commerce**

[The Eight Modern Chinese Restaurant Pty Ltd and Australian Trade Commission](#) [2014] AATA 923; 12/12/2014; Deputy President SE Frost

Industry assistance – export market development grants – whether the new business is similar to the old business to such an extent that the new business should be treated as a continuation of the old business – decision under review affirmed

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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>Agius v Commissioner of Taxation</b>	<a href="#">[2014] AATA 854</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Applicant in WAD230/2014 v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2011] AATA 920</a>	<a href="#">[2014] FCA 1351</a>
<b>Sheldon v Repatriation Commission</b>	<a href="#">[2014] AATA 228</a>	<a href="#">[2014] FCA 1388</a>

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