



AAT Bulletin

ISSUE NO. 2/2013

14 JANUARY 2013

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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CONTENTS

AAT Recent Decisions	2
Civil Aviation	2
Immigration and Citizenship	2
Social Security	2
Taxation	3
Veterans' Affairs.....	4
Appeals	5
Appeals lodged	5
Appeals finalised.....	5

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.

Civil Aviation

[Confidential and Civil Aviation Safety Authority](#) [2012] AATA 913; 13/12/2012; Senior Member E Fice

Stay application – Suspension of Medical Certificates – Class 1 medical certificate – Class 2 medical certificate – Undisclosed medical history – Post-Traumatic Stress Disorder – Sleep disorder – Adjustment disorder – Anxiety – Safety of air-navigation – Safety relevant condition – Helicopter pilot – Receipt of a Department of Veterans' Affairs pension – Application refused

Immigration and Citizenship

[The Applicant and Minister for Immigration and Citizenship](#) [2013] AATA 6; 10/1/2013; Senior Member JL Redfern

Visa cancellation – Character test – Criminal history – Seriousness of conduct and risk of further offending – Protection of Australian community – Visa holder committed criminal offences soon after arrival – Leniency in sentencing because of exceptional circumstances – Best interests of minor child in Australia – Factors to be considered where child is in foster care – Decision under review is set aside.

[Salahuddin and Minister for Immigration and Citizenship](#) [2013] AATA 1; 7/1/2013; Senior Member AK Britton

Visa cancellation – Character test – Ministerial Direction 55 – Consideration of the applicant's criminal history – Consideration of the applicant's ties to Australia – Consideration of the applicant's risk of reoffending – Decision under review affirmed

Social Security

[Fletcher and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 11; 11/1/2013; Deputy President PE Hack SC

Pensions, benefits and entitlements – Disability support pension – Osteoarthritis of lower back – Lack of evidence as to extent of loss of normal range of movement – Generalised anxiety disorder/depression – Condition not fully diagnosed, treated or stabilised – Decision under review affirmed.

[Reeves and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 934; 4/12/2012; Deputy President PE Hack SC

Pensions, benefits and entitlements – Disability support pension – Whether Australian resident – Applicant living in Australia and the Philippines – No permanent accommodation in either country – Spouse ordinarily resident in the Philippines – Few assets in either country – Applicant’s intention to settle in Australia when spouse able to do so – Decision under review set aside.

[Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Confidential and Anor](#) [2013] AATA 2; 8/1/2013; Senior Member RG Kenny

Family Tax Benefit – FTB child – Court Order determining percentage of care – Primary decision by Centrelink, on application by mother, to change care percentage – Objection to that primary decision – Decision set aside by authorised review officer – Application by mother to Social Security Appeals Tribunal (SSAT) to review – Father was person “affected by” primary Centrelink decision – Mother was person “affected by” decision of authorised review officer – Decision under review set aside

Taxation

[Harbutt and Commissioner of Taxation](#) [2013] AATA 8; 11/1/2013; Deputy President SE Frost

Income tax – Rental income and deductions – Where tax payer is sole registered proprietor – Whether net rental income can be split between husband and wife on basis the property is an asset of a tax law partnership between them – Whether income received jointly – Distinction between receipt and disposition of income – Decision under review affirmed

[Kelly’s Office Furniture Pty Ltd and Anor and Commissioner of Taxation](#) [2013] AATA 9; 11/1/2013; Deputy President SE Frost

Income tax – Whether amounts described as “Accrued expenses”, “Salary and wages” and “Management fee” are assessable in the relevant years – Onus of proof – Time at which company incurred expense or definitively committed to making payments – Decisions under review affirmed

[Penrowse Pty Ltd and Commissioner of Taxation](#) [2013] AATA 10; 11/1/2013; Dr KS Levy RFD, Senior Member

Objection decision – Superannuation Guarantee Charge – Claim that part of employee payment was an allowance or reimbursement for expenses – Part of ordinary wages or income – Underpayment of superannuation contribution – Nominal interest component – Administrative component – Whether excessive – Decision under review set aside and remitted for re-assessment

[The Taxpayer and Commissioner of Taxation](#) [2013] AATA 3; 8/1/2013; Senior Member BJ McCabe

Private rulings – Objection decision – Capital intensive business – ‘Business like’ activity – Objective to make profit – Offsetting non-commercial losses – Whether discretion should be exercised in taxpayer’s favour – Objection decision affirmed.

Veterans' Affairs

[Brown and Repatriation Commission](#) [2013] AATA 5; 9/1/2013; Miss EA Shanahan, Member

Application for special rate – Intermediate rate – Retirement by choice or for medical reasons – No medical indication for retirement – Decision under review 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
Paredes Duarte v Minister for Immigration and Citizenship & AAT	[2011] AATA 262
Aspen Pharma Pty Ltd & Ors v H Lundbeck A/S & Commissioner of Patents	[2012] AATA 851
Watsford v Commissioner of Taxation	[2012] AATA 815
Forrester v Repatriation Commission	[2012] AATA 846
Commissioner of Taxation v Gem Plant Hire Pty Ltd ATF The Condello Family Trust	[2012] AATA 852
Bawden v Repatriation Commission	[2011] AATA 283

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Hamden v Secretary, Department of Human Services	[2011] AATA 587	[2013] FCA 3
Teuila v Minister for Immigration and Citizenship & AAT	[2012] AATA 351	[2012] FCAFC 171 [2012] FCA 1056



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