



## AAT Bulletin

ISSUE NO. 12/2013

25 MARCH 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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## 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

[Auston and Chubb Security Services Limited](#) [2013] AATA 153; 21/3/2013; Senior Member RG Kenny

Acceptance of liability for medical treatment and compensation – Injuries suffered in two incidents – Overall impairment – Percentage of impairment attributable to each incident – Settlement of common law damages claim against employer in relation to first incident – Compensation not payable under the *Safety, Rehabilitation and Compensation Act 1988* for incapacity associated with first incident – Acceptance of liability for medical treatment and compensation for second incident – Compensation payable for extent of overall incapacity associated with second incident – Length of period payable adjusted – Assessment of incapacity remitted – Decision under review set aside and substituted

Incapacity from accepted condition resolved – No continuing entitlement to compensation under the Act for incapacity or impairment – Decision under review affirmed

[Berry and Telstra Corporation Limited](#) [2013] AATA 163; 22/3/2013; Senior Member GD Friedman

Right shoulder injury – Previously accepted condition – whether liability for medical treatment – Physiotherapy – Decision under review affirmed.

[Chalkey and Australian Postal Corporation](#) [2013] AATA 164; 22/3/2013; Senior Member N Bell and Dr H Haikal-Mukhtar, Member

Commonwealth Employees – Whether suitable employment available to applicant – Whether applicant failed to engage in suitable employment – Whether applicant continues to be incapacitated for injury – Decision under review affirmed

[Muthubalasuriyar and Comcare](#) [2013] AATA 147; 19/3/2013; Senior Member PW Taylor SC

Commonwealth employees – Interpretation of 2007 amendment to the *Safety, Rehabilitation and Compensation Act 1988* – Injury sustained as employee proceeding to lunch – Whether injury arose out of, or in the course of the person's employment – Ordinary recess – Whether the injury occurred at the employee's place of work – Whether the Tribunal is bound by an earlier decision – Green distinguished – Decision set aside and remitted

[Red and Comcare](#) [2013] AATA 123; 8/3/2013; Senior Member AK Britton and Dr Isles, Member

Tinnitus – Causation – Whether tinnitus arose out of, or in the course of, employment – Anxiety disorder – Whether a result of reasonable administrative action – Whether reasonable administrative action was executed in a reasonable manner – Decision under review affirmed

PRACTICE AND PROCEDURE – Expert witnesses – Opinion evidence

PRACTICE AND PROCEDURE – Contempt of Tribunal

## **Immigration and Citizenship**

[Confidential and Minister for Immigration and Citizenship](#) [2013] AATA 144; 18/3/2013; Dr P McDermott, RFD, Senior Member

Refusal to register applicant as Australian citizen by descent – Insufficient evidence regarding identity of applicant – Application deficient – Decision under review affirmed

[Naea and Minister for Immigration and Citizenship](#) [2013] AATA 152; 20/3/2013; Senior Member RG Kenny

Class TY Subclass 444 Special Category (Temporary) Visa – Cancellation – New Zealand citizen – Entry to Australia at age 10 years – Substantial criminal record of serious offences and failure to comply with court orders – Failure to pass character test – Discretion to cancel visa – Relevant considerations – On balance, primary and other considerations favour cancellation of visa – Preferable decision is that visa be cancelled – Decision under review affirmed

[Ruautu Tara and Minister for Immigration and Citizenship](#) [2013] AATA 157; 22/3/2013; Deputy President RP Handley and Senior Member NP Bell

Visa cancellation – Direction No 55 – Character test – Substantial criminal record – Primary considerations – Other considerations – Decision under review set aside

## **Practice and Procedure**

[Makasa and Minister for Immigration and Citizenship](#) [2013] AATA 145; 12/3/2013; Deputy President RP Handley

Summons to produce documents from original criminal trial – Objection on grounds of abuse of process, fishing expedition and unfair and prejudicial to Applicant – Summons allowed

[Menz and Border Express Pty Ltd](#) [2013] AATA 143; 15/3/2013; Professor RM Creyke, Senior Member

Costs – Party costs other than legal costs – Witness costs – Whether summoned to give evidence – Application refused

[Walters and Commissioner of Taxation](#) [2013] AATA 151; 20/3/2013; Deputy President SA Forgie

Jurisdiction – Whether power to review objection decisions where submitted objections improperly made – Objections to amended assessments found to be properly made – consideration of principles applying if objections not properly made – When Tribunal has power to review improperly made decision – Whether Tribunal's review can lead to effective outcome is a separate question from power to review an improperly made decision

## **Social Security**

[Abdulrahman and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 150; 20/3/2013; Senior Member AK Britton

Disability support pension – Major depressive disorder – Whether condition is fully diagnosed, treated and stabilised – Whether condition is permanent – Insufficient medical evidence – Decision remitted to the Secretary

[Allen and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 121; 21/3/2013; Senior Member K Bean

Disability support pension – Qualification – Whether applicant's medical conditions are fully diagnosed, investigated, treated and stabilised – Whether rateable impairments attract a rating of at least 20 points – Applicant's rateable impairments do not attract 20 points – Decision under review affirmed.

[Attwill and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 148; 19/3/2013; Senior Member K Bean

Newstart allowance – Whether applicant a member of a couple – Acknowledged previous relationship – Whether relationship has changed sufficiently that no longer a de facto relationship – Some relevant financial and household arrangements dictated by financial hardship and/or necessity rather than choice – Applicant no longer a member of a couple – Consideration of date of effect of decision given late application to SSAT – Decision under review set aside.

[Donoghue and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 162; 22/3/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Disability support pension – Condition fully diagnosed, treated and stabilised – Condition permanent – Impairment Tables – No impairment of 20 points or more – Decision under review affirmed

[Kisfali and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 159; 22/3/2013; Senior Member AF Cunningham

Widow's pension – Age pension – member of a couple – Factors relevant to assessing marriage-like relationship – Living in jointly owned property from 1980 – Mutual trust with respect to finances and purchase of jointly owned property – Limited social interactions and joint holidays – Domestic living arrangements – Long term relationship – Absence of emotional attachment – Decision under review set aside

[QFZS and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Anor](#) [2013] AATA 98; 26/2/2013; Senior Member AK Britton

Family tax benefit – Shared care – Percentage of care – Decision set aside and substituted

PRACTICE AND PROCEEDURE – Jurisdiction – Temporal jurisdiction of the Social Security Appeals Tribunal – Decision of appellate body must equate to the time-period assessed in the original decision

[Rosehart and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 155; 21/3/2013; Senior Member Dr KS Levy, RFD

Pensions, benefits and allowances – Disability support pension – Portability provisions – Accrued portability rights under earlier provisions – Amendments to portability provisions apply – Decision under review affirmed

PRACTICE AND PROCEDURE – Jurisdiction – Review of previous decisions – Operation of sections 142 and 179 of the *Social Security (Administration) Act 1999* (Cth) – No jurisdiction to review previous decisions

PRACTICE AND PROCEDURE – Application for dismissal as frivolous or vexatious – Claim long ceased to exist – Devoid of any practical effect – Question of law to be tested – Application refused

[Taylor and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 161; 22/3/2013; Dr P McDermott, RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Compensation settlement – Compensation charge – Compensation preclusion period – No special circumstances – Decision under review affirmed

[Turner and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 160; 22/3/2013; Dr P McDermott, RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Physical, intellectual or psychiatric impairment – Spinal condition – Impairment tables – Impairment rating of 20 points required – Loss of half normal range of movement – Pain not present with most physical activities, standing, sitting or driving – No continuing inability to work – Decision under review affirmed

## **Taxation**

[Brookdale Investments Pty Ltd and Commissioner of Taxation](#) [2013] AATA 154; 20/3/2013; Senior Member CR Walsh

Goods and services tax – Whether sale of land a GST-free supply of a going concern or a taxable supply – Whether parties agreed in writing that supply is of a going concern – Whether contemporaneous statutory declarations of supplier recipient of supply together constitute an agreement in writing that supply is of a going concern – Timing of agreement in writing that supply is of a going concern under s 38-325(1)(c) of *A New Tax System (Goods and Services Tax) Act 1999* – Validity of Commissioner's s 105-50 notice – consideration of s 255-10 of

*Taxation Administration Act 1953* – Alleged inconsistent GST treatment by Commissioner of supplier and recipient of supply – GST neutrality – Commissioner’s objection decision affirmed

## **Veterans' Affairs**

[Robertson and Repatriation Commission](#) [2013] AATA 149; 19/3/2013; Senior Member RG Kenny

Operational service with Royal Australian Navy – Posttraumatic stress disorder unrelated to eligible service – Clinical worsening of posttraumatic stress disorder in accordance with Statement of Principles – Whether aggravation must be permanent – Reasonable hypothesis of aggravation of posttraumatic stress disorder raised – Not satisfied beyond reasonable doubt that aggravation of posttraumatic stress disorder not war-caused – Decision set aside – Matter remitted for assessment.

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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>Batchelor v Commissioner of Taxation</b>	<a href="#">[2013] AATA 93</a>
<b>Calvista Australia Pty Ltd v AAT &amp; Director of the Classification Board</b>	<a href="#">[2013] AATA 91</a>
<b>Hurn v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2013] AATA 79</a>
<b>Haydn Cook v Teena Cook &amp; Thales Australia Limited &amp; Comcare</b>	<a href="#">[2013] AATA 67</a>

### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Evans v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2010] AATA 578</a>	<a href="#">[2013] HCASL 28</a> <a href="#">[2012] FCAFC 81</a> <a href="#">[2011] FCA 1207</a>
<b>Cross v Repatriation Commission</b>	<a href="#">[2012] AATA 632</a>	<a href="#">[2013] FCA 229</a>
<b>Commissioner of Taxation v Boyn</b>	<a href="#">[2012] AATA 660</a>	<a href="#">[2013] FCA 232</a>
<b>Bell v Commissioner of Taxation</b>	<a href="#">[2012] AATA 45</a>	<a href="#">[2013] FCAFC 32</a>



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