



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.

CONTENTS

AAT Recent Decisions	2
Immigration and Citizenship	2
Social Security.....	2
Taxation	3
Veterans' Affairs	3
Appeals Finalised	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.

Immigration and Citizenship

[Confidential and Minister for Immigration and Citizenship](#) [2013] AATA 237; 19/4/2013; Senior Member E Fice

Class BQ Subclass 139 Skilled – Designated Area Sponsored visa – Cancellation under s 501(2) of the *Migration Act 1958* (Cth) – Applicant does not pass the character test – Primary considerations – Other considerations – Protection of the Australian community – Risk to the Australian community should the applicant re-offend – Strength, duration and nature of ties to Australia – International non-refoulement obligations – Substantial criminal record – Criminally negligent manslaughter – Evidence of a history of violent behaviour and deceit – Decision under review affirmed

[The Applicant and Minister for Immigration and Citizenship](#) [2013] AATA 242; 23/4/2013; Senior Member RG Kenny

Class BF Transitional (Permanent) Visa – Cancellation – Philippines citizen – Entry to Australia at age 16 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

Social Security

[Bektas and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 249; 24/4/2013; Dr Breen, Member

Disability support pension – Cervical disc disease – Lower back pain – Bilateral knee arthropathy – Past polio with weakness of the left leg – Generalised arthritis – Chronic perforation of the left ear drum – Calcaneal spur – Chronic perforation of the left ear drum fully treated and stabilised – Five impairment points – Decision under review affirmed

[Henningson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 241; 23/4/2013; Senior Member BJ McCabe

Compensation – Preclusion period – Special circumstances – Centrelink advice – Decision under review affirmed

[Hunter and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 244; 24/4/2013; Senior Member N Isenberg

Benefits – Cancellation of rent assistance for specified period – Consideration of whether applicant is entitled to rent assistance for specified period – Whether Applicant was given notice of decision to cancel rent assistance – Section 237 *Social Security (Administration) Act 1999* – Applicant was given notice – Late application for review – Decision under review affirmed

[Westbrook and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 247; 24/4/2013; Deputy President DG Jarvis

Age pension – Assessment of ordinary income on a yearly basis – Computation of underpayments – Decision under review remitted for reconsideration

PRACTICE AND PROCEDURE – Request for review of earlier Administrative Appeals Tribunal (AAT) decision – Finality of AAT decisions – Jurisdiction - AAT cannot review conduct of Departmental officers – Futility of application for review as to portion of disputed period – AAT could not dismiss application in part, but should decline to consider disputed period

Taxation

[IOOF Holdings Limited and Commissioner of Taxation](#) [2013] AATA 239; 19/4/2013; Senior Member FD O'Loughlin

Private Rulings – Whether Applicant entitled to a ruling based on law that has been amended – Whether the Applicant had an accrued right to a ruling based on law that has been amended – Whether any accrued right abrogated by the terms of the amending legislation

[The Gambler and Commissioner of Taxation](#) [2013] AATA 243; 23/4/2013; Deputy President SE Frost

Income Tax – Assessable income – Whether unexplained deposits formed part of assessable income – Whether unexplained deposits were the proceeds of gambling - Whether amended income tax assessments excessive under s 14ZZK of the *Taxation Administration Act 1953* – Burden of proving assessments are excessive – Objection decisions affirmed

Veterans' Affairs

[Creffield and Repatriation Commission](#) [2013] AATA 248; 24/4/2013; Senior Member BJ McCabe

Widow's pension – Death of veteran – Operational service – Carcinoma of the jejunum – Statement of principles – Reasonable hypothesis connecting death with operational service – Decision under review affirmed

[Hughes and Repatriation Commission](#) [2013] AATA 238; 19/4/2013; Senior Member K Bean

Widow's pension – Veteran's death due to ischaemic heart disease secondary to smoking – Whether veteran's smoking habit related to operational service – Whether material points to a reasonable hypothesis – Decision under review set aside

Appeals Finalised

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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Soames v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2012] AATA 699	NSD1759/2012
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Rawsthorne v Minister for Immigration and Citizenship & AAT	[2012] AATA 484	[2013] FCAFC 39 [2012] FCA 1217
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Kalm v AAT & Minister for Immigration and Citizenship	[2013] AATA 87	VID230/2013
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