



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 online. 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

[Bose and Swire Pacific Ship Management \(Australia\) Pty Ltd](#) [2013] AATA 307; Deputy President SD Hotop and Dr J Chaney, Member

Seafarers – Applicant employed by respondent as Chief Engineer – Applicant removed from vessel and replaced as Chief Engineer – Applicant suffered major depressive disorder – Applicant’s major depressive disorder contributed to in a material degree by employment – Applicant’s major depressive disorder a “disease” – Applicant’s major depressive disorder suffered as a result of removal from vessel – Decision to remove applicant from vessel “disciplinary action” – Decision to remove applicant from vessel not “reasonable” – Applicant’s major depressive disorder not suffered as a result of “reasonable disciplinary action” – Applicant’s major depressive disorder an “injury” – Compensation payable to applicant for major depressive disorder – Decision under review set aside

[Cooper and Comcare](#) [2013] AATA 305; 15/5/2013; The Hon RJ Groom AO, Deputy President

Commonwealth employees – Weekly payments for incapacity – Employee continuing in Commonwealth employment – Calculation of normal weekly earnings – Employee initially receiving higher duties allowance – Higher duties allowance deducted from normal weekly earnings – Employee, if not incapacitated, would remain at APS3 level and would receive some higher duties allowance – Employee to receive average of higher duties allowance paid to other APS3 employees – Decision set aside and remitted

[Ferguson and Comcare](#) [2013] AATA 310; 16/5/2013; Dr M Denovan, Member

Commonwealth employees – Accepted liability for injury – Claim for cost of toilet cistern maintenance – Definition of household services – Maintenance not regular or frequent – Not a household service under the Act – Decision under review affirmed

[Scerri and Comcare](#) [2013] AATA 302; 14/5/2013; Mr S Webb and Dr B Hughson, Members

Commonwealth employees – Neck injury claim – Claim not barred due to lack of notice – Migrainous vertigo arising from defence service – Not established that claimed neck injury is related to defence service – Fall in the course of employment on a return to work program – Liability accepted for a left shoulder injury – Subsequent onset of neck symptoms – Not established that the neck symptoms are causally attributable to the fall – Cervical spondylosis – Not established that cervical spondylosis was caused or aggravated by the fall – Decision under review affirmed

Corporations

[Jewel of India Holdings and Australian Securities and Investments Commission](#) [2013] AATA 314; 17/5/2013; The Hon. B Tamberlin QC, Deputy President

Australian Securities and Investments Commission – Order seeking financial statements not be made available where Applicant successful in substantive proceedings – Order seeking restriction of publication – Interlocutory applications resolved by way of undertakings – Whether decision made in respect of subsidiary as well as chief where application is unclear or incomplete – Considerations specific to factual nexus – Not to be used as basis for general rule – Application made on behalf of, and decision made with respect to the affairs of, both entities

Health

[Hadjiantoniou and Secretary, Department of Health and Ageing](#) [2013] AATA 289; 23/4/2013; Senior Member GD Friedman

Aged Care Act 1997 – Care Recipient – Hardship Supplement – No Financial Hardship – Decision under review affirmed

[Issa and Anor and Australian Community Pharmacy Authority and Ors](#) [2013] AATA 292; 14/5/2013; Deputy President JW Constance

Australian Community Pharmacy Authority – Application for approval to supply pharmaceutical benefits – Whether there was and are at least the equivalent of four full-time prescribing medical practitioners practising – Whether there were and are one or two supermarkets which occupied a combined total gross leasable area of at least 2,500 sq. m – Whether applicants had and have the legal right to occupy the proposed premises – Information to be considered by the Authority – Decision under review set aside – Recommendation that the application be approved

Immigration and Citizenship

[Chadwick and Minister for Immigration and Citizenship](#) [2013] AATA 312; 17/5/2013, Dr P McDermott RFD, Senior Member

Visa cancellation – Character test – Discretion to cancel visa – Substantial criminal record – Ministerial Direction – Primary considerations – Serious offences against vulnerable members of the community – Risk of reoffending – Other considerations – Weight given to considerations favour cancellation – Decision under review affirmed

PRACTICE AND PROCEDURE – Original decision made in accordance with Ministerial Direction in force at the time – New Ministerial Direction issued prior to application for review by the Tribunal – Application to be considered under Ministerial Direction in force at the time of Tribunal hearing

[Heron and Minister for Immigration and Citizenship](#) [2013] AATA 298; 13/5/2013; Senior Member PW Taylor SC

Visa cancellation – Failure to pass character test – Substantial criminal record – Discretion to cancel applicant's visa – Ministerial Direction No 55 applied – Protection of

the Australian community – Seriousness and nature of the relevant conduct – The risk conduct may be repeated – Impact of the cancellation – Decision under review affirmed.

[PQVB and Minister for Immigration and Citizenship](#) [2013] AATA 288; 10/5/2013; Senior Member N Bell

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

[The Applicant and Minister for Immigration and Citizenship](#) [2013] AATA 300; 14/5/2013; Senior Member JL Redfern

Visa cancellation – Character test – Criminal history involving violence – Seriousness of conduct and risk of future harm – Protection of Australian community and criminal offending soon after arrival outweighing all other factors – Decision under review affirmed

Practice and Procedure

[Meaney and Comcare](#) [2013] AATA 299; 16/5/2013; President D Kerr

Remittal by consent from Federal Court of Australia – Function of Guidelines for Constituting the Tribunal – Case remitted to Tribunal as previously constituted

Social Security

[Ahordan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 304; 15/5/2013; Senior Member G Ettinger

Pensions, benefits and allowances – Disability support pension – Applicant has a form of severe dementia – Residency requirement – Did Applicant's inability to work commence before he became resident in Australia – Decision under review affirmed

[Edwards and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 293; 13/5/2013; Ms K Hogan, Member

Pensions, benefits and allowances – Carer payment – Applicant qualified for carer payment – Date from which applicant can be paid carer payment – Applicant contacted Centrelink but did not lodge claim within 13 weeks of contact – Tribunal unable to set the start date to a date beyond 13 weeks previous to the claim – Applicant only qualified for carer payment from the claim date – Decision under review affirmed

[Evans and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 282; 9/5/2013; Dr A Frazer, Member

Pensions, benefits and allowances – Disability support pension – Qualification requirements – Applicant has impairments – Applicant's impairments not considered permanent or sufficient rating – Applicant not qualified for disability support pension – Decision under review affirmed

Evans and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 308; 15/5/2013; Senior Member JL Redfern

Pensions, benefits and allowances – Disability support pension – DSP – Impairment tables – Whether Applicant had impairment of 20 points or more under Impairment Tables and was eligible for DSP – Decision under review affirmed

Hussein and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 287; 10/5/2013; Senior Member N Bell and Dr I Alexander, Member

Pensions, benefits and allowances – Disability support pension – DSP – Impairment tables – Applicant does not meet impairment rating requirement – Decision under review affirmed

Rudd and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 295; 13/5/2013; Ms K Hogan, Member

Pensions, benefits and allowances – Disability support pension – Aged pension – Whether applicant was overpaid disability support pension and aged pension – Applicant failed to declare partner's income – Applicant was overpaid disability support pension and aged pension – Overpayments were debts due to the commonwealth – Debts could not be written-off under section 1236 of the *Social Security Act* – Debts could not be waived under section 1237A of the *Social Security Act* – Debts could not be waived under section 1237AAD of the *Social Security Act* – Decision under review affirmed

Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Visi [2013] AATA 291; 13/5/2013; Senior Member K Bean

Pensions, benefits and allowances – Disability support pension – Whether applicant has a "continuing inability to work" – Applicant has serious impairment but medical evidence to the effect that he can work at least 15 hours per week or undertake training – Decision under review set aside

Tinsey and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 290; 10/5/2013; Mr S Webb, Member

Pensions, benefits and allowances – Rate of payment – Defined benefits superannuation income stream – Intention to claim Widow Allowance – Centrelink administrative errors – Informal advice about eligibility not comprehensive – Claim not lodged prior to commencement of amending legislation – Subsequent claims lodged and payments made – Failure to provide notice affects operation of claim lodgement deeming provisions – Decision under review affirmed

Taxation

Balens and Commissioner of Taxation [2013] AATA 203; 8/4/2013; Senior Member Dr KS Levy RFD

Taxation assessment – Application for release from tax debts – Objection to decision – Waiver of outstanding tax debts – Application of departmental practice statement –

Assessment of assets and liabilities – No serious hardship – Decision under review affirmed

[McLennan and Commissioner of Taxation](#) [2013] AATA 311; 16/5/2013; Senior Member Dr KS Levy RFD

Superannuation – Objection decision – Superannuation contributions – Superannuation payment re-deposited – Excessive contributions – Non-concessional contribution tax – Discretion to disregard or allocate excess to another financial year – No special circumstances – Decision under review affirmed

[Trevaskis and Tax Practitioners Board](#) [2013] AATA 301; 14/5/2013; Deputy President PE Hack SC

Tax agent – Registration – Termination of registration – Discretion to terminate registration enlivened upon conviction – Serious tax offence – Offence involving dishonesty – Sentenced to term of imprisonment – Disqualification from managing corporations – Lack of contrition – Conduct of applicant warrants termination of registration – Decision under review affirmed

Veterans' Affairs

[Ambler and Repatriation Commission](#) [2013] AATA 303; 15/5/2013; The Hon RJ Groom AO, Deputy President

Disability pension – Applicant rendered defence service in Royal Australian Navy – Traumatic incidents during service – Claim of defence-caused PTSD – Correct diagnosis is Recurrent Major Depressive Disorder – Connection raised between disease and service rendered by applicant – Relevant Statement of Principles does not uphold connection – Disease not defence-caused – Except for different diagnosis – Decision under review affirmed

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
Peters v Comcare	[2012] AATA 636
BHFC v Minister for Immigration and Citizenship	[2013] AATA 166
Muliaga v Minister for Immigration and Citizenship & AAT	[2010] AATA 1034

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Stewart v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2013] AATA 120	QUD182/2013
Oldmeadow v Repatriation Commission	[2012] AATA 691	[2013] FCA 423
Greenhatch v Commissioner of Taxation	[2011] AATA 479	[2013] HCATrans 104 [2012] FCAFC 84



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