



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

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

[Borg and Australian Postal Corporation](#) [2013] AATA 363; 31/5/2013; Senior Member JL Redfern and Dr W Isles, Member

Claims for compensation for physiological and psychiatric injury as a result of work duties – Whether causal connection between the applicant's conditions and his employment – Consideration of the nature of applicant's physical and mental conditions and when they arose – Not satisfied that the applicant sustained a compensable injury under s 14 of the *Safety, Rehabilitation and Compensation Act 1988* in respect of the physiological and psychological injuries alleged – Decisions under review affirmed

Courts and Judicial System

[Board and Family Court of Western Australia](#) [2013] AATA 350; 28/5/2013; Senior Member GD Friedman

Exemption from payment of setting-down fee – Whether financial hardship exists – Decision under review affirmed

Health and Ageing

[O'Carroll and Secretary, Department of Health and Ageing](#) [2013] AATA 365; 31/5/2013; Mr P Wulf, Member

Aged care – Supported resident status – Assets – Date for determining value of assets – Exemption of home from value of assets – Carer – Not occupying home of applicant for two years prior to entering aged care – Decision under review affirmed

Higher Education

[Juresic and Secretary, Department of Industry, Innovation, Science, Research and Tertiary Education](#) [2013] AATA 338; 24/5/2013; Senior Member AK Britton

Student assistance – Whether FEE-HELP can be re-credited – Whether it was not possible for the applicant to apply for re-crediting before the expiry of the application period – Pre-condition not met – Decision under review affirmed

Immigration and Citizenship

[Duwai and Minister for Immigration and Citizenship](#) [2013] AATA 339; 24/5/2013; Senior Member D Letcher

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

[Hutchins and Minister for Immigration and Citizenship](#) [2013] AATA 343; 27/5/2013; Senior Member RG Kenny

Class TY Subclass 444 Special Category (Temporary) Visa – New Zealand citizen – Cancellation – Substantial criminal record – 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

[Tekawa and Minister for Immigration and Citizenship](#) [2013] AATA 344; 27 May 2013; Senior Member BJ McCabe

Visa cancellation – Character test – Primary considerations – Protection of the Australian community – Issues with summons documents – Decision under review affirmed

Practice and Procedure

[KMZY and Minister for Immigration and Citizenship](#) [2013] AATA 340; 24/5/2013; Senior Member RM Creyke

Jurisdiction – Whether Tribunal has jurisdiction

[QDSN and Minister for Immigration and Citizenship](#) [2013] AATA 352; 28/5/2013; Professor RM Creyke, Senior Member

Jurisdiction – Whether Tribunal has jurisdiction – Decision to cancel visa made pursuant to section 501(2) of the *Migration Act 1958* – Application for review not lodged with the Administrative Appeals Tribunal within nine days from the day after notification was received in accordance with section 500(6B) of the *Migration Act 1958*

[Uluer and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 353; 19/4/2013; Senior Member GD Friedman

Extension of time to lodge application for review – Tribunal refuses the application for an extension of time

Social Security

[Cremona and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 349; 22/5/2013; Mr C Ermert, Member

Tribunal refuses to stay the operation of the decision under review

Croft and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 332; 23/5/2013; Senior Member JF Toohey

EXTENSION OF TIME – Relevant considerations – Acceptable reasons for delay – No prospect of success – Extension of time refused

SOCIAL SECURITY – Pensioner concession card – Foster carer – Foster child now aged 16 – Whether applicant qualifies for pensioner concession card – Legislation clear that applicant not qualified once child turns 16

Daly and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 354; 29/5/2013; Dr KS Levy, RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Impairment tables – Permanent condition – Less than 20 impairment points – Decision under review affirmed

Davidson and Secretary, Department of Education, Employment and Workplace Relations [2013] AATA 342; 27/5/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Newstart allowance – Assets – Loans – Deemed income – Reduced rate of payment – Loans to company an asset – Decision under review affirmed

Mikhael and Secretary, Department of Education, Employment and Workplace Relations [2013] AATA 355; 30/5/2013; Senior Member D Letcher, QC

Pensioner education supplement – Undertaking qualifying study – Approved tertiary courses at Masters level – Decision under review affirmed

Nairn and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 356; 30/5/2013; Mr S Webb, Member

Disability Support Pension – Arthritis, gastritis, psoriasis, Barmah Forest virus, depression and anxiety – Not fully diagnosed, treated and stabilised or permanent – Insufficient impairment points to qualify – Work in private business – Continuing inability to work not established – Decision under review affirmed

Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Anor and Brown; [2013] AATA 345; 27/5/2013; Senior Member Isenberg

Whether a person is a member of a marriage-like relationship – Whether a person is a member of a couple – Consideration of all of the circumstances of the relationship – Decision under review set aside

Shaky and Secretary, Department of Education, Employment and Workplace Relations [2013] AATA 359; 31/5/2013; Senior Member JF Toohey

Newstart allowance – Whether applicant a member of a couple – Whether applicant and wife living separately and apart on a permanent or indefinite basis – Factors to be considered – Tribunal satisfied applicant not a member of a couple as of March 2012 – Decision under review set aside

[Tranchita and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 327; 22 May 2013; Dr A Frazer, Member

Payment of age pension – Severe financial hardship – Decisions under review affirmed

[Warren and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 364; 31/5/2013; Dr I Alexander, Member

Disability Support Pension – Impairment Table – Rating under Impairment Table – Continuing inability to work – Sufficient impairment – Impairment rating of 20 points or greater – Permanent, treated and stabilized – Decision under review is affirmed

Taxation

[Cancer and Bowel Research Association Incorporated as trustee for Cancer and Bowel Research Trust and Commissioner of Taxation](#) [2013] AATA 336; 24/5/2013; Deputy President DG Jarvis

Endorsements as tax concession charity and as deductible gift recipient – Revocation of endorsements – Date at which entitlement to endorsement is to be determined – Whether trust deed complied with statutory requirements – Whether purposes for which trust had been established were charitable – Relevance of related party transactions – Whether revocation of endorsements should take effect from a retrospective date – Objection decision in part affirmed, and in part remitted for further consideration – Objection decision that applicant not entitled to endorsement as a health promotion charity remitted for further consideration

[ZZGN and Commissioner of Taxation](#) [2013] AATA 351; 5/4/2013; President D Kerr and Senior Member CR Walsh

Petroleum resource rent tax – Exploration expenditure – Exploration expenditure incurred in relation to a petroleum project – Payments liable to be made in carrying on or providing “operations and facilities involved in or in connection with exploration for petroleum” – Exploration for petroleum in the eligible exploration or recovery area in relation to the project – Permit derived production licence – Production licence – General project expenditure – Operations and facilities preparatory to the activities – feasibility or environmental study – Operations, facilities and other things comprising a petroleum project – Petroleum project – Carrying forward of undeducted expenditure – excluded expenditure – Transferrable expenditure – Transfer of unused exploration expenditure between group companies – Procuring the carrying on of operations by others – Commissioner’s objection decision affirmed in part and set aside in part and remitted to Commissioner for reconsideration in accordance with the Tribunal’s reasons for decision and directions

Veterans' Affairs

[Betts and Repatriation Commission](#) [2013] AATA 346; 28/5/2013; Senior Member JF Toohey and Dr M Couch, Member

Defence service – Accepted back, knees and ankle condition – Morbid obesity – Whether related to service – Standard of proof to Tribunal’s reasonable satisfaction – service diet – Caloric intake – Whether excessive for energy needs – Whether caloric intake could be compensated by physical activity – 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
Tsiamis v Comcare	[2013] AATA 319
Uelese v Minister for Immigration and Citizenship & AAT	[2012] AATA 793

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Salomonn v Migration Agents Registration Authority & AAT	[2013] AATA 146	NSD270/2013
Wynnum Holdings No 1 Pty Ltd & Anor v Commissioner of Taxation	[2012] AATA 616	NSD1570/2012



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