



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

[Anderson and Military Rehabilitation and Compensation Commission](#) [2013] AATA 360; 31/5/2013; Deputy President SD Hotop

Military compensation – Applicant served in Royal Australian Navy ("RAN") from 1988 to 2011 – Applicant claimed compensation for obstructive sleep apnoea ("disease") contracted in 2010 – Disease related solely to incident which occurred in course of RAN service in April 1988 – Applicant's claim disallowed – *Military Rehabilitation and Compensation Act 2004* does not apply to disease – Decision under review affirmed

[Blundell and Military Rehabilitation and Compensation Commission](#) [2013] AATA 387; 7/6/2013; Deputy President PE Hack SC and Deputy President IR Molloy

Service in Australian Regular Army – Psychological condition – Current condition not continuation of earlier accepted psychological condition – Decision under review varied to substitute "adjustment disorder with depressed and anxious mood" as accepted condition in lieu of "acute situational anxiety and depression" and to substitute commencement date of accepted psychological condition – Decision under review otherwise affirmed

Service in Australian Regular Army – Tension headaches – Not caused by accepted back injury – Decision under review affirmed

[Lean and Comcare](#) [2013] AATA 374; 4/6/2013; Deputy President PE Hack SC

Injury – Failure to obtain promotion – Whether disease suffered as result of reasonable administrative action taken in reasonable manner – Decision under review affirmed

[Onorato and Comcare](#) [2013] AATA 383; 6/6/2013; The Hon. B Tamberlin QC, Deputy President and Dr M Couch, Member

Knee injury – Liability denied for permanent impairment and non-economic loss – Lower extremity injury – Whether permanent impairment could be assessed on Comcare Guide – Construction of instructions in Chapter 9 of the Guide – Whether Table 9.7 invalid – Applicability of the American Medication Association Guide – Decision under review affirmed

Health

[Health World Limited and Minister for Health and Ageing](#) [2013] AATA 388; 7/6/2013; Deputy President PE Hack SC, Senior Member RG Kenny and Dr GJ Maynard, Member

Therapeutic goods – Whether advertisement breached legislative scheme – Whether restricted representation – Whether cystitis is a urogenital disease – Whether cystitis is a serious form of urogenital disease – Whether contained correct and balanced statements – Whether contained verified claims – Whether likely to arouse unwarranted and unrealistic expectations – Whether likely to lead to self-diagnosing and inappropriately treating serious disease – Whether likely to mislead – Decision set aside – Initial decision revoked

Immigration and Citizenship

[Chakass and Minister for Immigration and Citizenship](#) [2013] AATA 375; 5/6/2013; Senior Member N Bell

Permanent resident – Application for citizenship – Applicant married to Australian citizen – Applicant does not meet residence requirements – Exercise of discretion – Application of Australian Citizenship Instructions – Whether applicant has a close and continuing association with Australia – Decision under review affirmed

[DSR and Minister for Immigration and Citizenship](#) [2013] AATA 341; 27/5/2013; Senior Member PW Taylor SC

Class BF transitional (permanent) visa – Cancellation – Direction No. 55 – Character test – Discretion to cancel visa – Primary and other considerations – Risk of re-offending – Whether the risk of future harm is unacceptable – Ties to Australia – Interests of minor children – Decision under review set aside

[TVCA and Minister for Immigration and Citizenship](#) [2013] AATA 309; 15/5/2013; Deputy President SE Frost

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 set aside and substituted with a decision that the applicant's visa is not cancelled

Practice and Procedure

[Confidential and Commissioner of Taxation](#) [2013] AATA 382; 6/6/2013; Senior Member E Fice

Request to reopen the hearing – Taxation – Onus of Proof – Failure to call applicant as a witness – The Tribunal's discretion – Procedure of the Court and Tribunal in taxation matters – Impact of reopening the hearing on the correct or preferable decision – Irremediable prejudice – Expedient hearing and disposition – Public interest in a finality in litigation – Deliberate choice not to adduce evidence – Four classes of cases recognised by the courts – Tribunal refuses the request

[TCXG and Director-General of Security and Anor](#) [2013] AATA 377; 5/6/2013; Justice D Kerr, President, Deputy President RP Handley and Senior Member JF Toohey

Judgments, decisions and orders – Security Appeals Division – Whether Tribunal permitted to publish reasons – Whether Tribunal should publish reasons – Risk of

identification of applicant – Pseudonym insufficient to protect identity of applicant – Necessary to redact reasons before publication

Courts and judicial system – Precedent – Tribunal should follow a considered obiter dicta conclusion of a single judge of the Federal Court unless persuaded that conclusion was plainly incorrect

Social Security

[Adian and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 385; 13/5/2013; Senior Member AK Britton

Carer payment and carer allowance – Whether payment or allowance can be backdated – No power under the *Social Security (Administration) Act 1999* (Cth) that has not already been exercised – Whether there has been defective administration – Recommendations to the administrator – Decision under review affirmed

[Curtis and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 386; 7/6/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Parenting payment – Compensation affected payment – Preclusion period – No special circumstances – Decision under review affirmed

[Fiala and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 369; 3/6/2013; Senior Member AF Cunningham

Age pension – Overseas applicant – Not permanent resident at time of lodgement of claim – Overpayments – Debt raised – Applicant knowingly made false statements – No waiver of debt – Decision under review affirmed

[Krivsky and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 372; 13/3/2013; Mr R Perton, Member

Disability support pension – Whether 20 impairment points – Whether condition stabilised and treated – Decision under review affirmed

[Miller and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 366; 31/5/2013; Ms K Hogan, Member

Overpayment of disability support pension – Applicant not qualified for disability support pension during relevant period – Obligation to notify Centrelink of change in circumstances – Applicant owes debt to the Commonwealth – Inappropriate for the debt to be waived or written off – Debt not solely due to administrative error – 10% penalty not imposed – Decision under review

[Stanford and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 370; 3/6/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical impairment from chronic lumbar back pain and systemic generalised psoriasis – Impairment Tables – Conditions fully diagnosed, treated, stabilised and permanent – Overall impairment rating less than 20 points – Applicant

not qualified for disability support pension during the relevant period – Decision under review affirmed

[Toma and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 379; 5/6/2013; Dr K Breen, Member

Disability support pension – Depression – Type 2 diabetes mellitus – Old shrapnel injury – Bilateral inguinal hernias and right varicocele – Right shoulder tendonitis and bursitis – Hypercholesterolaemia – Conditions not fully treated and stabilised and permanent – Decision under review affirmed

Taxation

[Sanctuary Australasia Pty Ltd and Commissioner of Taxation](#) [2013] AATA 371; 4/6/2013; Deputy President SA Forgie

Goods and services tax – Whether applicant for review of reviewable objection decision relating to retention of an amount pending verification of information is a “person ... dissatisfied” with the decision when application lodged after amended assessment issued to effect not entitled to input tax credits claimed – Applicant not such a person – Tribunal does not have jurisdiction to review the decision

WORDS AND PHRASES – “person ... dissatisfied” with a reviewable objection decision

[The Taxpayer and Commissioner of Taxation](#) [2013] AATA 367; 31/5/2013; Senior Member BJ McCabe

Income tax – Shares and rights – Employee share scheme – Commissioner's discretion to allow late election – Issue date of shares – Reasonable care by taxpayer – Remission of penalty – Decision under review affirmed

[Trustee for the Farant Family Trust and Commissioner of Taxation](#) [2013] AATA 358; 30/5/2013; Senior Member CR Walsh

INCOME TAX – PAYG (Pay As You Go) withholding – Whether delivery drivers employees of applicant or independent contractors – Common law meaning of “employee” considered – Whether applicant failed to withhold from the payments it made to the delivery drivers during the relevant periods – Whether applicant liable to an administrative penalty for its failure to withhold from the payments it made to delivery drivers during the relevant periods – Whether the penalty imposed on the applicant by the Commissioner should be remitted in whole or in part – Commissioner's objection decision affirmed

Veterans' Affairs

[Chopping and Repatriation Commission](#) [2013] AATA 362; 31/5/2013; Senior Member K Bean and Professor P Reilly

Veterans' entitlements – Rate of disability pension – Special rate – Whether factors other than accepted disability contributed to veteran being prevented from continuing to undertake remunerative work – Veteran suffering arthritis in knees and shoulders – Veteran carried out a variety of different forms of employment in the period before

ceasing remunerative work – "Alone test" not satisfied – Ameliorating provision also not satisfied – Decision under review affirmed

[Hughes and Repatriation Commission](#) [2013] AATA 373; 4/6/2013; Miss EA Shanahan, Member

Disability pension – Special Rate – Farmer – War-caused conditions of osteoarthritis of the knees and ankles and lumbar spondylosis – No impact of non-accepted conditions on the applicant's work capacity – Criteria for Special Rate satisfied – Decision under review set aside

[James and Repatriation Commission](#) [2013] AATA 376; 5/6/2013; Senior Member RG Kenny

Disability pension – Operational service with Australian Regular Army – Application of Statements of Principles – Diagnosis of conditions – Clinical onset – Reasonable hypotheses of relevant relationship to service raised – Hypotheses disproved beyond reasonable doubt – Alcohol abuse, dysthymic disorder, hypertension and ischaemic heart disease not war-caused – Decision under review affirmed

[Wooten and Repatriation Commission](#) [2013] AATA 384; 6/6/2013; Senior Member BJ McCabe and Dr G Maynard, Member

Service pension – Statement of Principles – Relevant date of clinical onset – 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
Deas & Ors v Issa & Ors	[2013] AATA 292

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Cyonara Snowfox Pty Ltd v Commissioner of Taxation	[2011] AATA 124	[2013] HCASL 80 [2012] FCAFC 177
Bayconnection Property Developments Pty Ltd & Ors v Commissioner of Taxation	[2013] AATA 40	[2013] FCA 440
Christanty v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2012] AATA 497	[2013] HCASL 90 [2013] FCA 33 [2012] FCA 1360



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