



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.

Civil Aviation

[Landers and Civil Aviation Safety Authority](#) [2013] AATA 465; 5/7/2013; Deputy President JW Constance, and Dr K Breen, Member

Medical standard for the issue of class 2 medical certificate – Safety-relevant condition - sequela of a surgical operation – Subdural haematoma – Seizures – Safety of air navigation – Decision under review affirmed

Compensation

[Esber and Australian Postal Corporation](#) [2013] AATA 419; 21/6/2013; Senior Member N Bell, and Dr I Alexander, Member

Compensation for injuries – Notion of whole person impairment – Obligation to pay compensation in the event of a 10% degree of impairment – Use of American Medical Association's Guides to the Evaluation of Permanent Impairment – Decision under review affirmed

[Heylin and Tidewater Marine Australia Pty Ltd](#) [2013] AATA 480; 9/7/2013; Senior Member JF Toohey

Deemed denial of liability – Whether correspondence from applicant's solicitors constituted new claim – Substantial compliance – Whether reconsideration requested within time – Correspondence did not substantially comply with the approved form and was not a new claim

PRACTICE AND PROCEDURE – Whether extension of time should be granted – Relevant principles – Tribunal satisfied extension of time should be granted

[Lombardo and Comcare](#) [2013] AATA 470; 5/7/2013; Professor RM Creyke, Senior Member

Commonwealth Employees – Depressive disorder – Whether contributed to by employment to a significant degree – Whether reasonable administrative action – decision to not offer a redundancy – Failure to obtain a benefit – Whether taken in a reasonable manner in respect of employment – Decision under review affirmed

[McGorlick and Comcare](#) [2013] AATA 477; 9/7/2013; Senior Member J Handley

Applicant employed as a customer services officer with Medicare – The work exposed her to repetitive movements of her neck and upper back – Injury treated conservatively – Finding of C6-C7 cervical disc prolapse on MRI – Contention that the applicant suffered three injuries unrelated to employment – Absence of evidence in support – Employment did contribute to a significant degree – Decision under review set aside

[Morgan and Comcare](#) [2013] AATA 490; 12/7/2013; Miss EA Shanahan, Member

Call centre operator – Dysphonia – Overuse or disuse of voice – Stress – Injury or ailment – Arising out of or in the course of employment – Any significant contribution by employment – Cause of the dysphonia – Persisting symptoms – Minor pathophysiological changes secondary to dysphonia – Decision under review affirmed

[Wood and Comcare](#) [2013] AATA 469; 5/7/2013; Mr S Webb, Presiding Member; and Dr B Hughson, Member

Orders for costs – Request for 100 percent of costs – Nature of decisions under review – Conduct of parties – Compliance with legislative requirements and guidelines – Reasonable expectation that Comcare would adhere to binding guidelines it promulgates – Applicant put to unnecessary costs – Costs award

[ZPFJ and Comcare](#) [2013] AATA 468; 5/7/2013; Senior Member GD Friedman

Employment as customer service officer – Compensable wrist, hand and shoulder injuries – Whether rehabilitation program reasonable – Whether effect of injuries has ceased – Decision under review affirmed

Health

[Anderson and Secretary, Department of Health and Ageing](#) [2013] AATA 436; 1/7/2013; Dr A Frazer, Member

Residential Care Subsidy Principles 1997 – Assets assessment – Value of the home – Decision under review affirmed

Immigration and Citizenship

[Girgis and Minister for Immigration and Citizenship](#) [2013] AATA 481; 9/7/2013; Deputy President RP Handley

Citizenship – Failure to meet general residence requirement – Period of unlawful residence in Australia – Whether Applicant was an unlawful non-citizen due to an administrative error – Whether discretion to treat a person as lawful if unlawfully present – No discretion – Decision affirmed

[Jione and Minister for Immigration and Citizenship](#) [2013] AATA 466; 5/7/2013; 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 – Strong evidence of rehabilitation from independent and authoritative sources – Best interests of minor children – Effect of cancellation on immediate family – Decision under review set aside and substituted with a decision that the applicant's visa is not cancelled

[Kerr and Minister for Immigration and Citizenship](#) [2013] AATA 489; 11/7/2013; Senior Member GD Friedman

United Kingdom – Cancellation of Spouse visa – Convictions for causing serious injury and other offences – Character test – Exercise of discretion – Decision under review affirmed

[Tauariki and Minister for Immigration and Citizenship](#) [2013] AATA 475; 9/7/2013; Professor R Deutsch, Deputy President

Visa cancellation – Does not pass character test – Whether the applicant poses an unacceptable risk to the Australian community – Likelihood of reoffending – Offending linked to alcohol use – Whether applicant likely to remain abstinent – Positive contributions to Australian society – Best interests of minor children – International non-refoulement obligations – Whether the applicant is at risk of significant harm from a non-state actor if deported – Decision under review set aside

Practice and Procedure

[Adediran and Minister for Immigration and Citizenship](#) [2013] AATA 482; 10/7/2013; Senior Member AF Cunningham

Application for citizenship by conferral – Residence requirements not met on the basis applicant in Australia as unlawful non-citizen for six days, Ministerial discretion – Whether administrative error – Visa lodgement procedure not fully explained – Reason for unlawful residence period – Discretion exercised – Decision under review set aside

[Wang and Minister for Immigration and Citizenship](#) [2013] AATA 483; 10/7/2013; Dr P McDermott RFD, Senior Member

Extension of time – Considerations as to whether reasonable in the circumstances – Length of delay – Merits of the application – Application refused

Social Security

[Campbell and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 488; 11/7/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Physical, intellectual or psychiatric impairment – Fully diagnosed, treated and stabilised – Impairment Tables – Impairment rating less than 20 points – Decision under review affirmed

Elkan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 462; 5/7/2013; Senior Member JF Toohey

Age pension – Whether applicant a member of a couple – Applicant and partner financially independent – Tribunal satisfied applicant was a member of a couple – Whether any special reason why applicant should not be treated as a member of a couple – Tribunal not satisfied special reason existed – Decision under review affirmed

EI Rashed and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 484; 11/7/2013; Senior Member JF Toohey

Disability support pension – Schizoaffective disorder – Low back pain – Dermatitis – Whether conditions fully diagnosed, treated and stabilised – Requirements in the Impairment Tables concerning diagnosis of a mental health condition – Psychological condition not diagnosed by medical practitioner according to the Impairment Tables – Back condition not fully diagnosed – Dermatitis not fully stabilised during the relevant period – Decision under review affirmed

Hakim and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 478; 9/7/2013; Ms R Perton, Member

Lump sum compensation – preclusion period – Whether special circumstances exist – Decision under review affirmed

Peters and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 474; 8/7/2013; Senior Member N Isenberg

Lump sum workers' compensation payment – Preclusion period – Whether special circumstances exist to justify the exercise of the discretion to disregard all or part of the compensation payment being made – Unfairness of the strict application of the '50% rule' – Decision under review affirmed

Peterson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 467; 5/7/2013; Dr K Breen, Member

Disability support pension – International agreement with New Zealand – Discogenic lumbar back pain disc – Anxiety and depression – Severe disability – Hours of work capacity – Decision under review affirmed

Von Perger and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 486; 9/7/2013; Professor R Creyke, Senior Member

Family Tax Benefit – Whether Effective Claim Made – Notification of Refusal not Received - Request for Further Information not Received – Effective Claim not made – Decision under review affirmed

Wallis and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 479; 9/7/2013; Dr I Alexander, Member

Disability support pension – 13 week assessment period – Impairment table – continuing inability to work – Fully diagnosed, treated and stabilised – Severe impairment – The decision under review is set aside and substituted by a decision that during the 13 week assessment period Mr Wallis satisfied the requirements of section 91(a), (b) and (c) of the Act and was qualified for DSP

Veterans' Affairs

[Coughlan and Repatriation Commission](#) [2013] AATA 485; 9/7/2013; Professor R Creyke, Senior Member

Claim for Disability Pension due to Cerebral Ischaemia Hypertension and Type II Diabetes Mellitus – Whether the Material Raises a Reasonable Hypothesis that the Claimed Conditions arose out of or were Attributable to Operational Service – Whether the Tribunal is Reasonably Satisfied that the Claimed Conditions arose out of or were Attributable to the Applicant's Eligible War Service or Defence Service – Applicant Unable to Satisfy any of the Relevant Tests – Decision under review is affirmed

[De La Rue and Repatriation Commission](#) [2013] AATA 464; 5/7/2013; Senior Member E Fice

Pension – Sleep Apnoea – Obesity – Clinical onset – Diagnosis – Connection with operational service – Reasonable hypothesis – War-caused – Alcohol – Claimed stressors – Decision under review affirmed

[Dyke and Repatriation Commission](#) [2013] AATA 472; 8/7/2013; Senior Member Dr KS Levy, RFD

Pensions and benefits – Widows' pension – War service – Type of death of the veteran – Hypotheses connecting death with service – Statements of Principle – Deledio steps – Standard of proof – Death not connected to service – Decision under review affirmed

[Hohn and Repatriation Commission](#) [2013] AATA 487; 11/7/2013; Senior Member Dr KS Levy, RFD

Pensions and benefits – Special rate of pension – Relevant remunerative work – Substantial loss of remunerative work – Loss of remunerative work due to accepted war-caused conditions – Loss of salary, wages or earnings due solely to war-caused disability – Decision under review set aside and substituted

[Kendrick and Repatriation Commission](#) [2013] AATA 491; 24/6/2013; Professor R Creyke, Senior Member

Application for Increase in Payment to the Special or Intermediate Rate – Applicant Ceased Working before the age of 65 – Decision under review affirmed

[Wildman and Repatriation Commission](#) [2013] AATA 476; 9/7/2013; The Hon RJ Groom AO, Deputy President

Disability pension – Applicant rendered service in Royal Australian Navy – Death of fellow apprentice and friend in motor vehicle accident – Smoking – Whether ischaemic heart disease was defence-caused – Relevant Statement of Principles does not uphold connection with service – Disease not defence-caused – 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
Salahuddin v Minister for Immigration and Citizenship & AAT	[2013] AATA 1
Wallis v Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education	[2013] AATA 256
Comcare v Dunstan	[2013] AATA 402

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
None finalised		



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