



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

[Conforti and K & S Freighters Pty Ltd](#) [2013] AATA 542; 2/8/2013; Senior Member GD Friedman

Truck driver — Left shoulder injury — Whether work-related — right shoulder injury — Whether physiotherapy reasonably required — Decision under review set aside and substituted

[Georgoulas and National Australia Bank Limited](#) [2013] AATA 553; 8/8/2013; Senior Member JL Redfern and Dr SH Toh, Member

For the reasons given in *Re Maria Georgoulas and National Australian Bank Limited* [2013] AATA 512, the decision under review is set aside and substituted

[Lee and John Holland Pty Ltd](#) [2013] AATA 547; 5/8/2013; Deputy President PE Hack SC and Dr M Denovan, Member

Injury — Shoulder injury — Whether injury or aggravation of injury arose out of or in the course of employment — Symptoms not attributable to workplace incident — Decisions under review affirmed

Immigration and Citizenship

[JXVH and Minister for Immigration, Multicultural Affairs and Citizenship](#) [2013] AATA 550; 6/8/2013; Senior Member AK Britton

Visa application — Protection visa — Character test failed — Ministerial Direction No. 55 — Nature and seriousness of applicant's criminal history — Drug related offences — Whether the applicant poses an unacceptable risk to the Australian community — Likelihood of reoffending — Breach of previous visa conditions — Vulnerability — International non-refoulement obligations — Refugee Review Tribunal decision that the applicant is a person in respect of whom Australia has protection obligations — Impact of visa refusal on the applicant's brother — Decision under review set aside

Practice and Procedure

[Bell and Repatriation Commission](#) [2013] AATA 548; Deputy President PE Hack SC

Jurisdiction — Whether application to Veterans' Review Board was made outside statutory time limit — Whether the Veterans' Review Board had power to review the

decision of the Repatriation Commission — Application dismissed for want of jurisdiction

Social Security

[Cecil and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 556; 8/8/2013; Dr M Denovan, Member

Pensions, benefits and allowances — Disability support pension — Australian residency — Overseas portability — Legislative amendments to maximum periods of portability — Date of effect of amendments — Decision under review affirmed

[Clements and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 561; 9/8/2013; Dr M Denovan, Member

Pensions, benefits and allowances — Disability support pension — Relevant period — Impairment Tables — Fully diagnosed, treated and stabilised — Total impairment rating less than 20 points — Decision under review affirmed

[Eid and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 558; 8/8/2013; Deputy President SA Forgie

Disability support pension — Qualification for pension — Time at which qualification to be determined — Decision under review set aside

PRACTICE AND PROCEDURE — Social security — Purpose of Job Capacity Assessment Reports — Whether intended as determinations, recommendations or evidence — On evidence given no evidentiary weight

PRACTICE AND PROCEDURE — Words and phrases — “taken to have made”

[Hamblion and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 546; 5/8/2013; Deputy President RP Handley and Mr N Gaudion, Member

Age pension — Reduced rate of pension payable to applicant — Applicant's assets held in partially asset-test exempt income stream — Assets rolled over into a different stream — Funds could not be fully withdrawn as portion were in a frozen fund — Whether the rolled over market linked income stream is asset-test exempt — Whether rolled over income stream is a "successor fund" — Whether all assets supporting the partially asset-test exempt income stream were rolled over — Decision under review affirmed

[Pala and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 543; 2/8/2013; Dr A Frazer, Member

Age pension — Member of a couple — Partnered rate — Decision under review affirmed

[Sheremetjev and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 552; 8/8/2013; Senior Member RW Dunne, Professor P Reilly, Member

Pensions, benefits and allowances — Application for disability support pension rejected — Diagnosis of depression, anxiety and ischaemic heart disease — Whether incapacities are fully treated and stabilised — Later primary psychiatric diagnosis — Decision under review affirmed

Taxation

[Harste and Commissioner of Taxation](#) [2013] AATA 544; 2/8/2013; Senior Member G Ettinger

Employment Termination Payment (ETP) — Applicability of tax concession — Whether redundancy — Applicant's claim of discrimination due to age over 65 years at time of receipt of ETP — No discrimination found in application of the tax law — Objection decision under review affirmed

Veterans' Affairs

[Fox and Repatriation Commission](#) [2013] AATA 555; Dr P McDermott RFD, Senior Member, Dr M Sullivan, Member

Pensions and benefits — Lumbar Spondylosis — Satisfaction of Statement of Principles — Decision set aside — Cervical Spondylosis and Osteoarthritis — No evidence of onset of conditions within the time prescribed by the Statement of Principles — Decision under review affirmed

[Hagar and Repatriation Commission](#) [2013] AATA 557; 8/8/2013; Senior Member GD Friedman

Veterans' entitlements — Special rate of pension — Self-employed builder — Whether incapacity from war-caused injuries alone prevented the veteran from undertaking remunerative work — Whether loss of salary or wages or earnings of own account — Whether payments received from income protection insurance constitute earnings — Decision set aside and substituted

[Hopkins and Repatriation Commission](#) [2013] AATA 554; 8/8/2013; Professor RM Creyke, Senior Member; Professor P Reilly, Member, and Lieutenant-Colonel R Ormston (Retd), Member

Disability pension — Application for pension at the special rate — Date of cessation of employment — Whether alone test satisfied — Whether veteran genuinely seeking to engage in remunerative work — Whether service-related incapacity is the substantial cause of the veteran's inability to obtain remunerative work — 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
Summers v Repatriation Commission	[2013] AATA 439
Secretary, Department of Families, Housing, Community Services and Indigenous Affairs v Charlish	[2013] AATA 434
Salomonn v Migration Agents Registration Authority & AAT	[2013] AATA 146
Arifin v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2013] AATA 502

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Rigoli	[2012] AATA 757	[2013] FCA 784
Uelese v Minister for Immigration and Citizenship & AAT	[2012] AATA 793	[2013] FCAFC 86 [2013] FCA 342



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