



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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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.

Civil Aviation

[Bryant and Anor and Civil Aviation Safety Authority](#) [2013] AATA 641; 11/9/2013; Senior Member G Ettinger

Cancellation of individual's Aircraft Engineer Licence and company's Certificate of Approval – Application for stay of decisions – Relevant considerations – Hardship – Public safety – Prospects of success – Stay refused in regard to the cancellation of the individual's Aircraft Engineer Licence – Stay granted with regard to the company's Certificate of Approval

[Green and Civil Aviation Safety Authority](#) [2013] AATA 652; 12/9/2013; Senior Member G Ettinger

Six months suspension of Applicant's private pilot helicopter licence – Applicant claims malice by CASA - Usual principles in stay matters canvassed – Hardship, the safety of air navigation, prospects of success of the substantive application – Stay refused

Compensation

[Clement and Comcare](#) [2013] AATA 638; 9/9/2013; Professor RM Creyke, Senior Member

Commonwealth employees – Rehabilitation program – Whether reasonable to close program – Whether rehabilitation authority should have chosen alternative provider following breakdown of relationship between employee and provider – Application for alternative provider made some 17 years after closure of program – Employee has not been employed since 1994 – Decisions under review affirmed

Health

[Aspen Pharmcare Australia Pty Ltd and Minister for Health and Ageing](#) [2013] AATA 649; 12/9/2013; President Kerr and Senior Member Nicoletti

Therapeutic goods – Cancellation of registration of products containing dextropropoxyphene (DPP) – Whether quality, safety or efficacy is unacceptable within meaning of the *Therapeutic Goods Act* – Previous decision of Tribunal that imposition of conditions would provide acceptable safety – Conditions determined by Tribunal after parties unable to reach agreement

Practice and Procedure – Judgments, decisions and orders – Relevance of prospect of appeal to proposed orders

Social Security

[Arnold and Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education](#) [2013] AATA 640; 10/9/2013; Professor RM Creyke, Senior Member

Entitlement to austudy – Course not an approved course – Whether applicant advised of change of course – Whether debt raised was lawful – Whether debt raised must be waived – Whether debt raised may be written off – Whether debt may be waived for special circumstances – Decision under review affirmed

[Breen and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 639; 9/9/2013; Ms K Hogan, Member

Disability support pension – Whether applicant is an Australian resident – Consideration of factors relevant to residence in Australia - Effective date of cancellation – Decision set aside

[Elisha and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Anor](#) [2013] AATA 653; 13/9/2013; Senior Member J Toohey

Family tax benefit – Percentage of care – Pattern of care – Whether pattern of care changed – Decision under review affirmed

[Ford and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 651; 12/9/2013; Senior Member AK Britton

Disability support pension – Eligibility – Whether claimed conditions result in a continuing inability to work – Decision under review affirmed

[Foster and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 648; 12/9/2013; Dr M Denovan, Member

Pensions, benefits and allowance – Disability support pension – Less than 20 points under the Impairment Tables – Decision affirmed

[Graham and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 650; 12/9/2013; Deputy President RP Handley

Disability support pension – whether applicant's conditions fully diagnosed, treated and stabilised – Applicant's psychiatric condition fully diagnosed, treated and stabilised – Decision under review set aside

[McCormack and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 647; 12/9/2013; Senior Member N Bell

Child Care Benefit – Child Care Rebate – Whether special circumstances prevented the applicant from making an application within 52 weeks – Whether applicant entitled to arrears – Backdating – Decision under review set aside

[Stewart and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 656; 13/9/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Carer allowance – Form of care given – Face-to-face care – Decision under review affirmed

Taxation

[Floorplay Pty Ltd and Commissioner of Taxation](#) [2013] AATA 637; 6/9/2013; Deputy President PE Hack

Whether liable to pay superannuation guarantee charge – Whether employees or independent contractors – Quantum of superannuation guarantee charge – Decision under review set aside and remitted

[Griffiths and Commissioner of Taxation](#) [2013] AATA 643; 11/9/2013; Deputy President Deutsch

Superannuation – Excess contributions tax – Whether non-concessional excess contributions tax can be waived in relation to excess concessional contributions – Special circumstances – Decision affirmed

Veterans' Affairs

[Burgess and Repatriation Commission](#) [2013] AATA 645; 12/9/2013; Dr M Denovan, Member

Benefits and entitlements – Eligibility for pension – Whether applicant was a “member of the Forces” – Applicant did not complete period of service – Not entitled to any benefits – Decision affirmed

[Mitchell and Repatriation Commission](#) [2013] AATA 654; 13/9/2013; Senior Member RG Kenny

Operational service with Australian Army – Death from ischaemic heart disease – Statements of Principles concerning depressive disorder (dysthymic disorder) and ischaemic heart disease – Clinical onset – Reasonable hypothesis of relationship to eligible war service raised – Death war-caused – Decision set aside

[Stuth and Repatriation Commission](#) [2013] AATA 646; 12/9/2013; Senior Member N Bell and Dr I Alexander, Member

Whether suffers from psychiatric condition – Whether condition war caused – Standard of reasonable satisfaction – Decision under review affirmed

[Umstad and Repatriation Commission](#) [2013] AATA 642; 11/9/2013; Dr P McDermott RFD, Senior Member

Pensions and benefits – Defence Service – Atherosclerotic peripheral vascular disease – Satisfaction of Statement of Principles – Decision set aside

Appeals

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
Ueese v Minister for Immigration and Citizenship & AAT	[2012] AATA 793
Anderson v Civil Aviation Safety Authority	[2013] AATA 613

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Forrester v Repatriation Commission	[2012] AATA 846	[2013] FCA 898
Cook v Cook & Thales Australia Limited & ComCare	[2013] AATA 67	VID186/2013

Recent developments

This section of the Bulletin contains information about recent legal changes that affect the AAT or other important developments.

Revised Guide to the Workers' Compensation Jurisdiction and New Practice Directions

The AAT is introducing some changes to practice and procedure to promote effective case management and the timely progress of applications for review of Commonwealth workers' compensation decisions.

The AAT is taking steps to clarify its expectations as to how applications will progress in this jurisdiction. In particular, the Tribunal will issue a notice at the commencement of each review setting out how the review will proceed, including what parties are expected to do prior to the first conference to ensure it is as effective as possible. The notice will also give an indication of the months by which the Tribunal will aim to hold any conciliation or hearing in order to try to finalise the application within 12 months of lodgement.

The AAT has also issued two new practice directions.

- The Practice Direction relating to the Use of Video Surveillance Material sets out when parties will usually be required to lodge and exchange such material in proceedings in the Tribunal. The general requirement to disclose video surveillance material on which a party intends to rely in advance of a hearing will apply to applications in which a hearing is listed to commence on or after 28 October 2013.
- The Practice Direction relating to Release from the Implied Undertaking sets out when a party will be required to make a request for release from the undertaking that a party may not use a document provided under compulsion in an AAT proceeding for any purpose other than the purpose for which it was given. It also sets out how such requests should be made.

The Tribunal has issued a revised version of its Guide to the Workers' Compensation Jurisdiction which sets out how the Tribunal manages applications for review in the workers' compensation jurisdiction. It incorporates references to the changes referred to above and has otherwise been updated to reflect current practices.

Copies of the Guide and the practice directions are available on the AAT's website: www.aat.gov.au/LawAndPractice.htm.

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