



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

[Marcelli and Military Rehabilitation and Compensation Commission](#) [2013] AATA 789; 8/11/2013; Deputy President SD Hotop and Dr A Frazer, Member

Commonwealth employees – Member of the Defence Force – Applicant served in Royal Australian Navy (RAN) from September 1993 to April 1996 – Applicant discharged from RAN on medical grounds by reason of attention deficit disorder – Applicant claimed compensation for manic depression/bipolar affective disorder in 2011 – Applicant has suffered attention deficit disorder and bipolar affective disorder – Applicant has not suffered post-traumatic stress disorder – Applicant's attention deficit disorder and bipolar affective disorder not causally related to RAN service – Neither attention deficit disorder nor bipolar affective disorder a compensable injury – Decision under review affirmed

[Meaney and Comcare](#) [2013] AATA 815; 15/11/2013; Senior Member RM Creyke

Commonwealth Employees – Adjustment reaction – Other contributing factors - Whether contributed to by employment to a significant degree – Decision under review affirmed

[Smith and Comcare](#) [2013] AATA 796; 30/10/2013; Senior Member RG Kenny

[Walshe and Comcare](#) [2013] AATA 812; 15/11/2013; Senior Member RM Creyke, Dr B Hughson, Member

Commonwealth employees – Employed as bus driver – Impact of non-employment factors on injury – Aggravation of condition – Whether condition significantly contributed to by employment – Decision set aside and substituted

Corporations

[Murphy and Australian Securities and Investments Commission](#) [2013] AATA 810; 15/11/2013; Senior Member G Ettinger

Registration of auditors – Registration refused – Whether Applicant satisfied all components of auditing competency standard – Whether Applicant had prescribed practical experience – Whether different considerations apply where an applicant practices in a country area – Decision affirmed

Customs

[Forsyth and Chief Executive Officer of Customs](#) [2013] AATA 793; 6/11/2013; Mr S Webb, Member

Jurisdiction – Application for review of decision to impose duty – Payment of duty on importation – Not established that duty paid under protest – Application for refund of duty – No decision made in respect of the application for refund – No jurisdiction

Immigration and Citizenship

[Gentile and Minister for Immigration and Border Protection](#) [2013] AATA 814; 15/11/2013; Dr P McDermott RFD, Senior Member

Application for Citizenship by Conferral – Whether the Applicant has a close and continuing association with Australia – Decision under review affirmed

[Makasa and Minister for Immigration and Border Protection](#) [2013] AATA 790; 8/11/2013; The Hon B Tamberlin QC, Deputy President

Visa cancellation – Failure to pass character test – Substantial criminal record – Discretion to cancel applicant's visa – Ministerial Direction No 55 – Discretion – Whether conduct in respect of which there has been an acquittal can be considered by Tribunal – Role of the Tribunal – Whether Tribunal can or should make finding in respect of such conduct – Protection of the Australian community – Seriousness and nature of the relevant conduct – The risk conduct may be repeated – Best interests of minor children – Decision under review set aside and substituted with a decision that the applicant's visa should not be cancelled

Practice and Procedure

[Cambridge International College \(Vic\) Pty Ltd and Australian Skills Quality Authority and Anor](#) [2013] AATA 805; 13/11/2013, Deputy President SA Forgie

EDUCATION PROVIDERS – Identification of respondents – Two reviewable decisions in single document – Identify source of power exercised in making each decision

[Davey and Australian Electoral Commission and Anor](#) [2013] AATA 794; 11/11/2013; Deputy President JW Constance

Joinder applications – Whether interests of the joinder applicants are affected by the decision – Tribunal's discretion to make applicants parties to the proceedings

[Kruger and Secretary, Department of Social Services](#) [2013] AATA 806; 13/11/2013; Deputy President PE Hack SC

Application fee not paid – Whether application fee payable – Cancellation of parental leave pay – Whether decision under social security law – Application dismissed

Social Security

[Bennington and Secretary, Department of Social Services](#) [2013] AATA 792; 6/9/2013; Senior Member GD Friedman

Eight Week Unemployment Non Payment Period – Social Security Appeals Tribunal Substituted Decision – Applicant Cannot Achieve More Favourable Outcome – Application Frivolous – Dismissed under s 42B(1)

[Duley and Secretary, Department of Social Services](#) [2013] AATA 803; 13/11/2013; Deputy President SD Hotop

Age pension – Applicant given notice to provide statement of income – Applicant did not comply with notice – Age pension cancelled – Applicant made fresh claim for age pension – Age pension granted to applicant with effect from date of claim – Applicant's age pension correctly cancelled – Age pension not payable to applicant in period from cancellation to fresh claim – Decision under review affirmed

[Eveans and Secretary, Department of Social Services](#) [2013] AATA 809; 14/11/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Whether 20 impairment points – Whether continuing inability to work – Decision affirmed

[Goonewaradana and Secretary, Department of Social Services](#) [2013] AATA 795; 11/11/2013; Deputy President K Bean

Debt – Overpayment – Whether applicant was entitled to obtain social security payments at the relevant time – Debts correctly raised – Effect of reparation order on discretion to waive – Whether provision for waiver in special circumstances applicable in circumstances where applicant had been convicted of making a false statement in connection with the payments – Convictions relevant to issue of 'knowingly making a false statement' but not necessarily conclusive – No special circumstances – Whether debts arose solely from administrative error – Decision under review affirmed

[Horsfield and Secretary, Attorney-General's Department](#) [2013] AATA 811; 15/11/2013; Senior Member RG Kenny

Benefits and entitlements – Claim for Australian Government Disaster Recovery Payment (AGDRP) – No egress from property to roadway because of floodwater – Applicant's property and place of residence thereon not flooded – Access to neighbours' properties available – Applicant not stranded in his place of residence – Applicant not adversely affected by a major disaster – Applicant not qualified for an Australian Government Disaster Recovery Payment (AGDRP) – Decision under review affirmed

[House and Secretary, Department of Social Services](#) [2013] AATA 791; 8/11/2013; Ms K Hogan, Member

Application for Newstart Allowance – Applicant qualified for Newstart Allowance – Income maintenance period applied – Whether payments constituted leave or termination payments – Whether income maintenance period can be shortened due to severe financial hardship – Decision varied

[Norman and Secretary, Department of Social Services](#) [2013] AATA 797; 12/11/2013; Senior Member N Bell

Disability support pension – DSP – Impairment tables – Applicant does not meet impairment rating requirement – Decision under review affirmed

[Pye and Secretary, Department of Social Services](#) [2013] AATA 801; 13/11/2013; Mr S Webb, Member

Disability support pension – Assets test – Divorce – Inheritance – Ownership of assets prior to formalisation of agreed transfer – Undeclared assets – Valuation – Unrealised value – Actual or agreed value – Asset value limit exceeded – Overpayment – Debt – No administrative error – Health and financial difficulties – No special circumstances – Debt cannot be written off or waived – Decision varied

[Smeets and Secretary, Department of Industry](#) [2013] AATA 807; 16/10/2013; Ms K Hogan, Member

Taxation

[Allboat Transport Pty Ltd and Commissioner of Taxation](#) [2013] AATA 808; 14/11/2013; Dr P McDermott RFD, Senior Member

Withholding tax – Incorrect reporting – Administrative penalty – Not appropriate to remit penalty in part or in full – Objection decision affirmed

[Snugfit Australia Pty Ltd and Commissioner of Taxation](#) [2013] AATA 802; 13/11/2013; Deputy President JW Constance

Goods and Services Tax – Whether supply of product is GST-free – Medical aids and appliances – Essential character test – Decision under review set aside

[Trustee for the Grewal Property Trust and Commissioner of Taxation](#) [2013] AATA 788; 8/11/2013; Senior Member RW Dunne

Goods and services tax – Input tax credits – Audit of business activity statements – Requirement to keep records of indirect tax transactions, including records of creditable acquisitions – Assessment of GST net amount – Applicant not entitled to input tax credits claimed during the relevant period – Burden of proof – Objection decision under review varied in part

Veterans' Affairs

[Campbell and Repatriation Commission](#) [2013] AATA 798; 12/11/2013; Senior Member N Bell

Claim for war widow's pension – Operational service – Whether veteran's service led to death – A reasonable hypothesis raised for prostate cancer – What is the earliest date of effect – Decision under review set aside

[Deslandes and Repatriation Commission](#) [2013] AATA 800; 13/11/2013; Dr M Denovan, Member

Pensions and Benefits – Defence service with Royal Australian Navy – Statement of Principles Concerning Lumbar Spondylosis – No connection between defence service and Lumbar Spondylosis – Decision under review affirmed

[Hoath and Repatriation Commission](#) [2013] AATA 799; 12/11/2013; Senior Member AK Britton

Widows' pension – Where hypothesis must be upheld by more than one Statement of Principles – Where the identified hypothesis relies on a number of sub-hypotheses – Whether the veteran was suffering from a “clinically significant anxiety disorder” – Decision affirmed

[Krepp and Repatriation Commission](#) [2013] AATA 786; 7/10/2013; Senior Member GD Friedman

Veterans' and Military Compensation – Service Pension/Income Support Supplement/Pension Bonus Scheme – Overpayment of Income Support Supplement – Debt Owed To The Commonwealth – Deb Recovery – Decision Under Review Affirmed

[Lansom and Repatriation Commission](#) [2013] AATA 813; 15/11/2013; Dr M Denovan, Member

Service pension – Special rate of pension – Whether applicant ceased remunerative work for reasons other than his war-caused incapacity – Decision under review affirmed

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 |
|--|---------------------------------|
| May v Military Rehabilitation and Compensation Commission | [2011] AATA 886 |
| GB Shaw & Co Pty Ltd trading as Dalby Air Maintenance v Civil Aviation Safety Authority | [2013] AATA 736 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|---|--|--|
| Pala v Secretary, Department of Families, Housing, Community Service and Indigenous Affairs | [2013] AATA 543 | PEG254/2013 |
| Arifin v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs | [2013] AATA 502 [2013] AATA 429 | [2013] FCA 1162 |
| FTZK v Minister for Immigration and Citizenship & AAT | [2012] AATA 312 | [2013] HCATrans 270 [2013] FCAFC 44 |
| Sea Shepherd Australia v Commissioner of Taxation & AAT | [2012] AATA 520 | [2013] HCATrans 271 [2013] FCAFC 68 |

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