



## 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

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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.

### Corporations

[Hickie and Australian Securities and Investments Commission](#) [2013] AATA 853; 29/11/2013; Senior Member E Fice

Banning order – Australian financial services licence – Failure to comply with conditions on financial services licence – Registered managed investment schemes – Duties of responsible entity – Duties of officer of responsible entity – Failure to exercise reasonable care and diligence – Failure to comply with financial services law – Failure to maintain an insurance policy covering professional indemnity and fraud – Failure to maintain membership of one or more external disputes resolution schemes – Failure to lodge annual audited financial reports – Duties of auditors – Appointment and dismissal of auditors – Audit of compliance plans – Failure to lodge breach reports – Bases for making a banning order – Decision affirmed

### Intellectual Property

[Sunesis Pharmaceuticals Inc and Anor and Commissioner of Patents](#) [2013] AATA 858; 2/12/2013; Deputy President JW Constance

PATENTS – Request for extension of time for asking for an examination of patent request - Whether request for examination of patent request is a relevant act required to be done within a certain time – If extension of time granted, will the requirements of the Act, as they stood before the day on which amendments to the Act took effect, apply – Decision under review affirmed

### Practice and Procedure

[Browne and Commissioner of Taxation](#) [2013] AATA 866; 15/11/2013; Deputy President SE Frost

Taxation – Respondent suggests resolution of dispute under s 42C of the AAT Act – Effect of proposed s 42C decision is to allow the Applicant's objection in full – Applicant reluctant to agree to s 42C terms – Alternative application by Respondent for remittal under s 42D of the AAT Act – Respondent foreshadows entirely favourable outcome for Applicant – Applicant opposes remittal – Applicant dissatisfied with reasons – Whether remittal under s 42D should be ordered only in rare instances – Discretion to be exercised according to the circumstances of the particular case, confined only by the subject matter and object of the section – Appropriate to exercise the discretion in this case – Decision remitted for reconsideration

[Byrt and Commissioner of Taxation](#) [2013] AATA 862; 27/11/2013; Deputy President PE Hack SC

Failure to proceed with application – Failure to comply with direction by Tribunal – Application dismissed

[Gillard and Minister for Health](#) [2013] AATA 859; 2/12/2013; Deputy President PE Hack SC

Jurisdiction – Australian Register of Therapeutic Goods – Annual registration charge – Low value turnover exemption – No application for exemption made within prescribed time – No decision to refuse exemption – Tribunal has no jurisdiction

[Novotel Barossa Valley Resort and Australian Trade Commission](#) [2013] AATA 860; 2/12/2013; Deputy President K Bean

Application for Export Market Development Grant – Applicant initially contended its investors were in a partnership – Partnership argument subsequently withdrawn – Respondent sought Tribunal direction that the investors be notified they had been held out as partners – Whether necessary for Tribunal to contact investors for purposes of proceedings – Whether Tribunal has an obligation to notify investors of arguments previously advanced on their behalf – Tribunal declined to make direction sought

## **Social Security**

[Calder and Secretary, Department of Social Services](#) [2013] AATA 869; 6/12/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Psychiatric impairment – Impairment Tables – Conditions not fully treated, stabilised and permanent in the relevant period – No allocation of impairment rating – Applicant not qualified for disability support pension during the relevant period – Decision under review affirmed

[Crawford and Secretary, Department of Social Services](#) [2013] AATA 872; 7/11/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Disability support pension – Number of impairment points – Participation in a Program of Support – Decision under review affirmed

[Linard and Secretary, Department of Social Services](#) [2013] AATA 871; 6/12/2013; Dr K Breen, Member

Disability support pension – Ulcerative colitis – Migraine – Gastritis – Conditions not fully treated and stabilised and permanent – Decision affirmed

[Morrow and Secretary, Department of Social Services](#) [2013] AATA 857; 2/12/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Rent assistance – Whether 'ineligible homeowner' – Not qualified to receive rent assistance – Application to Social Security Appeals Tribunal (SSAT) made more than 13 weeks after notice of decision of authorised review officer (ARO) – Decision affirmed

[Pacuraru and Secretary, Department of Social Services](#) [2013] AATA 870; 6/12/2013; Senior Member RG Kenny

Benefits and entitlements – Disability support pension – Applicant legally married – At the relevant time, applicant and wife not living separately and apart on a permanent or indefinite basis – Overpayment of disability support pension – Debt due to the Commonwealth – No basis for writing off or waiving debt – Decision affirmed

[Ryan and Secretary, Department of Social Services](#) [2013] AATA 863; 2/12/2013; Dr A Frazer, Member

Disability support pension – Qualification requirements – Applicant has impairments – Impairment rating less than 20 points – Applicant not qualified for disability support pension – Decision under review

[Salangsang and Secretary, Department of Social Services](#) [2013] AATA 856; 2/12/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical and psychiatric impairment – Impairment Tables – Evidence of conditions being fully diagnosed, treated, stabilised and permanent – Overall impairment rating of 20 points – No rating of 20 points from any one Table – No severe impairment – Program of support not undertaken – Qualifying requirements for disability support pension not met during the relevant period – Decision under review affirmed

[Sim and Secretary, Department of Social Services](#) [2013] AATA 861; 3/12/2013; Senior Member RG Kenny

Benefits and entitlements – Austudy payment – Failure to advise change of enrolment in timely manner – Activity test not satisfied – Overpayment a debt due to the Commonwealth – No basis for writing off debt – No circumstances making it desirable to waive debt – Decision affirmed

[Yakubova and Secretary, Department of Social Services](#) [2013] AATA 851; 29/11/2013; Senior Member AK Britton

Pensions and benefits — Disability support pension — Wide-spread spondylopathy — Anxiety/depression — Migraine — Polycystic ovary syndrome — Uterine fibroids — Whether conditions can be assigned a rating under the Tables for the Assessment of Work-related Impairment for Disability Support Pension — Whether conditions are diagnosed, fully stabilised and fully treated — Decision under review affirmed

## **Taxation**

[Desalination Technology Pty Ltd and Commissioner of Taxation](#) [2013] AATA 846; 29/11/2013; Deputy President SE Frost

INCOME TAX – Research and development expenditure – Tax offset – Whether expenditure "incurred" – Decision set aside – Objection allowed in full

[VGGL and Commissioner of Taxation](#) [2013] AATA 867; 5/12/2013; Professor R Deutsch, Deputy President

Goods and services tax – Whether the applicant was entitled to claim certain input tax credits – Liability for administrative penalty – Whether penalty should be remitted – One objection decision affirmed and the other varied

[Xu and Commissioner of Taxation](#) [2013] AATA 855; 2/12/2013; Senior Member D Letcher QC

Income tax – Withdrawal of superannuation funds – Whether release conditions satisfied – Inclusion of superannuation benefit in assessable income – Penalty – Decision affirmed

## Veterans' Affairs

[De Chauffepie and Repatriation Commission](#) [2013] AATA 865; 3/12/2013; Deputy President SD Hotop, Dr J Chaney, Member

Veterans' entitlements – Disability pension – Applicant served in Australian Army from 1971 to 1991 – Applicant's Army service included eligible defence service – Applicant suffered from acne and abdominal symptoms during service – Applicant treated with isotretinoin for acne during service – Applicant contracted ulcerative colitis in 2010 – Statement of Principles concerning inflammatory bowel disease (SoP) – SoP does not uphold contention that ulcerative colitis on balance of probabilities connected with defence service – Applicant's ulcerative colitis not defence-caused – Decision under review affirmed

[Herbertson and Repatriation Commission](#) [2013] AATA 868; 5/12/2013; Dr M Denovan, Member

Pension bonus scheme – Whether applicant satisfied the work test – Non-accruing member – Application not within lodgement period – Pension bonus not payable – Decision under review affirmed

[Longhorn and Repatriation Commission](#) [2013] AATA 854; 29/11/2013; Dr P McDermott RFD, Senior Member

Service pension – Special rate of pension – Whether applicant ceased remunerative work for reasons other than his war-caused incapacity – Whether applicant is suffering a loss of salary or wages, or of earnings – Decision affirmed

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## Appeals

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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

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CASE NAME	AAT REFERENCE
<b>FTZK v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2012] AATA 312</a>
<b>Repatriation Commission v Holden &amp; AAT</b>	<a href="#">[2013] AATA 778</a>
<b>BHFC v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2013] AATA 166</a>
<b>IOOF Holdings Limited v Commissioner of Taxation &amp; AAT</b>	<a href="#">[2013] AATA 239</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Salahuddin v Minister for Immigration and Border Protection &amp; AAT</b>	<a href="#">[2013] AATA 1</a>	<a href="#">[2013] FCAFC 141</a> <a href="#">[2013] FCA 588</a>
<b>P v Child Support Registrar &amp; M</b>	<a href="#">[2013] AATA 426</a>	<a href="#">[2013] FCA 1312</a>
<b>Kline v Official Secretary to the Governor-General &amp; AAT</b>	<a href="#">[2012] AATA 247</a>	<a href="#">[2013] HCA 52</a> <a href="#">[2012] FCAFC 184</a>

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