



## 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.

### Compensation

[Treen and Comcare](#) [2013] AATA 22; 18/1/2013; Deputy President SD Hotop

Commonwealth employee – Applicant suffered hearing loss – Applicant's hearing loss a compensable injury – Applicant's hearing loss has resulted in permanent impairment – Applicant's degree of whole person permanent impairment is 19.25% – Respondent liable to pay permanent impairment compensation to applicant on that basis – Decision under review varied

### Freedom of Information

[O'Donoghue and Migration Review Tribunal](#) [2013] AATA 29; 22/1/2013; Deputy President SD Hotop

Request by applicant for access to documents – Access to documents given to applicant – Transfer of documents and request for access to another agency – Documents subsequently identified as also falling within scope of applicant's request for access – All reasonable steps now taken to identify and locate documents – Access to documents subsequently identified and located should be given to applicant – Decision under review varied

[O'Donoghue and Department of Immigration and Citizenship](#) [2013] AATA 30; 22/1/2013; Deputy President SD Hotop

Request by applicant for access to documents – Access to some documents given to applicant – Access to exempt documents not given to applicant – Documents affecting personal privacy – Documents relating to business affairs – Access to additional documents should be given to applicant – Decision under review varied

## **Immigration and Citizenship**

[Vaetoru and Minister for Immigration and Citizenship](#) [2013] AATA 33; 23/1/2013; Senior Member RG Kenny

Class TY Subclass 444 Special Category (Temporary) Visa – Cancellation – New Zealand citizen – Entry to Australia in 2004 at age 25 years – Substantial criminal record of serious offences and failure to comply with court orders – Failure to pass character test – Discretion to cancel visa – Relevant considerations – On balance, primary and other considerations favour cancellation of visa – Preferable decision is that visa be cancelled – Decision under review affirmed

[Wirihana and Minister for Immigration and Citizenship](#) [2013] AATA 27; 10/1/2013; Miss EA Shanahan, Member

Cancellation of visa – Failure to pass character test – Substantial criminal record – 15 charges including armed robbery, assault, drug dealing and drug use – Sentenced to 4 years and 6 months imprisonment – Early parole – Exemplary prisoner – Applicant now aged 20 – Arrived in Australia at age 14 – Entire immediate family resident in Australia – Low risk of recidivism – Not unacceptable risk to the Australian community – Extended support in Australia – Few opportunities and support in country of birth and citizenship – Ministerial Direction No 55 – Decision under review set aside

## **Practice and Procedure**

[O'Donohue and Australian Electoral Commission](#) [2013] AATA 23; 21/1/2013; Hon B Tamberlin, QC, Deputy President

Judgments, decisions and orders – Whether Tribunal has the power or jurisdiction to review an earlier decision of the Tribunal (differently constituted) finding no jurisdiction – Whether jurisdiction decision is a decision for the purposes of s 44 of the Tribunal Act – Tribunal's power to reinstate – Application dismissed

## **Social Security**

[Fajloun and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 32; 23/1/2013; Senior Member JF Toohey

Assurance of support – Whether assurance of support debt should be waived – Whether special circumstances – Whether breakdown of relationship amounted to special circumstance – Whether delay in notifying applicants of social security payments a special circumstance – Decision under review affirmed

[Godfrey and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 31; 23/1/2013; Senior Member AF Cunningham

Disability support pension – Overseas claimant – Living in Indonesia with wife and son – Not Australian resident – Decision under review affirmed

[McCormick and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 36; 24/1/2013; Dr P McDermott, RFD, Senior Member

Pensions, benefits and allowances – Disability support payment – Compensation affected payment – Preclusion period – Discretion to reduce preclusion period – No special circumstances – Decision under review affirmed

[Whitehead and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 34; 23/1/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Age pension – Applicant not resident in Australia when claim made – Claim taken not to have been made – Decision under review affirmed

## **Taxation**

[Dickinson and Commissioner of Taxation](#) [2013] AATA 25; 21/1/2013; Professor R Deutsch, Deputy President

Income tax – Capital gains tax – Sale of shares pursuant to share purchase agreement – Whether scrip for scrip roll-over relief available – Section 124-780 – Whether share exchanges resulted from single arrangements – Whether pre-contractual offers, dealings or circumstances form part of final arrangement – Whether participation on substantially same terms in share exchanges were available to owners of interests of a particular type – Decision under review set aside

[Fabig and Commissioner of Taxation](#) [2013] AATA 26; 21/1/2013; Professor R Deutsch, Deputy President

Income tax – Capital gains tax – Sale of shares pursuant to share purchase agreement – Whether scrip for scrip roll-over relief available – Section 124-780 – Whether share exchanges resulted from single arrangements – Whether pre-contractual offers, dealings or circumstances form part of final arrangement – Whether participation on substantially same terms in share exchanges were available to owners of interests of a particular type – Decision under review set aside

[Tom and Commissioner of Taxation](#) [2013] AATA 28; 22/1/2013; Professor R Deutsch, Deputy President

GST – Entitlement to refund – Notification of entitlement – Notification to be lodged within four years of relevant tax period – Revised BAS accepted as notification – Notification lodged out of time – Decision under review affirmed



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