



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.

Child Support

[Confidential and Child Support Registrar](#) [2013] AATA 81; 19/2/2013; Senior Member RG Kenny

Departure prohibition order – No grounds requiring revocation of departure prohibition order – No grounds for exercising discretion to revoke departure prohibition order – Use of the Guide – Decision under review affirmed

Compensation

[Collett and Australian Postal Corporation](#) [2013] AATA 56; 1/2/2013; Senior Member K Bean

Commonwealth Employees – Lumbar disc rupture and cauda equina syndrome – Whether injury occurred in course of employment – Whether applicant's account of circumstances of injury should be accepted – Balance of the evidence establishes injury occurred in course of applicant's employment – Respondent liable to pay compensation – Effects of earlier aggravation of back injury subsumed by disc rupture – Question of liability to pay medical expenses and incapacity payments associated with that aggravation proposed to be remitted to respondent – Decisions under review set aside

[Kennedy and Comcare](#) [2013] AATA 77; 15/2/2013; Senior Member GD Friedman

Commonwealth Employees – Employment as domestic cleaner – Back pain – Aggravation of compensable condition – Whether effect of injury has ceased – Decision under review affirmed

[Khoshaba and Linfox Armaguard Pty Ltd](#) [2013] AATA 89; 21/2/2013; Senior Member N Bell and Dr I Alexander, Member

Commonwealth Employees – Whether applicant suffered injury to back – Whether pre-existing degenerative back condition – Aggravation – Whether fall aggravated pre-existing condition – Whether failure to disclose history of back condition in employment form – Decision under review affirmed

[Smith and John Holland Pty Ltd](#) [2013] AATA 73; 15/2/2013; Deputy President SD Hotop and Dr J Chaney, Member

Employee of licensed corporation – Applicant suffered anosmia and loss of taste – Applicant claimed compensation – Anosmia and loss of taste a compensable injury – Incapacity for work – Amount of compensation payable to applicant – Applicant's normal weekly earnings – Amount applicant able to earn in suitable employment – Amount of compensation payable to applicant for incapacity for work is nil – Applicant suffered major depressive disorder – Applicant claimed compensation – Applicant's anosmia and loss of taste contributed significantly to applicant's major depressive disorder – Applicant's major depressive disorder a disease – Applicant's major depressive disorder a compensable injury – Respondent liable to pay compensation to applicant for major depressive disorder – Decision under review regarding liability to pay compensation for

incapacity for work affirmed – Decision under review regarding liability to pay compensation for major depressive disorder set aside

Customs and Excise

[Calvista Australian Pty Ltd and Director of the Classification Board](#) [2013] AATA 91; 21/2/2013; Senior Member AK Britton and Mr S Webb, Member

Prohibited imports – Refusal of permission to import objectionable goods – Scope of power to grant permission – Power to grant permission is not confined to a particular objectionable good – Permission may apply to a class of objectionable goods – Requirement for certainty and specificity in respect of goods to be imported – Discretion-requirement to consider all relevant matters – Purpose of importation – reputation – Ability to comply with conditions – Previous importations of objectionable goods without permission – Possible breaches of State law – Decision under review affirmed

Immigration and Citizenship

[Grage and Minister for Immigration and Citizenship](#) [2013] AATA 84; 20/2/2013; Senior Member P McDermott RFD

Application for Australian citizenship by descent – Neither parent was an Australian citizen at date of birth of applicant – Decision under review affirmed

[Kalm and Minister for Immigration and Citizenship](#) [2013] AATA 87; 21/2/2013; Senior Member E Fice

Visa refusal – Working Holiday (temporary) (class TZ 417) visa – Substantial criminal record – Character test – Protection of the Australian community – Nature and seriousness of the conduct – Risk to the Australian community – Best interests of minor children – International non-refoulement obligations – Estonian citizen – Undisclosed criminal offences – Decision under review affirmed

[Mong and Minister for Immigration and Citizenship](#) [2013] AATA 92; 22/2/2013; Senior Member Kenny

Class TY Subclass 444 Special Category (Temporary) Visa – Cancellation – New Zealand citizen – Entry to Australia at age 21 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

[Pesamino and Minister for Immigration and Citizenship](#) [2013] AATA 90; 21/2/2013; Senior Member GD Friedman

New Zealand citizen – Cancellation of Special Category (Temporary) visa – Convictions for causing serious injury and other offences – Character test – Exercise of discretion – Decision under review affirmed

Practice and Procedure

[Arifin and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 85; 25/1/2013; Senior Member AK Britton

Extension of time application – Merits of substantive application – Explanation of delay – Application refused

SOCIAL SECURITY – Disability support pension – Debt – Sole cause administrative error

[McDonnell and Repatriation Commission](#) [2013] AATA 74; 15/2/2013; Senior Member N Bell

Scope of review – Whether to limit claims and scope for review – Review of previous Tribunal decision – Whether appropriate to adopt findings of previous decision – previous Tribunal decision adopted – Direction for review to be determined for future progress

Social Security

[Jovicic and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 82; 20/2/2013; Senior Member JF Toohy

Disability support pension – Epilepsy, osteoarthritis of the cervical and lumbar spine, chronic fatigue syndrome, ulcer – Whether conditions treated and stabilised – Whether applicant had continuing inability to work – Decision under review affirmed

[Kalaba and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 69; 14/2/2013; The Hon RJ Groom AO, Deputy President

Newstart allowance – Allowance cancelled in 2008 and again in 2011 – Delay in seeking review of the 2008 cancellation – Section 109(2) of the *Social Security (Administration) Act 1999* applied – No entitlement to arrears – Applicant again granted newstart allowance in May 2011 – Newstart allowance cancelled in November 2011 because of a failure to attend appointment and to enter into an Employment Pathway Plan – Not satisfied that proper notice was given of appointment – Applicant prepared to enter into plan – Did not fail to enter plan – 2008 cancellation decision affirmed – 2011 cancellation decision is set aside

[Younan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 88; 21/2/2013; Senior Member N Bell

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

Taxation

[Batchelor and Commissioner of Taxation](#) [2013] AATA 93; 22/2/2013; Deputy President R Deutsch

Assessable Income – Ordinary income – Assessable recoupment – Assessable capital gain – Character in the hands of the recipient – There must be a gain – Gains derived periodically – Carrying on a business – Reimbursement of deductible expenditure – Objection decision varied

Veterans' Affairs

[Berry and Repatriation Commission](#) [2013] AATA 78; 19/2/2013; Senior Member GD Friedman

Veterans' entitlements – Lumbar spondylosis and intervertebral disc prolapse – Diagnosis – Whether conditions related to service – Decision under review affirmed

[McDonald and Repatriation Commission](#) [2013] AATA 80; 19/2/2013; Senior Member RG Kenny

Disability pension – Operational service with Australian Regular Army – Application of Statement of Principles – No diagnosis of posttraumatic stress disorder in relation to an event on service – Condition not war-caused – 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
Commissioner of Taxation v Dickinson	[2013] AATA 25
Commissioner of Taxation v Fabig	[2013] AATA 26
Kline v Official Secretary to the Governor-General & AAT	[2012] AATA 247
Allen v Secretary, Department of Education, Employment and Workplace Relations & Secretary, Department of Families, Housing, Community Services and Indigenous Affairs & AAT	[2012] AATA 912
Comcare v Lilley	[2011] AATA 472
Freeman v Fleetmaster Services Pty Ltd	[2013] AATA 38
Bayconnection Property Developments Pty Ltd & Ors v Commissioner of Taxation	[2013] AATA 40

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Meaney	[2012] AATA 352	ACD52/2012
Pacific Tug (Australia) Pty Ltd v Hingston	[2011] AATA 761	[2013] HCATrans 26
	[2012] AATA 277	[2012] FCAFC 119
Comcare v O'Connell	[2012] AATA 532	[2013] FCA 111
Blewitt v Telstra Corporation	[2012] AATA 25	[2013] FCA 110
Sami v Minister for Immigration and Citizenship & AAT	[2012] AATA 459	[2013] FCA 106



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