



## 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

[Capper and Military Rehabilitation and Compensation Commission](#) [2013] AATA 103; 28/2/2013; Senior Member RG Kenny

Service in the Royal Australian Air Force – Claim for headaches – No evidence to support relationship between headaches and service – Respondent not liable to pay compensation for incapacity or impairment – Decision under review affirmed

[McDonald and Comcare](#) [2013] AATA 105; 28/2/2013; Deputy President JW Constance

*Safety, Rehabilitation and Compensation Act 1988* (Cth) – Electromagnetic hypersensitivity syndrome – Chronic adjustment disorder with depressed moods – Migraine – Permanent impairment – Whether applicant suffered an injury – Whether ailment contributed to, to a significant degree by employment – Whether aggravation of ailment contributed to, to a significant degree by employment – Perception – Immaterial Whether symptoms have determinable pathological cause or purely psychogenic – Decisions under review set aside

[Spaul and Comcare](#) [2013] AATA 107; 28/2/2013; Senior Member GD Friedman

Adjustment disorder – Termination of employment – Increase in salary – Normal weekly earnings – Whether increase is an increment – Decision set aside and substituted

### Customs

[BR Williams Customs and Freight Forwarding Pty Ltd and Chief Executive Officer of Customs](#) [2013] AATA 100; 27/2/2013; Senior Member JL Redfern

Licensing – Customs broker – Cancellation of licence – Whether cancellation “necessary” for the protection of revenue or for the purpose of ensuring compliance with the Customs Acts – Standard of proof – Decision set aside and substituted with reprimand

### Practice and Procedure

[Von Stieglitz and Comcare](#) [2013] AATA 108; 28/2/2013; Mr M Hyman, Member

Summons to produce books, documents or things – Claim of legal professional privilege – Validity of claim where summons procedure not followed – Distinction between privilege claim by summonsed party and party to proceedings

## Social Security

[Berry and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 102; 22/2/2013; Ms K Hogan, Member

Newstart Allowance – Whether the applicant has made persistent failures in relation to participation failures – Connection failures – Reconnection failures – Breakdown in relationship with job network provider – no reasonable excuse for connection and reconnection failures – Decision under review affirmed

[Confidential and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 97; 22/2/2013; Ms K Hogan, Member

Disability support pension – Whether applicant is an Australian resident – Consideration of factors relevant to residence in Australia – Decision under review set aside

[Parker and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 101; 27/2/2013; Senior Member K Bean

Disability support pension – Qualification – Whether applicant's medical conditions are fully diagnosed, investigated, treated and stabilised – Whether rateable impairments attract a rating of at least 20 points – Applicant's rateable impairments do not attract 20 points – Decision under review affirmed.

[Pavilupillai and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 109; 28/2/2013; Mr C Ermert, Member

Newstart allowance – Assets test – Deemed claim date – Assets test limits – Hardship provisions – Income-earning assets – Part-payment of allowance – Decision under review affirmed

[Pavlis and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 106; 28/2/2013; Mr C Ermert, Member

Disability support pension – Start date – Qualifying period – Whether impairment – Assessment of impairment – Impairment Tables – Whether 20 points or more – Decision under review affirmed

[S and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 113; 1/3/2013; Hon RJ Groom AO, Deputy President

Carer Allowance – Child suffering developmental delay – Whether there is present a qualifying rating of "intense" – Whether score for assessment of care load is 85 or more – Score of 70 – Qualifying rating of "intense" not satisfied – Decision under review affirmed

## Taxation

[Confidential and Commissioner of Taxation](#) [2013] AATA 110; 28/2/2013; Senior Member FD O'Loughlin

Excess contributions tax – Concessional superannuation contributions – Non concessional superannuation contributions – Valid notice of intention to claim

deductions for contributions – Discretion to disregard excess contributions – Discretion to treat contributions as attributable to another year – Decision under review affirmed

[Confidential and Commissioner of Taxation](#) [2013] AATA 111; 28/2/2013; Senior Member FD O'Loughlin

Excess Contributions Tax – Concessional superannuation contributions – Non concessional superannuation contributions – Valid notice of intention to claim deductions for contributions – Discretion to disregard excess contributions – Discretion to treat contributions as attributable to another year – Decision under review affirmed

[Cooper Bros Holdings Pty Ltd trading as Triple R Waste Management and Commissioner of Taxation](#) [2013] AATA 99; 26/2/2013; Deputy President FJ Alpins

Customs And Excise – Duties Of Excise – Private Rulings – Used oil drained from automotive sumps, machinery and transmissions – Contaminants and water removed from used oil and sold as fuel oil – Whether fuel oil “manufactured” or “produced” – whether “liquid hydrocarbon products derived through a recycling, manufacturing or other process” – Consideration by Tribunal of additional information not considered when ruling made – Tribunal’s jurisdiction

[Flood and Commissioner of Taxation](#) [2013] AATA 96; 22/2/2013; Senior Member J Handley

Applicant applied to extend time to object to her income tax assessment for the year ended 30 June 2005 – Capital gains tax liability incurred in 2005 – Objection not raised – Debts forgiven by her in 2010 – A private ruling in 2012 found she had incurred a capital loss over the debts forgiven – Applicant contended the private ruling supported a finding that the 2005 assessment should be reversed – Applicant did not satisfy the onus under s 14ZZK of *Taxation Administration Act 1953* – the events of 2005 and 2012 were unrelated – Applicant did not have an arguable case – Decision under review affirmed.

## **Transport**

[Bempasciusto and Minister for Infrastructure and Transport](#) [2013] AATA 104; 22/2/2013; Senior Member S Penglis, Mr W Evans, Member

Motor vehicle regulations – Importation of used car – Whether structural integrity of vehicle had been reduced by crash damage – Decision under review 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
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**None lodged**

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
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**None finalised**

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