



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 1 and Social Security Appeals Tribunal and Anor](#) [2013] AATA 125; 11/3/2013; Ms K Hogan, Member

Assessment of percentage of care by child support agency during a care period – Non-compliance with court order – Significant change in level of care – Whether reasonable action taken to reach new agreement – Whether a determination is possible under section 52 or section 53 of the *Child Support (Assessment) Act 1989* – If determination is possible under both sections 52 and 53 determination must be made under section 53 – Other party did not make the daughter available to the applicant – No determination possible under section 53 – Significant difference between ordered care and actual care – No reasonable excuse for non-compliance with ordered care – no determination possible under section 52 – No change in level of care under court order – Decision under review set aside

Compensation

[Hey and Comcare](#) [2013] AATA 131; 13/3/2013; Professor RM Creyke, Senior Member

Commonwealth employees – Anxiety and depression – Adjustment disorder – Bullying and harassment in the workplace – Date of injury – Whether there was contribution to a significant degree by employment – Impact of non-employment factors on injury – Predisposition to development or aggravation of injury – Whether reasonable administrative action taken in a reasonable manner – Decision under review is affirmed

Defence

[Bracks and Director, Australian Defence Force Reserves Employer Support Payment Scheme](#) [2013] AATA 129; 13/3/2013; Hon. B Tamberlin QC, Deputy President

Employer support payment scheme – Whether Director has power to review earlier decisions – Whether Applicant employed full-time or part-time for the purposes of the Defence (Employer Support Payments) Determination 2005 – Appropriate rates of payment – Decision under review affirmed

Education and Research

[Ivy Education Group Pty Ltd and Australian Skills Quality Authority](#) [2013] AATA 138; 14/3/2013; Deputy President RP Handley

National Vocational Education and Training Regulator Act 2011 (Cth) – Registered Training Organisation – Standards for NVR Registered Training Organisations (RTO) (the Standards) – Non-compliance by RTO with the Standards – Registration of RTO cancelled prior to the time it could apply for renewal of its registration – Application to the Administrative Appeals Tribunal for review of the decision of the Australian Skills Quality Authority – Decision under review affirmed

[Miller and Secretary, Department of Industry, Innovation, Science, Research and Tertiary Education](#) [2013] AATA 128; 13/3/2013; Senior Member G Ettinger

Student assistance – Withdrawal from units after census date – Application for remission of debt in relation to units enrolled in – Whether special circumstances exist – Decision under review affirmed

Immigration and Citizenship

[Do and Minister for Immigration and Citizenship](#) [2013] AATA 124; 8/3/2013; Ms R Perton, Member

Citizen of Vietnam – Cancellation of Return Resident (Class 155) visa – Convictions for drug related and other offences – Character test – Exercise of discretion – Decision set aside and remitted

Practice and Procedure

[Lofts and Comcare](#) [2013] AATA 122; 8/3/2013; Deputy President JW Constance

Jurisdiction – *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Liability to compensate under s 14(1) – Whether Tribunal has jurisdiction under section 16(1) – Strict compliance with written compensation claim not required – Tribunal not precluded from dealing with a claim properly before review officer – Whether Comcare liable for expenses submitted after reviewable decision made – Tribunal must make decision on the basis of material before it at the time of its decision – Tribunal has jurisdiction to determine claim for compensation under section 16

Social Security

[Bendovska and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 134; 24/1/2013; Professor T Sourdin, Member

Pension, benefits, allowances – Disability support pension (DSP) – Earlier decision to reject claim as failed to meet residence requirements – Applicant granted DSP – Application for claim to be backdated to earlier rejection date – Failure to apply for review of decision within 13 weeks – Decision under review affirmed

Perez and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Anor [2013] AATA 68; 11/2/2013; Senior Member JF Toohey

Family Tax Benefit – Percentage of care – Shared care percentage – Decision under review set aside

Phillip and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 135; 14/3/2013; Senior Member JF Toohey

Age pension – Whether applicant a member of a couple – Applicant and partner financially independent – Tribunal satisfied applicant a member of a couple – Whether any special reason applicant should not be treated as a member of a couple – Decision under review affirmed

Stewart and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 120; 8/3/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Carer allowance – Care – Special care needs not related to care receiver's bodily functions or to sustaining life – Decision under review affirmed

Wang and Secretary, Department of Education, Employment and Workplace Relations [2013] AATA 139; 15/3/2013; Senior Member N Isenberg

Whether person is a member of a couple – consideration of all of the circumstances of the relationship – Decision under review affirmed

Warrington and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 132; 13/3/2013; Dr K Breen, Member

Disability support pension – Depression and anxiety– Congenital shortened leg – Hip and back pain – Conditions not fully treated or stabilised – Conditions not permanent – Decision under review affirmed

Taxation

Carter and Commissioner of Taxation [2013] AATA 141; 14/3/2013; Senior Member CR Walsh

Failure by applicant to keep business records for florist business in such a way as to enable the tax liability of her business to be readily ascertained by the Commissioner – Default income tax and goods and services tax assessments by Commissioner - cost of goods sold (COGS) small industry benchmark range (of 44% to 54%) applicable to florist retail industry applied by Commissioner – Whether conduct of Commissioner in applying relevant COGS benchmark was inconsistent with s 99 of the Constitution – Commissioner's general conduct in carrying out audit of applicant at issue - administrative penalties – Income tax shortfall amounts – GST shortfall amounts – Shortfall amounts caused by “recklessness” of the applicant – Decision under review affirmed

[Hadrian Fraval Nominees Pty Ltd and Commissioner of Taxation](#) [2013] AATA 127; 12/3/2013; Senior Member E Fice

Research and development activities – Research and development expenditure – Research and development deductions – Tax offset – The meaning of expenditure incurred – Expenditure incurred not at arm's length – Eligible feedstock expenditure – Substantiation of research and development expenditure – Burden of proof – Depreciation assets – Company books as evidence – Penalties – Remission of penalties – Decision under review affirmed

[Mayhew and Commissioner of Taxation](#) [2013] AATA 130; 13/3/2013; Dr G Hughes, Member

Residency – Permanent place of abode – Taxpayer transferred to Middle East in December – Leased family home in Brisbane to son – Wife did not join taxpayer permanently for 16 months – Decision set aside and substituted

[The Private Tutor and Commissioner of Taxation](#) [2013] AATA 136; 14/3/2013; Deputy President SE Frost

GST – GST registration – Enterprise – Whether a taxpayer not carrying on an enterprise can have a positive net amount – Input tax credits – GST registration not cancelled – Input tax credit claims disallowed

Trade and Commerce

[Elton and Australian Trade Commission](#) [2013] AATA 133; 14/3/2013; Senior Member E Fice

Export Market Development Grant – Substantiation of expenses – Substantiation for amounts claimed – Samples given for an eligible purpose – Genuinely carrying on a business in Australia – Eligibility for a grant – Approved promotional purposes – Eligible products – Eligible goods – Exporter of Australian wine – Marketing visits – The provision of free samples of wine – Claimed travel expenditure – 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 finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Baranski v Comcare	[2012] AATA 115	[2013] FCAFC 31 [2012] FCA 925



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