



# AAT Bulletin

ISSUE NO. 13/2013

2 APRIL 2013

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](mailto:aatweb@aat.gov.au).

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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

[May and Australian Securities and Investments Commission](#) [2013] AATA 180; 28/3/2013; Deputy President PE Hack SC

Officers and employees – Officer of two or more corporations that have been wound up – Disqualification from managing corporations – Whether satisfied disqualification justified – Public interest considerations – Relevance of breach of directors’ statutory duties – Relevance of competence to hold office of director – Two companies regarded as single entity – Failure to comply with taxation obligations – Failure to meet responsibilities as director caused loss of revenue – Discretion to disqualify enlivened – Neither applicant’s incompetence nor public interest considerations warrant period of disqualification – Decision under review set aside

### Customs

[Target Australia Pty Ltd and Chief Executive Officer of Customs](#) [2013] AATA 176; 28/3/2013; Deputy President SA Forgie

Tariff concession order – Goods subject of application described as bags for shopping and carrying personal items – Substitutable goods claimed – Uses to which goods subject of the application are put or can be put – Uses to which goods claimed to be substitutable are put or can be put – Goods claimed to be substitutable produced in Australia in ordinary course of business – Substitutable goods exist – Decision under review affirmed

Practice and procedure – Whether regard can be had to additional evidence or whether Tribunal confined to information had at time of the decision’s internal review – Whether Tribunal confined to reviewing decision on internal review – Task to review operable decision – Additional material lodged more than 28 days prior to hearing – No denial of procedural fairness in allowing material into evidence

### Immigration and Citizenship

[“BHFC” and Minister for Immigration and Citizenship](#) [2013] AATA 166; 25/3/2013; Deputy President DG Jarvis

Visa application – Character test – Direction 55 – Substantial criminal record – Held that pattern of frequent non-violent offences of dishonesty constituted an unacceptable risk of harm to the Australian community – Substantial risk of re-offending – Non-refoulement obligations owed to applicant – Asserted delay in processing visa application – Time spent in Australia not relevant to discretion to refuse visa – Decision under review affirmed.

[Rangiwai and Minister for Immigration and Citizenship](#) [2013] AATA 171; 27/3/2013; Professor R Deutsch, Deputy President

Visa cancellation – Character test – Substantial criminal record – Protection of the Australian community – Nature and seriousness of the conduct – Risk to the Australian community – Strength, duration and nature of ties to Australia – Best interests of any minor children – Effect of cancellation on immediate family in Australia – Impact on Australian business interests – Impact on members of the Australian community if visa not cancelled – Impediments if applicant removed from Australia to home country – Set aside and substituted so that the Minister's discretion to cancel is not exercised

## **Social Security**

[Hale and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 165; 22/3/2013; Deputy President RP Handley

Age pension – Asset-reduced rate of payment – Whether sufficient notice of relevant decision and appeal rights given – Whether sufficient evidence was available to revalue shares – Decision set aside

[McCoy and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 177; 28/3/2013; Senior Member Dr KS Levy, RFD

Pensions, benefits and allowances – Carer payment – Carer allowance – Date of enquiry for payment of benefit – Date of lodgement of claim – Valid lodgement of claim form later than prescribed time limit – No provision for backdating grant to date of enquiry – Decision under review affirmed

[Reese and Secretary, Department of Industry, Innovation, Science, Research and Tertiary Education](#) [2013] AATA 179; 28/3/2013; Dr KS Levy, RFD, Senior Member

Pensions, benefits and entitlements – Austudy – Whether applicant qualified for 25% concessional study-load – Whether applicant undertaking at least one quarter but less than three quarters of the normal study-load for the particular course – Early completion of course – Decision under review affirmed

[Richards and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 167; 8/2/2013; Senior Member GD Friedman

Compensation preclusion period – Whether able to waive any part of the compensation preclusion – Whether special circumstances exist – Decision under review affirmed

[Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Naunton](#) [2013] AATA 169; 27/3/2013; Senior Member AF Cunningham

Age pension – Amending legislation from 20 September 2009 – Transitional divisions – Casual work – Work bonus provisions lead to higher rate of pension under new rules – Transitional provisions no longer applicable – Decision of SSAT set aside

[The Applicant and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 158; 22/3/2013; Senior Member G Ettinger

Disability Support Pension – The Applicant suffers serious psychiatric illness originating some 15 years ago – She has received various income support payments including Newstart allowance, and student allowances – Her application before this Tribunal was to backdate her Disability Support Pension – Application of the legislation does not permit that – Decision of the SSAT affirmed

[Threadgold and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 168; 27/3/2013; Senior Member AF Cunningham

New start allowance – Recovery of overpayments – Failure to declare full amount of income earned – Whether overpayments recoverable – No special circumstances – Decision under review affirmed

## **Taxation**

[Trantino and Commissioner of Taxation](#) [2013] AATA 178; 28/3/2013; Dr G Hughes, Member

Excess non-concessional contributions – Multiple deductions from associated employers – Whether employer contributions are to be aggregated when determining applicant's transitional non-concessional contributions cap – Decision under review affirmed

## **Veterans' Affairs**

[Green and Repatriation Commission](#) [2013] AATA 174; 27/3/2013; Deputy President JW Constance, and Miss EA Shanahan, Member

Widow's pension – Whether death was war-caused – Suicide – Malignant neoplasm of the larynx – Depressive disorder – Whether material raises an hypothesis connecting the death with the circumstances of operational service – Smoking and supply of cigarettes to members of the Australian Defence Forces – Sub hypotheses – Decision under review set aside

[Vu and Repatriation Commission](#) [2013] AATA 172; 27/3/2013; Mr C Ermert, Member

Member of the armed forces of the Republic of Vietnam – Whether service in period of hostilities – Whether faced hostile forces of the enemy – No documentary evidence of service – Credibility of statements and evidence – 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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Comcare v Burke	<a href="#">[2012] AATA 706</a>	ACD77/2012
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VN Railway Pty Ltd v Commissioner of Taxation	<a href="#">[2012] AATA 178</a>	<a href="#">[2013] FCA 265</a>
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Hurn v Minister for Immigration and Citizenship & AAT	<a href="#">[2013] AATA 79</a>	NSD499/2013
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