



## 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

[As-Sayeed and Comcare](#) [2013] AATA 210; 10/4/2013; Professor RM Creyke, Senior Member and Dr P Wilkins, Member

Commonwealth employee – Low back pain – Lumbar spine – Whether arising out of or in the course of employment – Whether significantly contributed to by employment – Whether a nature and conditions claim – Whether liability excluded under s 7(7) of *Safety, Rehabilitation and Compensation Act 1988* – Decision under review set aside and substituted

[Cowell and Telstra Corporation Limited](#) [2013] AATA 208; 10/4/2013; Dr KS Levy, RFD, Senior Member

Injury or disease suffered due to employment – No liability due to reasonable administrative action – Employment in call centre – Customer feedback for quality control – Workplace performance assessment – Exception for reasonable appraisal of employees' performance – Undertaken in a reasonable manner – Decision under review affirmed

[Csont and Military Rehabilitation and Compensation Commission](#) [2013] AATA 215; 11/4/2013; Deputy President SD Hotop and Dr J Chaney, Member

Military compensation – Applicant served in Australian Army from March 2007 to June 2008 – Applicant sustained service injuries/service diseases – Compensation payable to applicant for service injuries/service diseases – Applicant suffered permanent impairment resulting from service injuries/service diseases – Degree of whole person permanent impairment – Combined impairment rating – Lifestyle rating – Decision under review affirmed

[Tuck and Comcare](#) [2013] AATA 206; 10/4/2013; Deputy President SD Hotop

Commonwealth employee – Applicant employed by Australian Taxation Office – Applicant sustained bilateral carpal tunnel syndrome – Applicant claimed compensation – Applicant's bilateral carpal tunnel syndrome not significantly contributed to by employment – Applicant's bilateral carpal tunnel syndrome not a disease – Applicant's bilateral carpal tunnel syndrome not an injury – Respondent not liable to pay compensation to applicant for bilateral carpal tunnel syndrome – Decision under review affirmed

## Health

[Aspen Pharmacare Australia Pty Ltd and Minister for Health and Ageing](#) [2013] AATA 197; 5/4/2013; Justice Kerr, President and Dr Nicoletti, Senior Member

Therapeutic goods – Cancellation of registration of products containing dextropropoxyphene (DPP) – Whether quality, safety or efficacy is unacceptable within meaning of the *Therapeutic Goods Act* – Whether undertaking to ensure via Special Access Scheme the availability of an otherwise unsafe therapeutic good a relevant consideration in respect of safety and efficacy – Imposition of conditions to provide acceptable safety

## Immigration and Citizenship

[Yao and Minister for Immigration and Citizenship](#) [2013] AATA 209; 10/4/2013; Senior Member JF Toohey

Citizenship – Former citizen of Peoples Republic of China – Australian citizenship acquired by conferral – Application to renounce Australian citizenship – Whether Tribunal satisfied that applicant is a Chinese citizen – Whether Tribunal satisfied that applicant would become a Chinese citizen immediately after the approval – No evidence of either – Whether renunciation would render applicant stateless – Decision under review affirmed

## Jurisdiction

[Mehmood and Commonwealth Director of Public Prosecutions](#) [2013] AATA 204; 15/3/2013; Senior Member AK Britton

Courts and judicial system – Jurisdiction of Tribunal – Decision made by Commonwealth Director of Public Prosecutions – No jurisdiction

## Practice and Procedure

[Reeve and Commissioner of Taxation](#) [2013] AATA 212; 11/4/2013; Professor RM Creyke, Senior Member

Reviewable objection decision – Objection decision – Stay order sought – Whether Tribunal has jurisdiction to issue a stay order for an objection decision – Application refused

## Social Security

[Al Azraki and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 205; 9/4/2013; Miss EA Shanahan, Member

Disability support pension – Depression and/or post-traumatic stress disorder – Chronic pain syndrome – Motor vehicle accident – Conditions not fully diagnosed, treated and

stabilised – Questionable impairment rating of 20 points – Decision under review affirmed

**Crerar and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 207; 10/4/2013; Dr K Breen, Member

Disability support pension – End stage renal failure – Hypertension with left ventricular hypertrophy – Conditions permanent – 15 impairment points – Decision under review affirmed

**Gregson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 213; 11/4/2013; Dr KS Levy, RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Cancellation of pension – Australian residency requirements – Exceptions allowing for unlimited portability – No exceptions applicable – Decision under review affirmed

**Kuric and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 219; 12/4/2013; The Hon RJ Groom AO, Deputy President

Disability support pension – International Social Security Agreement between Australia and Croatia – Whether applicant “severely disabled” – Applicant qualified to received disability support pension – Decision under review set aside

**Naumoski and Secretary, Department of Education, Employment and Workplace Relations** [2013] AATA 214; Deputy President RP Handley; 11/4/2013

New Start Allowance – Whether income maintenance period should be applied – Severe financial hardship – Unavoidable or reasonable expenditure – Termination payment – Leave payment – Period to which the payment relates – Redundancy payment – Reasonable costs of living – Decision under review set aside and matter remitted to the Respondent

**Richardson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 220; 12/4/2013; The Hon RJ Groom AO, Deputy President

Disability support pension – Whether applicant has a continuing inability to work – Whether actively participated in program of support – Decision under review affirmed

## **Taxation**

**Wray-McCann and Commissioner of Taxation** [2013] AATA 196; 4/4/2013; Deputy President SE Frost

Income tax – Assessable income – Whether amounts transferred overseas should form part of assessable income – Deductions – Whether expenses associated with removal of furniture between private dwellings deductible – Administrative penalty – Intentional disregard – Whether taxpayer not liable to pay penalty pursuant to s 8ZE of *Taxation*

*Administration Act 1953* – Taxpayer prosecuted under *Financial Transactions Reports Act 1988* – Whether “act or omission” that caused penalty is the same as “act or omission” constituting “taxation offence” – Construction of s 8ZE – Objection decisions affirmed, except where concessions made by Commissioner

## **Veterans' Affairs**

[Grant and Repatriation Commission](#) [2013] AATA 200; 8/4/2013; Deputy President SD Hotop and Brigadier AG Warner, Member

Veterans' entitlements – Eligibility to claim disability pension – Applicant served in Royal Australian Air Force from March 1948 to April 1958 – Applicant not a “veteran” – Applicant did not render “British nuclear test defence service” – Applicant not a “member of the Forces” – Decision under review affirmed

[McKenzie and Repatriation Commission](#) [2013] AATA 216; 11/4/2013; Deputy President JW Constance

Widow's pension – Whether death was war-caused – Cardiomyopathy – Malignant neoplasm of the oesophagus – 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 – Decision under review affirmed

[Sist and Repatriation Commission](#) [2013] AATA 201; 8/4/2013; Senior Member J Handley

Applicant engaged in service in Vietnam for six months in 1967 – A Vietnamese child was struck and killed by a truck in which the applicant was a passenger at a refuse tip – Local persons in the vicinity of the truck became agitated and aggressively held lengths of timber whilst waving their arms – Applicant experienced a life-threatening event and was threatened with a weapon – Applicant experienced category 1A stressors – Anxiety state is war-caused – Reviewable decision in part set aside

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## Appeals Finalised

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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
<b>Stewart v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2013] AATA 120</a>
<b>Minister for Immigration and Citizenship v Tokorua Pareina &amp; AAT</b>	<a href="#">[2013] AATA 115</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Comcare v Heffernan</b>	<a href="#">[2012] AATA 581</a>	<a href="#">[2013] FCA 299</a>
<b>Mulholland v Australian Electoral Commission &amp; Zegenhagen</b>	<a href="#">[2011] AATA 879</a>	<a href="#">[2013] HCASL 43</a> <a href="#">[2012] FCAFC 136</a>
<b>SZOQQ v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2010] AATA 662</a>	<a href="#">[2013] HCA 12</a> <a href="#">[2012] FCAFC 40</a> <a href="#">[2011] FCA 1237</a>

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