



AAT Bulletin

ISSUE NO. 16/2013

22 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.

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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.

Compensation

[Laviano and Comcare](#) [2013] AATA 229; 16/4/2013; Senior Member AK Britton and Dr Alexander, Member

Commonwealth employees – Anxiety adjustment disorder and depressed mood – Whether the employee suffered from a disease – Whether the employee suffered a recognised psychiatric illness – Whether the employee suffered a psychiatric disorder or a condition “outside the bounds of normal mental functioning” – Decision under review affirmed

Freedom of Information

[Keefe and Australian Government Solicitor](#) [2013] AATA 202; 3/4/2013; Senior Member BJ McCabe

Australian Government Solicitor – 'Agency' under FOI Act – Decision not reviewable by Tribunal

Immigration and Citizenship

[DJYZ and Minister for Immigration and Citizenship](#) [2013] AATA 218; 11/4/2013; Ms R Perton, Member

Cancellation of visa – Conviction for sexual offence – Character test – Exercise of discretion – Decision under review affirmed

[Guo and Migration Agents Registration Authority](#) [2013] AATA 225; 15/4/2013; Senior Member E Fice

Migration Agent – Breaches of the code of conduct – Caution issued – Subclass 457 visa – Business sponsor – Approved nomination – Withdrawal of a nomination – Claimed conflict of interest – Immigration assistance – Immigration legal assistance – Misleading information provided to the department – Agency and fiduciary duties – Sub-agency – Reputation and integrity of the migration agent advice profession – Fees and charges obligations – Failure to maintain proper records – Client's dependence on the agent's knowledge and experience – Obligation to provide information to Immigration when certain events occur – Sponsorship undertakings – Decision under review set aside and substituted

[Tran and Minister for Immigration and Citizenship](#) [2013] AATA 235; 17/4/2013; Senior Member D Letcher, QC

Cancellation of visa – Does not pass character test – Substantial criminal record – Drug offence – Imprisonment of 12 months or more – Application of Direction 55 – Primary considerations – Other considerations – Discretion not to cancel not exercised – Decision affirmed

Social Security

[Ahmed and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 227; 15/4/2013; Senior Member JF Toohey

Disability support pension – Blindness and astigmatism – Impairment rating five points – Whether post-traumatic stress disorder and depression diagnosed, treated and stabilised – Evidence of chronic post-traumatic stress disorder and depression – Applicant had not sought treatment for either at the relevant time – Decision under review affirmed

[Habashi and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 232; 17/4/2013; Senior Member N Bell

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

[Kanyilmaz and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 224; 15/4/2013; Dr P McDermott, RFD, Senior Member

Pensions, benefits and allowances – Age pension – Unlimited portability of pension – Australian residency regained after absence – Absent within two years after regaining residency status – Age pension not payable while absent – Decision under review affirmed

[MacDonald and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 233; 17/4/2013; Dr K Breen, Member

Disability support pension – Back injury – Crush fracture of the second lumbar vertebra – Hypertension – Conditions permanent – 10 impairment points – Decision under review affirmed.

[Seaborn and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 228; 16/4/2013; Senior Member G Ettinger

Newstart Allowance – Whether the Applicant failed to accept an offer of suitable employment – Whether serious failure – Whether reasonable excuse – Decision under review affirmed

Sullivan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 234; 17/4/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Disability support pension – Not fully diagnosed, treated and stabilised – Impairment tables – No permanent conditions – No impairment rating – Decision under review affirmed

Trade and Commerce

Fairlight Instruments Pty Ltd and Australian Trade Commission [2013] AATA 231; 17/4/2013; Senior Member N Bell

Industry assistance – Export market development grant – Whether new business a continuation of previous business – Whether old and new business are similar – Decision under review set aside and remitted

Veterans' Affairs

La and Repatriation Commission [2013] AATA 222; 12/4/2013; Deputy President JW Constance

South Vietnamese Air Force – Qualifying service – Period of hostilities – Whether incurred danger from hostile forces of the enemy before Australian Forces withdrew – Obligations under section 33(1AA) of the *Administrative Appeals Tribunal Act 1975* – Decision under review set aside.

Parkes and Repatriation Commission [2013] AATA 226; 16/4/2013; Senior Member RG Kenny

Pensions and benefits – Widow's pension – Operational service with Royal Australian Navy – Death from alcoholic cirrhosis – Statements of Principles – Clinical onset – Heavy alcohol consumption unrelated to eligible service – Reasonable hypothesis of relationship to eligible service not raised – Death not war-caused – Decision under review affirmed

Appeals Finalised

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
Comcare v Lofts	[2013] AATA 122
Frugtniet v Tax Practitioners Board	[2013] AATA 188
Commissioner of Taxation v Altnot Pty Ltd	[2013] AATA 140
Agapis v Government of Western Australia Plumbers Licensing Board	[2013] AATA 187
Commissioner of Taxation v AAT & Walters & Walters	[2013] AATA 151

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Soames v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2012] AATA 107	[2013] FCA 260
Commissioner of Taxation v Nash	[2012] AATA 719	[2013] FCA 336
Uelese v Minister for Immigration And Citizenship & AAT	[2012] AATA 793	[2013] FCA 342



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