



## 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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## Statements of Principles

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This section of the Bulletin provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

### New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **8 May 2013**.

[Aortic stenosis – No. 21 of 2013](#)

[Aortic stenosis – No. 22 of 2013](#)

[Goitre – No. 23 of 2013](#)

[Goitre – No. 24 of 2014](#)

[Chronic gastritis and chronic gastropathy – No. 25 of 2013](#)

[Chronic gastritis and chronic gastropathy – No. 26 of 2013](#)

[Hyperthyroidism and thyrotoxicosis – No. 27 of 2013](#)

[Hyperthyroidism and thyrotoxicosis – No. 28 of 2013](#)

[Hypothyroidism – No. 29 of 2013](#)

[Hypothyroidism – No. 30 of 2013](#)

[Hashimoto's thyroiditis – No. 31 of 2013](#)

[Hashimoto's thyroiditis – No. 32 of 2013](#)

[Graves' disease – No. 33 of 2013](#)

[Graves' disease – No. 34 of 2013](#)

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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

[Hodder and Comcare](#) [2013] AATA 251; 24/4/2013; Dr I Alexander, Member

Injury – Employment contributed to injury to a significant degree – Date of injury – Administrative action – Whether administrative action taken in a reasonable manner – Decision under review affirmed

### Education and Research

[Wallis and Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education](#) [2013] AATA 256; 26/4/2013; Professor RM Creyke, Senior Member

Higher education – Student assistance – Whether ‘special circumstances’ apply – Whether Administration Guidelines constitute government policy for subjects with a pre-1 January 2012 census date – Decision under review affirmed

### Practice and Procedure

[Stewart and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 260; 26/4/2013; Justice Kerr, President

Judgments and orders – Application for confidentiality order following publication of reasons for decision – Appeal filed in Federal Court – Adverse findings made by Tribunal on basis of materials not disclosed to Applicant – Principle that Tribunal documents should be made available to the public – Tribunal subject to supervisory jurisdiction of Federal Court – Limited confidentiality order made

[The Trustee for Oenoviva \(Australia & New Zealand\) Plant and Equipment Trust and Anor and Commissioner of Taxation](#) [2013] AATA 253; 26/4/2013; Deputy President SA Forgie

Taxation – GST – Whether Tribunal has jurisdiction to consider applications for review – Whether Commissioner has made reviewable objection decisions relating to objections made to assessments of indirect taxes or imposition of penalties – No decisions yet made and none deemed to have been made – No jurisdiction

## **Social Security**

### **[Bowring and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#)** [2013] AATA 262; 29/4/2013; Mr P Wulf, Member

Pensions, benefits and allowances – Disability support pension – Cancellation – Continued entitlement to pension – Permanent Impairment – Impairment rating less than 20 points – No continuing inability to work – Decision under review affirmed

### **[Clark and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#)** [2013] AATA 269; 2/5/2013; Dr I Alexander, Member

Disability Support Pension – Rating under Impairment Table less than 20 points – Continuing disability to work – Condition(s) fully documented, diagnosed, investigated, treated and stabilised – Decision under review affirmed

### **[Hull and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#)** [2013] AATA 258; 29/4/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical impairments – Impairment Tables – Some conditions not fully diagnosed, treated and stabilised – Conditions not permanent – Others assessable at nil points under the appropriate tables – Applicant not qualified for disability support pension during the relevant period – Decision under review affirmed

### **[Khawaja and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#)** [2013] AATA 264; 1/5/2013; Senior Member G Ettinger

Pensions – Disability support pension – Qualification – Applicant suffers from various illnesses and conditions – Conditions assessed by way of Job Capacity Assessments – New conditions nominated after application for pension – Whether impairments are rateable under impairment tables – Whether applicant's conditions attract an impairment rating of at least 20 points in the relevant period – Residency requirement – Decision under review affirmed

### **[Lemon and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#)** [2013] AATA 267; 2/5/2013; Senior Member Dr KS Levy, RFD

Pensions, benefits and allowances – Age pension – Rate of pension payable – Self-employed – Date of decision – Date of effect – Decision set aside and substituted

PRACTICE AND PROCEDURE – Facts pertaining to previous decision – Previous decision remitted – Principle of finality – No issue of law identified – Functus officio – No evidence produced – No determination made in regard to previous decision

### **[Newcombe and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#)** [2013] AATA 259; 29/4/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical and psychiatric impairments – Impairment Tables – First condition not fully treated and stabilised – Condition not permanent – Second condition assessed at 10 points under the Impairment Tables – Applicant not qualified for disability support pension during the relevant period – Decision under review affirmed

**Pattinson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 257; 29/4/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Two forms of physical impairment – Impairment Tables – First condition not fully treated and stabilised and not permanent – Impairment for other condition less than 20 points – Applicant not qualified for disability support pension during the relevant period – Decision under review affirmed

**Vella and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 265; 1/5/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Disability support pension – Conditions not fully diagnosed – No impairment rating able to be allocated – Decision under review affirmed

## **Taxation**

**Kuan and Tax Practitioners Board** [2013] AATA 254; 26/4/2013; Deputy President SA Forgie

BAS agent – Registration – Application for renewal of registration as BAS agent granted for period of 12 months – No rejection of application – Tribunal without power to review a decision granting registration

## **Veterans' Affairs**

**Finn and Repatriation Commission** [2013] AATA 266; 1/5/2013; Mr S Webb, Member

Claim for disability pension – Emphysema – Ischaemic heart disease – British nuclear test defence service – Reasonable hypothesis standard of proof – Statements of principles – Smoking – Anticipatory causation – Hypotheses linking claimed diseases with an increase in the rate of smoking prior to an event during eligible service – Hypothesis of anticipatory causation not supported by present materials – Need to consider alternative hypothesis of connection to service – Alternative hypothesis not raised on present materials – Hypotheses not reasonable – Decision under review affirmed

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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>Yao v Minister for Immigration and Citizenship</b>	<a href="#">[2013] AATA 209</a>
<b>Kentish v Commissioner of Taxation; Bond v Commissioner of Taxation; Purvis v Commissioner of Taxation</b>	<a href="#">[2013] AATA 58</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Commissioner of Taxation v Unit Trend Services Pty Ltd</b>	<a href="#">[2010] AATA 544</a>	<a href="#">[2013] HCA 16</a> <a href="#">[2012] FCAFC 112</a>

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