



## AAT Bulletin

ISSUE NO. 19/2013

13 MAY 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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

### CONTENTS

<b>AAT Recent Decisions</b> .....	<b>2</b>
Compensation .....	2
Immigration and Citizenship .....	2
Practice and Procedure .....	3
Social Security.....	3
Taxation .....	3
Transport.....	4
Veterans' Affairs .....	4
<b>Appeals Finalised</b> .....	<b>5</b>
Appeals lodged.....	5
Appeals finalised .....	5

---

## 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

[Rope and Comcare](#) [2013] AATA 280; 8/5/2013; Mr S Webb, Member

Liability accepted for physical and psychological injuries – Depression – Chronic pain – Medical treatment – Meaning of ‘therapeutic treatment’ – Meaning of ‘at the direction of’ – Classes obtained for a therapeutic purpose at the direction of a treating medical practitioner are within the meaning of ‘medical treatment’ – No requirement for a plan to permanently improve the injury – Test of reasonableness – Medical treatment is in relation to the injury and reasonable to obtain in the circumstances – Decision set aside and substituted

### Immigration and Citizenship

[Durani and Minister for Immigration and Citizenship](#) [2013] AATA 273; 6/5/2013; Deputy President Hotop

Visa – Cancellation of visa – Applicant a citizen of India – Applicant arrived in Australia in December 2006 aged 31 years – Applicant convicted of sexual offences in June 2011 – Applicant sentenced to 2 years 4 months imprisonment – Applicant does not pass character test – Discretion to cancel visa – Primary considerations and other relevant considerations on balance weigh against cancellation of visa – Minimal risk of applicant committing serious offence in future – Applicant's risk of future offending not unacceptable – Preferable decision is that visa not be cancelled – Decision under review set aside

[Nguyen and Minister for Immigration and Citizenship](#) [2013] AATA 272; 3/5/2013; Deputy President SA Forgie

Visa – Failure to pass character test – Substantial criminal record – Exercise of discretion whether to cancel visa – Decision under review affirmed

Minister's Direction – International non-refoulement obligations – Principles enunciated by High Court in *SZOQQ v Minister for Immigration and Citizenship*

Practice and Procedure – Determining time at which material given to Minister electronically has been “given” – Whether at least two clear business days before the hearing

[Wiperi and Minister for Immigration and Citizenship](#) [2013] AATA 279; 8/5/2013; Professor R Deutsch, Deputy President

Cancellation of visa – Does not pass character test – Substantial criminal record – Multiple serious offences – Imprisonment of 12 months or more – Application of Direction 55 – Primary considerations – Other considerations – Discretion not to cancel not exercised - Decision under review affirmed

## **Practice and Procedure**

[Elliott and Comcare](#) [2013] AATA 276; 7/5/2013; Professor RM Creyke, Senior Member

Jurisdiction – Whether Tribunal has jurisdiction where no decision has been made by Comcare – Application dismissed

## **Social Security**

[Carapeta and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 285; 10/5/2013; Senior Member AF Cunningham

Age pension – Overseas applicants – Value of assets – Loan to controlled private company – Applicants 100% attributed controllers – Shareholder loan attributed to applicants as an asset – Source of loan from bank and personal loans remain repayable – Attributable assets to be reduced by loans outstanding – Decision under review set aside

[Scanlan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 275; 7/5/2013; Mr P Wulf, Member

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

## **Taxation**

[Healy and Commissioner of Taxation](#) [2013] AATA 281; 7/5/2013; Senior Member CR Walsh

Jurisdiction – Whether objection decision of Commissioner is a decision which is reviewable by Tribunal – Commissioner's reasons for decision on objection failed to address one of the applicant's grounds of objection – Tribunal not bound by Commissioner's reasons for decision – Tribunal's jurisdiction enlivened by notice of objection decision not by reasons for decision attached to that decision

Tax – Deductibility of accounting and legal expenses – Losses or outgoings on annulment of bankruptcy and proof of debt proceedings – Whether losses or outgoings expenditure “incurred” by applicant – Meaning of “incurred” – Whether losses or outgoings incurred in the course of gaining and producing assessable income – Whether losses or outgoings of a capital, private or domestic nature – Whether relevant expenditure was for managing the applicant’s “tax affairs” – Whether relevant expenditure for complying with an obligation imposed on the applicant by a Commonwealth law insofar as that obligation relates to the tax affairs of an entity – Whether tax affairs concerned relate to matters of a capital nature – Objection decision affirmed

## **Transport**

[Lewis and Minister for Infrastructure and Transport](#) [2013] AATA 283; 8/5/2013; Senior Member S Penglis, Mr W Evans, Member

Importation of non-standard motor vehicle – Nature and application of discretion to allow importation pursuant to Regulation 11 of the Motor Vehicle Standards Regulations 1989 (CTH) – Discretion exercised in favour of importation – Turns on its own facts

## **Veterans' Affairs**

[Brain and Military Rehabilitation and Compensation Commission](#) [2013] AATA 286; 10/5/2013; Senior Member BJ McCabe

Compensation – Application made outside limitation period – Commonwealth prejudiced – Application for review rejected

[Howes and Repatriation Commission](#) [2013] AATA 278; 8/5/2013; Senior Member RG Kenny

Pensions and Benefits – Widow’s pension – Operational service with Royal Australian Air Force – Kind of death from cerebrovascular accident – Statements of Principles – Clinical onset – Increase in alcohol consumption or cigarette smoking – Increase related to operational service – Reasonable hypotheses of relationship to eligible service raised – Not satisfied beyond reasonable doubt death not war-caused – Decision set aside and substituted

[Mewett and Repatriation Commission](#) [2013] AATA 277; 8/5/2013; Senior Member BJ McCabe

Pensions and benefits – Pension at special rate – Date of onset of depressive disorder – Ischaemic heart disease – Category 1A stressor – Decision related to depressive disorder set aside and substituted – Decision related to ischaemic heart disease affirmed

[Radnidge and Repatriation Commission](#) [2013] AATA 274; 6/5/2013; Senior Member AK Britton, Dr I Alexander, Member

Entitlement to pension – Incapacity – War-caused disease – Post Traumatic Stress Disorder – Whether disease was war-caused – Deledio test – Whether the veteran suffered a life threatening event – Whether satisfied beyond reasonable doubt that disease was not war-caused – Decision set aside and substituted

---

## 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
<b>Carter v Commissioner of Taxation</b>	<a href="#">[2013] AATA 141</a>

---

### Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>FTZK v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2012] AATA 312</a>	<a href="#">[2013] FCAFC 44</a>

---



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.