



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

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

[Chyi and Australian Postal Corporation](#) [2013] AATA 326; 22/5/2013; Senior Member RG Kenny

Australia Post employee – Liability for aggravated condition – Continuing liability ceased – Work-related condition resolved – Decision under review affirmed

[Findlay and Comcare](#) [2013] AATA 324; 21/5/2013; Deputy President JW Constance

Adjustment disorder – Whether applicant suffered an injury within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* – Reasonable administrative action taken in a reasonable manner in respect of the applicant's employment – Decision under review affirmed

[Jones and Comcare](#) [2013] AATA 334; 24/5/2013; Senior Member AF Cunningham

Adjustment disorder – Application for partial invalidity pension to ComSuper – Whether employment related – Disease not contributed to, to a significant degree by employment with ATO – Decision under review affirmed

[Martin and Comcare](#) [2013] AATA 268; 2/5/2013; Hon B Tamberlin, QC, Deputy President

Entitlement to compensation – Method of calculation – Definition of adjustment percentage – Decision under review set aside and remitted

[Menz and Border Express Pty Ltd](#) [2013] AATA 317; 17/5/2013; Professor RM Creyke, Senior Member

Commonwealth employee – Calculation of incapacity payments – Calculation of normal weekly earnings – Whether Rostered Days Off are an allowance according to section 8 of the *Safety, Rehabilitation and Compensation Act 1988* – Whether deductions from payslips of amount 'banked for RDOs' authorised by sections 8 and 19 of the *SRC Act 1988* – Decision under review, so far as it relates to entitlement to Rostered Days Off, is affirmed.

[Tsiamis and Comcare](#) [2013] AATA 319; 20/5/2013; Senior Member JF Toohey and Dr S Toh, Member

Claim for bi-polar disorder, paranoid schizophrenia, post-traumatic stress disorder as a result of witnessing accident at work – Whether applicant witnessed accident – Claim lodged 30 years after incident at work – Whether notice given as soon as practicable –

Whether applicant suffered from claimed conditions – Whether any causal connection between applicant's condition and her employment – Whether injury in the course of employment – Whether claim excluded because applicant engaged in serious and wilful misconduct – Tribunal satisfied applicant suffered psychological conditions – Not satisfied of causal connection to employment – Decision under review affirmed

Practice and Procedure

[World Wide Fund for Nature Australia and Australian Pesticides and Veterinary Medicines Authority](#) [2013] AATA 329; 22/5/2013; Deputy President PE Hack SC

Jurisdiction – Tribunal's powers on review cannot exceed powers of original decision-maker – Decision not within terms of enactment – No decision constituted by refusal to do act or thing – No jurisdiction – Application dismissed

Social Security

[Atkinson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 325; 22/5/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Age pension – Assets test – Claim of financial hardship – Claim of unrealisable asset – Objective test to be applied – Decision under review affirmed

[Cook and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 323; 21/5/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Psychological impairment from Asperger's disorder – Impairment Tables – Condition not fully diagnosed and stabilised and not permanent – No impairment rating allocated – Applicant not qualified for disability support pension during the relevant period – Decision under review affirmed

[Druett and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 333; 23/5/2013; Mr M Hyman, Member

Pensions, benefits and allowances – Disability support pension – Age pension – Change in circumstances – When applicant informed Centrelink – Backdating of benefits – Benefits backdated to date when Centrelink informed of change in circumstances – Decision under review affirmed

[Townson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 321; 20/5/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Age pension – Failure to give timely notification of income – Overpayment of age pension a debt due to the Commonwealth – No basis for writing off debt – No special circumstances making it desirable to waive debt – Decision under review affirmed

Taxation

[Heaney and Commissioner of Taxation](#) [2013] AATA 331; 23/5/2013; Senior Member E Fice

Non-commercial business losses – Primary production activities – Offset claim due to losses from primary production – Deferral of losses from non-commercial business activities – Business activities of a similar kind – Special circumstances discretion – Lead time discretion – Single farming activity or two separate business activities – Definition of business activity – New business activity – Farming losses set off against medical practice income – Decision under review affirmed

PRACTICE & PROCEDURE – Burden of proof – Principles of statutory construction – expert evidence – Admissibility of opinion evidence – The rules of evidence – Extrinsic materials

Veterans' Affairs

[Greenwood and Repatriation Commission](#) [2013] AATA 316; 17/5/2013; Senior Member G Ettinger and Dr M Couch, Member

General rate of pension – Special or intermediate rate of pension – Whether totally and permanently incapacitated from war-caused injury or disease or both – Degree of incapacity from war-caused injury or disease – Totally and permanently incapacitated for work in employment for which one is suited – Whether prevented from continuing to participate in remunerative work due to accepted conditions alone – Whether a loss of salary, wages or earnings is suffered – Whether incapable of undertaking remunerative work for periods aggregating more than eight hours a week – Decision under review affirmed

[Moir and Repatriation Commission](#) [2013] AATA 315; 17/5/2013; Senior Member RG Kenny

Pensions and benefits – Service with Royal New Zealand Navy – Member of defence force established by a Commonwealth country – Danger not incurred by hostile forces of the enemy – Qualifying service for service pension not rendered – Decision under review affirmed

[O'Brien and Repatriation Commission](#) [2013] AATA 330; 22/5/2013; Miss EA Shanahan, Member

Special rate – Profound hearing loss – Occupation that of a teacher – Profound hearing loss – Non-war-caused conditions not contributing to incapacity for work – Decision under review set aside.

[Szelag and Repatriation Commission](#) [2013] AATA 318; 20/5/2013; Senior Member RG Kenny

Benefits and entitlements – Eligibility for intermediate or special rate of pension – Assessment period – Incapacity from accepted conditions sufficient to prevent applicant undertaking remunerative work for more than 20 hours or 8 hours per week, respectively, in consecutive parts of assessment period – Intermediate rate payable in

the early part of the assessment period – Special rate payable in the latter part of the assessment period – Decision under review set aside and substituted

[Townsend and Repatriation Commission](#) [2013] AATA 335; 24/5/2013; Senior Member RG Kenny

Pensions and benefits – Defence service with Australian Army – Depressive disorder – Diabetes mellitus – Statements of Principles – Clinical onset – Experiencing a category 1B stressor – Conditions caused by defence service – Decisions set aside and substituted – Matter of assessment remitted to Repatriation Commission

Pensions and benefits – Defence service with Australia Army – Alcohol dependence – Erectile dysfunction – Chronic bronchitis and emphysema – Clinical onset – Conditions not caused by defence service – Decisions 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
IOOF Holdings Limited v Commissioner of Taxation & AAT	[2013] AATA 239

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Comcare v Martinez (No 2)	[2012] AATA 795	[2013] FCA 439
Guppy v Australian Postal Corporation	[2012] AATA 806	[2013] FCA 489
Sent v Commissioner of Taxation	[2011] AATA 198	[2013] HCATrans 108 [2012] FCAFC 187 [2012] FCA 382
Billington v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2012] AATA 181	[2013] FCA 480
Sanctuary Lakes Pty Ltd v Commissioner of Taxation	[2012] AATA 404	[2013] FCAFC 50
Simmons v Comcare	[2012] AATA 687	[2013] FCA 484



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