



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

[Crawford and Comcare](#) [2013] AATA 405; 18/6/2013; Senior Member G Ettinger and Dr S Toh, Member

Commonwealth employees – Whether the applicant is eligible for compensation for his psychiatric condition – Whether condition was a result of reasonable administrative action taken in a reasonable manner – Decision under review affirmed

[Dunstan and Comcare](#) [2013] AATA 402; 17/6/2013; The Hon B Tamberlin, QC, Deputy President and Mr S Webb, Member

Compensation for incapacity resulting from injury – Calculation of weekly amounts – Effect of eligibility for a superannuation pension or a lump sum benefit on reaching the minimum compulsory preservation age – Meaning of ‘receives’ – Benefits deferred and not payable – No exercise of discretion by the employee directing payment of the benefit – Superannuation pension and lump sum benefit not received – Decision under review set aside

Customs

[Roger Armstrong Agency and Anor and Chief Executive Officer of Customs](#) [2013] AATA 399; 14/6/2013; Deputy President JW Constance

Classification of goods – Entitlement to Tariff Concession Order 0814551 – Sleep bags for young children – Bags fitted with internal material classified as bedding, items not so fitted classified as other made up articles – Classification as babies' garments rejected – Decision under review set aside

Immigration and Citizenship

[Eweama and Minister for Immigration and Citizenship](#) [2013] AATA 410; 20/6/2013; Ms K Hogan, Member

Application for citizenship made under s 21 of the *Australian Citizenship Act* – Applicant not engaged in work of a kind specified in the Legislative Instrument made under s 22C(3) for required period of time required by s 22B(1)(b) of the *Australian Citizenship Act* – Applicant does not satisfy the special residency requirement under s 22B of the *Australian Citizenship Act* – Decision under review affirmed

[Gade and Minister for Immigration and Citizenship](#) [2013] AATA 409; 19/6/2013; Senior Member BJ McCabe

Residency requirements – Special residence requirement – 'Ordinarily resident' – Decision under review affirmed

[Guden and Minister for Immigration and Citizenship](#) [2013] AATA 380; 6/6/2013; Deputy President JW Constance

Application for Special Eligibility (Residence) (Class AO) visa – Visa refusal under s 501 *Migration Act 1958* (Cth) – Character test – Direction [no. 55] – Substantial criminal record – Intentionally cause serious injury – Protection of Australian community from criminal or other serious conduct – Nature and seriousness of the conduct – Risk to the Australian community should the conduct be repeated – Strength, duration and nature of ties to Australia – Best interests of minors in Australia – Impact on immediate family members in Australia – Decision under review affirmed

[Khemlani and Ors and Minister for Immigration and Citizenship](#) [2013] AATA 401; 14/6/2013; Senior Member S Penglis and Mr W Evans, Member

Business skills visa – Cancellation – Whether “genuine efforts” made by primary applicant to obtain substantial ownership interest in an eligible business in Australia and actively participate at a senior level in the day-to-day management of such a business – Whether the Tribunal should exercise residuary discretion in favour of primary applicant – Whether cancelling the visas of the secondary applicants will cause “extreme hardship” – Decision cancelling visa affirmed – Turns on its own facts

[LM and Minister for Immigration and Citizenship](#) [2013] AATA 408; 19/6/2013; Senior Member AF Cunningham

Citizen by descent – Whether applicant had a parent who was an Australian citizen at time of her birth – Weight of evidence supports finding that SM, an Australian citizen is LM's biological father – Decision under review set aside

Practice and Procedure

[Accord Australasia Limited and Director, National Industrial Chemicals Notification and Assessment Scheme](#) [2013] AATA 414; 20/6/2013; Deputy President RP Handley

Application for extension of time – Applicant failed to apply within prescribed time for review of a final decision to include chemicals in the Australian Inventory of Chemical Substances – Whether extant decision for review – whether reasonable in the circumstances to grant an extension of time – Application for extension of time refused

[Mackay and Australian Postal Corporation](#) [2013] AATA 368; 6/5/2013; Senior Member BJ McCabe

Application for reinstatement – Dismissed in error – Matter withdrawn or adjourned – Understanding legal advice – Confidentiality order – Application to reinstate earlier proceedings refused

Social Security

[Conway and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 403; 17/6/2013; Ms R Perton, Member

Disability support pension – Overpayment – Debt to Commonwealth – Waiver – Whether sole administrative error by Centrelink – Whether special circumstances exist – Decision under review affirmed

[Gopalachary and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 297; 13/5/2013; Dr K Breen, Member

Disability support pension – Major depressive disorder – Reduced vision in right eye – conditions permanent – 10 impairment points – Decision under review affirmed

[Goulden and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 411; 19/6/2013; Dr K Breen, Member

Disability support pension – Bilateral lower limb venous stasis with ulceration – Bilateral degeneration of acromioclavicular joints – Past left shoulder dislocation – 10 impairment points – Decision under review affirmed.

[Karli and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 416; 20/6/2013; Ms R Perton, Member

Disability support pension – Whether 20 impairment points – Whether condition stabilised and treated – Decision under review affirmed

[Matthews and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 413; 19/6/2013; Mr S Webb, Member

Disability Support Pension – Impairments not permanent – Not fully treated and stabilised – No impairment rating assigned – Decision under review affirmed

[Senini and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 412; 19/6/2013; Mr S Webb, Member

Age Pension – Pension Bonus Scheme – Claim for registration and payment of Pension Bonus after grant of Age Pension – No discretion – Decision under review affirmed

[Watson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 361; 31/5/2013; Dr K Breen, Member

Disability support pension – chronic major depressive disorder – Condition fully treated, stabilised and permanent – Continuing inability to work – Decision under review set aside

[Yaman and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 418; 21/6/2013; Senior Member N Bell

Disability support pension – DSP – Portability period – Whether to extend portability period of pension while applicant overseas – Whether to extend portability beyond 13 weeks – Whether applicant was prevented from returning to Australia – Decision under review affirmed

Taxation

[Hefner and Commissioner of Taxation](#) [2013] AATA 407; 18/6/2013; Senior Member BJ McCabe

Private rulings – Non-commercial business activity – Commissioner's refusal to exercise discretion – Objection decision under review affirmed

Veterans' Affairs

[Geletic and Repatriation Commission](#) [2013] AATA 406; 18/6/2013; Deputy President SD Hotop and Brigadier AG Warner, Member

Veterans' entitlements – Disability pension – Applicant rendered defence service in Royal Australian Air Force from 1975 to 1995 – Applicant required to reside in married quarters on base – Married quarters constructed of asbestos materials – Applicant carried out necessary repairs – Applicant exposed to asbestos fibres – Applicant contracted pleural plaque in 2010 – Statement of Principles concerning pleural plaque (SoP) – SoP upholds contention that applicant's pleural plaque on balance of probabilities connected with defence service – Applicant's pleural plaque arose out of or was attributable to defence service – Applicant's pleural plaque a defence-caused disease – Decision under review set aside

[Johns and Repatriation Commission](#) [2013] AATA 415; 20/6/2013; Deputy President SD Hotop

Veterans' entitlements – Disability pension – Applicant served in Royal Australian Navy (RAN) from 1966 to 1986 – Applicant's RAN service included eligible defence service – Applicant performed duties as electrical fitter during RAN service and as an electrician after RAN service – Applicant contracted osteoarthritis in right elbow in 2011 – Statement of Principles concerning osteoarthritis (SoP) – SoP does not uphold contention that osteoarthritis of right elbow on balance of probabilities connected with defence service – Applicant's osteoarthritis of right elbow not defence-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 Simmons	[2012] AATA 687
Secretary, Department of Families, Housing, Community Services and Indigenous Affairs v Carapeta & Carapeta	[2013] AATA 285

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Minister for Immigration and Citizenship v Pareina & AAT	[2013] AATA 115	[2013] FCA 586



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