



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

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 **3 July 2013**.

[Colorectal adenoma – No. 35 of 2013](#)

[Colorectal adenoma – No. 36 of 2013](#)

[Malignant neoplasm of the colorectum – No. 37 of 2013](#)

[Malignant neoplasm of the colorectum – No. 38 of 2013](#)

[Familial adenomatous polyposis – No. 39 of 2013](#)

[Familial adenomatous polyposis – No. 40 of 2013](#)

[Sleep apnoea – No. 41 of 2013](#)

[Sleep apnoea – No. 42 of 2013](#)

[Erectile dysfunction – No. 43 of 2013](#)

[Erectile dysfunction – No. 44 of 2013](#)

[Gingivitis – No. 45 of 2013](#)

[Gingivitis – No. 46 of 2013](#)

[Periodontitis – No. 47 of 2013](#)

[Periodontitis – No. 48 of 2013](#)

[Periodontal abscess – No. 49 of 2013](#)

[Periodontal abscess – No. 50 of 2013](#)

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.

Child Support

[Confidential and Child Support Registrar & Anor](#) [2013] AATA 426; Senior Member N Bell

Percentage of care – Court orders for equal shared parental responsibility – Child a weekly boarder at his school – Payment of school fees – Whether necessary or appropriate to attribute specific periods spent at boarding school to either parent – How care should be apportioned between parents for periods spent at boarding school – Decision under review varied

Civil Aviation

[Hansen and Civil Aviation Safety Authority](#) [2013] AATA 437; 27/6/2013; Senior Member JL Redfern

Helicopter pilot – Fatal accident – Duty to safely navigate or operate aircraft – Discretion – Cancellation of private pilot licence – Whether applicant a fit and proper person – Decision under review affirmed

[Sullivan and Civil Aviation Safety Authority](#) [2013] AATA 425; 24/6/2013; Deputy President PE Hack SC

Cancellation of commercial pilot (helicopter) licence – Contravention of operations manual – Overloaded helicopter – Failed in duty with respect to matters affecting safe navigation and operation of aircraft – Not fit and proper person – Decision under review affirmed

Compensation

[Smith and Comcare](#) [2013] AATA 427; 25/6/2013; Senior Member BJ McCabe

Commonwealth employee – Accepted workplace injury – Liability for ongoing medical costs – Liability for permanent impairment – Workplace injury resolved – Decision under review affirmed

Immigration and Citizenship

[Vito and Minister for Immigration and Citizenship](#) [2013] AATA 422; 24/6/2013; The Hon B Tamberlin QC, Deputy President

Visa cancellation – Character test under s 501(2) *Migration Act 1958* – Ministerial Direction 55 – Decision under review affirmed

National Security

[TCXG and Director General of Security & Anor](#) [2013] AATA 284; 10/5/2013; Justice D Kerr, President; Deputy President RP Handley and Senior Member JF Toohey

Adverse security assessment – Refusal of application for Australian passport – Likely to engage in conduct which might prejudice security – Correctness, justification for any opinion or information contained in assessment – Whether evidence, information, material relied on sufficiently probative to justify assessment – Decision under review affirmed

Practice and Procedure

[Matthews and Commissioner of Taxation](#) [2013] AATA 435; 26/6/2013; Deputy President FJ Alpins

Taxation – Practice and procedure – Jurisdiction of Tribunal – Pt IVC of *Taxation Administration Act 1953* – No reviewable decision identified by applicant

[Weldon and Repatriation Commission](#) [2013] AATA 417; 21/6/2013; Senior Member N Bell

Application for special rate – Correct date of application – Whether the provisions of section 24 of Veterans Entitlement Act can be applied for increase to the special rate of pension – Direction for review to be determined for future progress

Social Security

[Arifin and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 429; 4/6/2013; Senior Member JF Toohey

Disability support pension – Date from which applicant entitled to payment – Decision under review set aside – Decision substituted that applicant entitled to payment from 17 September 2009 – Matter remitted to the respondent for assessment of arrears

[Charlish and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 434; 26/6/2013; Mr P Wulf, Member

Pensions, benefits and allowances – Rent assistance – Retirement village residents – Whether “ingoining sum” paid by applicants to owner of retirement village prior to occupation under a Licence Agreement forms an ownership of property – Whether “yearly sum” is rent or should be treated as rent for purposes of the Act – 12-month periodic licence – Decisions under review set aside and substituted

Green and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2013] AATA 438; 27/6/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Age pension – Residency – 10 years qualifying Australian residence – Qualifying residence exemption – Not qualified – Decision under review affirmed

Nilsson and Secretary, Department of Education, Employment and Workplace Relations [2013] AATA 441; 27/6/2013; Senior Member AK Britton

Newstart Allowance – Reconnection penalty – Whether the applicant had a reasonable excuse for not complying with the requirements of an Employment Pathway Plan – Decision under review affirmed

Superannuation

Roberts-Billett and Commonwealth Superannuation Corporation [2013] AATA 440; 27/6/2013; Ms R Perton, Member

Spouse pension – Widow – Applicant remarried husband shortly before death – Applicant not living with husband – Whether applicant dependent on deceased – Whether divorce due to illness – Whether apart due to special circumstances – Decision under review affirmed

Taxation

Clayton and Commissioner of Taxation [2013] AATA 428; 25/6/2013; Senior Member BJ McCabe

Carrying on an enterprise – Input tax credits – Creditable acquisitions incurred in carrying on an enterprise – Cancellation of GST registration – Delay in generating income – Objection decisions under review affirmed

Lambert and Commissioner of Taxation [2013] AATA 442; 27/6/2013; Senior Member E Fice

Income Tax – Discretionary Trust – Deed of variation – Claimed deduction for interest and expenditure on rental properties – Rental properties owned by the Trust – Money borrowed by the Trust – Onus of proof – Penalties

Naidoo and Commissioner of Taxation [2013] AATA 443; 28/6/2013; Senior Member G Lazanas

Goods and services tax – GST registration – Cancellation of registration – Whether carrying on an enterprise – Date of effect of cancellation of GST registration – Entitlement to input tax credits – What is the net amount for a period in circumstances where the taxpayer is held not to have been carrying on an enterprise – Whether applicant is entitled to a refund of GST paid – Application of s 105-65 of Schedule 1 of the *Taxation Administration Act* – Whether the Tribunal has jurisdiction to review a decision made pursuant to s 105-65 of Schedule 1 of the *Taxation Administration Act* – Administrative penalty – Calculation of penalty based on tax shortfall – Whether conduct involved recklessness – Whether applicant is entitled to remission of penalty –

Decision to cancel registration is affirmed and decisions in respect to assessment of GST and penalty are set aside and substituted

[Ozone Manufacturing Pty Ltd and Commissioner of Taxation](#) [2013] AATA 420; 21/6/2013; Senior Member RW Dunne

Income tax – Research and development tax offset – Research and development expenditure – Research and development activities – Whether research and development expenditure was incurred directly in respect of research and development activities carried out by the applicant during the 2001/2002 tax year – Keeping of records – Substantiation – Whether applicant's records establish nexus between R&D expenditure and R&D activities – Burden of proof – Whether taxation decision concerned should not have been made or should have been made differently – Objection decision under review affirmed

Veterans' Affairs

[Derry and Repatriation Commission](#) [2013] AATA 431; 26/6/2013; Dr K Breen, Member

Claim for defence caused post-surgical deformity – Injury or disease – Physical ailment or defect – Insufficient material to make a decision – Remittal to respondent pursuant to s 42D of the *Administrative Appeals Act 1975*

[Ellis and Repatriation Commission](#) [2013] AATA 433; 26/6/2013; Deputy President JW Constance

Widow's pension – Whether death was war-caused — Diabetes mellitus – Malignant neoplasm of the liver – Whether material raises an hypothesis connecting the death with the circumstances of operational service – Decision under review affirmed

[Kaluza and Repatriation Commission](#) [2013] AATA 424; Senior Member N Bell and Dr SH Toh, Member

Pension – Period of operational service – Whether applicant suffers from conditions – Posttraumatic stress disorder – Generalised anxiety disorder – Anxiety disorder – Alcohol dependence – Alcohol abuse – Hypertension – Whether conditions war-caused – Decision under review varied

[Richmond and Repatriation Commission](#) [2013] AATA 421; 20/6/2013; Ms R Perton, Member

Pension at special rate – Whether war caused conditions alone cause of inability to work – Reason why applicant stopped working – Decision under review affirmed

[Summers and Repatriation Commission](#) [2013] AATA 439; 27/6/2013; Senior Member GD Friedman

Veterans' entitlements – Post-traumatic stress disorder – Traumatic events – Whether condition diagnosed and war-caused – Alcohol dependence – Whether war-caused – Whether intermediate or special rate of pension applies – The Tribunal sets aside the decisions under review and substitutes a decision that post-traumatic stress disorder

suffered by Mr Summers is war-caused – In all other respects the Tribunal affirms the decisions under review

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
Commissioner of Taxation v Cancer and Bowel Research Association Inc. as Trustee for the Cancer and Bowel Research Trust	[2013] AATA 336
Commissioner of Taxation v AAT & Anor	[2013] AATA 336

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Heiner v Minister for Immigration and Citizenship & AAT	[2012] AATA 933	[2013] FCA 617
Salahuddin v Minister for Immigration and Citizenship & AAT	[2013] AATA 1	[2013] FCA 588
Demillo v Minister for Immigration and Citizenship & AAT	[2012] AATA 805	[2013] FCA 629
Smith v Comcare	[2011] AATA 662	[2013] FCAFC 65 [2012] FCA 502



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