



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.

Bankruptcy

[McPhee and Inspector-General in Bankruptcy](#) [2013] AATA 457; 28/6/2013; Senior Member S Penglis

Whilst practising as a legal practitioner in partnership, applicant executed an Everett Assignment in favour of his wife whereby he assigned half of his interest in the partnership – Whether the Everett Assignment between applicant and his wife had subsequently been abandoned – Whether, if not abandoned, the Everett Assignment continued to operate in any way in respect of income earned by the applicant as a sole practitioner – Held that, on the facts, the Everett Assignment had been abandoned by the parties thereto and, in any event, could not have operated in respect of income earned by the applicant as a sole practitioner – Decisions under review affirmed

Child Support

[Culleton and Child Support Registrar](#) [2013] AATA 454; 3/7/2013; Dr P McDermott, RFD, Senior Member

Departure prohibition order – Significant child support debt – Objects of the Act – No arrangements to repay debt – Debt not completely irrecoverable – Decision under review affirmed

Compensation

[Gardner and Australian Postal Corporation](#) [2013] AATA 451; 2/7/2013; Senior Member PW Taylor SC and Dr W Isles, Member

Whether injury was the result of a work-related incident – Delay in notifying employer of injury – No workplace corroboration of incident – Inconsistent and mistaken evidence of lay witnesses – Decision under review set aside

[Morabito and Comcare](#) [2013] AATA 450; 2/7/2013; Deputy President RP Handley and Dr IS Alexander, Member

Injury – Employee suffered from chronic, pre-existing psychological condition – Whether employee's psychological injury was contributed to, to a significant degree, by employment – Aggravation of pre-existing condition was not significant – Condition does not satisfy definition of "disease" or "injury" in *Safety, Rehabilitation and Compensation Act 1988* – Decision under review affirmed

[Perica and Comcare](#) [2013] AATA 430; 25/6/2013; Senior Member G Ettinger and Dr IS Alexander, Member

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

Higher Education

[Madziva and Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education](#) [2013] AATA 452; 2/7/2013; Dr M Denovan, Member

Student assistance – FEE-HELP – Withdrawal from course – Application for re-credit of debt – Period for valid application – Possible for application to have been made – No special circumstances – Decision under review affirmed

Practice and Procedure

[BQL and Ors and Commissioner of Taxation](#) [2013] AATA 423; 24/6/2013; Deputy President RP Handley and Senior Member PW Taylor SC

Proceedings – Constitution of the Tribunal – Application that a member not be included in the Tribunal to hear these matters – Where a member constituted to hear applications has previously presided over proceedings which raised the same issues – where findings of credit or credibility in relation to potential witness have been made in prior proceedings – Application granted

Social Security

[Berthmawos and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 459; 4/7/2013; Deputy President RP Handley

Special Benefit claim – Applicant qualified for Special Benefit – Whether Special Benefit payable – Whether applicant subject to newly arrived resident's waiting period – Whether applicant suffered a substantial change in circumstances beyond her control – Decision under review set aside

[Bradley and Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education](#) [2013] AATA 455; 3/7/2013; Senior Member BJ McCabe

Youth Allowance – Member of a couple – Must have regard to all the circumstances of the relationship – Decision under review set aside and remitted

[Celik and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 446; 28/6/2013; Senior Member JF Toohey

Disability support pension – Tinnitus and hearing loss, major depression and anxiety, wrist fractures – Lumbar spine, left knee and left shoulder pain – Whether conditions

fully diagnosed, treated and stabilised – Application determined “on the papers” – Tribunal not satisfied any conditions fully diagnosed, treated and stabilised – Decision under review affirmed

[Jones and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 453; 3/7/2013; The Hon RJ Groom AO, Deputy President

Age pension – Assets test – Whether the value of the applicant’s assets exceeds the assets value limit – Whether applicant and his wife made a loan to a private company – the amount of that loan – Whether a company, the assets of which are wholly attributable to the applicant, owns one half or one third interest in two properties – Decision under review set aside and remitted

[Plowright and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 404; 17/6/2013; Deputy President K Bean

Disability support pension – Portability – Former residence rules – Whether applicant formerly ceased to be an Australian resident – Whether he was an Australian resident when claim made – Applicant was not an Australian resident at the time of his claim and therefore had no entitlement to DSP – Applicant wrongly assessed as a former resident when he had not become a resident again – Decision under review set aside

[YCWS and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 444; 28/6/2013; Senior Member AK Britton

Carer allowance – Rate of carer allowance determined by ordinary income – Whether legal costs are an allowable deduction from ordinary income – Whether legal costs are of a capital nature – Preservation of the asset – Decision under review affirmed

Taxation

[Home Health Pty Ltd and Commissioner of Taxation](#) [2013] AATA 458; 1/7/2013; Senior Member CR Walsh

Public benevolent institution – Charitable institution – Whether applicant “entitled to be endorsed” as a “public benevolent institution” before and after modification of its Constitution (Articles of Association) – Income tax exempt entity – Meaning of “public benevolent institution” – The “non-profit” requirement – Benevolence – Meaning of “public” – Meaning of “institution” – Applicant not an “institution” – Commissioner’s objection decision affirmed

[Pillay and Commissioner of Taxation](#) [2013] AATA 447; 28/6/2013; Deputy President SE Frost

Income tax – Residence – Whether Applicant was residing in Australia during the relevant income tax years – Private Ruling – Consideration of factors in determining residency – Applicant had continuity of association with Australia and was a resident of Australia – Decision under review affirmed

Veterans' Affairs

[McCready and Repatriation Commission](#) [2013] AATA 456; 4/7/2013;
Miss EA Shanahan, Member

Disability pension – Eligible service – Macular degeneration – Service related smoking
– Failure to satisfy Statement of Principles – 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
Arifin v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2013] AATA 429

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Collection Point Pty Ltd v Commissioner of Taxation	[2011] AATA 909	[2013] FCAFC 67 [2012] FCA 720
Sea Shepherd Australia Limited v Commissioner of Taxation	[2012] AATA 520	[2013] FCAFC 68



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