



## 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

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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

[Catoni and John Holland Group Pty Ltd](#) [2013] AATA 509; 18/7/2013; The Hon R Nicholson, Deputy President

Workers' compensation – Claim for injury to back – Acceptance of knee injury – Acceptance of back injury for stated periods – Subsequent further diagnosis of back injury – Absence of certificates of a legally qualified medical practitioner for periods covered by new diagnosis – Whether claim deemed not to have been made – Decision under review affirmed

[Commonwealth of Australia and Comcare and Anor](#) [2013] AATA 503; 16/7/2013; Deputy President PE Hack SC

Injury – Adjustment disorder – Injury suffered as result of reasonable administrative action taken in reasonable manner in respect of applicant's employment – Decision under review set aside and substituted – Initial determination affirmed

[Vittiglia and John Holland Pty Ltd](#) [2013] AATA 493; 12/7/2013; Deputy President SD Hotop

Employee of licensed corporation – Applicant suffered compensable mental injury in March 2011 – Respondent liable to pay compensation to applicant for incapacity for work to 26 June 2012 – Applicant did not provide workers' compensation medical certificate from 27 June 2012 – Applicant not incapacitated for work as result of injury from 27 June 2012 – Applicant able to earn in suitable employment – Respondent not liable to pay compensation to applicant for incapacity for work from 26 June 2012 – Decision under review affirmed

### Immigration and Citizenship

[Lefau and Minister for Immigration and Citizenship](#) [2013] AATA 497; 15/7/2013; Dr P McDermott RFD, Senior Member

Australian citizenship – Adoption – Parent British subject – International convention on intercountry adoption – Not convention country – No adoption compliance certificate – Decision under review affirmed

[Rodrigueza and Minister for Immigration and Citizenship](#) [2013] AATA 508; 19/7/2013; Senior Member N Isenberg

Refusal to grant citizenship – Applicant between 16 and 18 years of age – Australian Citizenship Instructions – Applicant does not meet residency requirements – Whether

applicant suffering significant hardship or disadvantage by being denied citizenship – Personal wants do not constitute hardship – Circumstances not very unusual or exceptional – Decision under review is affirmed

[Uta and Minister for Immigration and Citizenship](#) [2013] AATA 498; 15/7/2013; Dr P McDermott RFD, Senior Member

Citizenship application – Intercountry adoption – One adoptive parent Australian – Adoption not in accordance with Hague Convention – Convention country – Decision under review affirmed

## **Practice and Procedure**

[Arifin and Decision Maker](#) [2013] AATA 502; 15/7/2013; Senior Member JF Toohey

Jurisdiction – Claim for compensation for discrimination on the ground of disability – No reviewable decision – The Tribunal does not have jurisdiction to hear the application

## **Social Security**

[Acheson and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 500; 15/7/2013; Deputy President RP Handley

Benefits and entitlements – newstart allowance – Applicant member of homeowner couple – Whether newstart allowance payable to applicant – Whether value of applicant and partner's combined assets exceeded the asset value limit – Decision under review affirmed

[Augustynski and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 507; 18/7/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Physical, intellectual or psychiatric impairment – Impairment rating of 20 points or more required – Impairment Tables – Decision under review affirmed

[Crickmore and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 495; 15/7/2013; Dr I Alexander, Member

Pensions, benefits and allowances – Disability support pension – Qualification – Whether applicant's impairment rating was at least 20 points within period of assessment – Impairments not able to be rated as conditions are not fully diagnosed, treated and stabilised – Decision under review affirmed

[Hillam and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 505; 17/7/2013; Senior Member RW Dunne

Pensions, benefits and allowances – Workplace injury – Compensation – Preclusion period as a result of lump sum compensation payment – All compensation monies expended – Whether special circumstances exist to warrant treating all or part of the lump sum compensation as not having been made – Special circumstances found not to exist – Decision under review affirmed

**Soames and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 473; 8/7/2013; Senior Member AK Britton

Pensions, benefits and allowances – Disability support pension – Assets test – Disposal of assets – Whether the Applicant received no or inadequate consideration – Financial hardship – Unrealisable asset – Decision affirmed

Debt recovery – Whether the debt can be waived on account of sole administrative error – Whether the debt can be written off – Special circumstances – Decision affirmed

Debt – Re-crediting of moneys already recovered for a debt – No power – Decision affirmed

Low income health care card – Assets test – Decision affirmed

Special benefit – Assets test – Decision affirmed

## **Taxation**

**AJJJ's Emporium Pty Ltd and Commissioner of Taxation** [2013] AATA 501; 16/7/2013; Dr G Hughes

Administrative penalty – Recklessness – Applicant incorrectly claimed input tax credits in respect of goods not yet manufactured or delivered – Mitigation not warranted on the facts – Decision under review affirmed

**Boyd and Commissioner of Taxation** [2013] AATA 494; 12/7/2013; Senior Member E Fice

Assessable income – Employment termination payment – Exempt income – Ordinary income – Statutory income – Liability to tax – Eligible termination payment – Resident or resident of Australia – Exempt non-resident foreign termination payment – Termination of employment – Redundancy payment – Decision under review varied

**Fay and Commissioner of Taxation** [2013] AATA 504; 16/7/2013; Senior Member CR Walsh

Income tax – Jurisdiction of Tribunal – Applicant applied to Commissioner to be released from her income tax liability pursuant to Commissioner's discretion – Applicant's release application refused by Commissioner – Applicant's objection disallowed by Commissioner – Whether Applicant would suffer "serious hardship" if required to pay her income tax liability – Meaning of "serious hardship" considered – Commissioner's objection decision affirmed

**Rod Mathiesen Truck Hire Pty Ltd as trustee for the Mathiesen Family Trust and Commissioner of Taxation** [2013] AATA 496; 15/7/2013; Deputy President IR Molloy

Goods and services tax – Objection decision – Sale of property – Consideration – Vendor finance agreement – GST payable on full amount of consideration – Decision under review affirmed

[The Taxpayer and Commissioner of Taxation](#) [2013] AATA 448; 28/6/2013; Senior Member BJ McCabe

Fuel Tax Credits – Maintenance of accurate records – Taxpayer must establish correct position – Allocation of fuel consumption – Administrative penalty – Objection decisions under review affirmed

## **Veterans' Affairs**

[Fowler and Repatriation Commission](#) [2013] AATA 499; 15/7/2013; Dr KS Levy RFD, Senior Member, and Dr M Sullivan, Member

Pensions and benefits – Disability pension – Special rate – Intermediate rate – Remunerative work – War-caused conditions “alone” – Period of remunerative work able to be performed – Loss of earnings – Not due to war caused conditions – Decision under review affirmed

[Pfitzner and Repatriation Commission](#) [2013] AATA 492; 12/7/2013; Deputy President K Bean

Veterans' entitlements – Rate of disability pension – Special and intermediate rates – Whether “alone test” satisfied – Availability of voluntary redundancy package contributed to veteran ceasing work when he did – Alone test not satisfied – Decision under review affirmed

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## Appeals Finalised

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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

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CASE NAME	AAT REFERENCE
<b>Conway v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2013] AATA 403</a>
<b>Richmond v Repatriation Commission</b>	<a href="#">[2013] AATA 421</a>
<b>Heiner v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2012] AATA 933</a>
<b>Demillo v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2012] AATA 805</a>

### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Tsiamis v Comcare</b>	<a href="#">[2013] AATA 319</a>	<a href="#">[2013] FCA 684</a>
<b>Williams v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2013] AATA 16</a>	<a href="#">[2013] FCA 702</a>



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