



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

[Georgoulas and National Australia Bank Limited](#) [2013] AATA 512; 22/7/2013; Senior Member JL Redfern and Dr SH Toh, Member

Whether applicant is eligible for compensation for psychiatric condition or injury – Preliminary issue – Exclusion of liability – Disentitlement to compensation – Whether wilful and false misrepresentation made by applicant in claim for compensation – Whether suffers or previously suffered from disease in respect of which compensation claimed – Test to be applied is whether previous disease suffered is the same or substantially the same – Liability not excluded

[Sandercock and Military Rehabilitation and Compensation Commission](#) [2013] AATA 517; 22/7/2013; Professor R Creyke, Senior Member

Military Rehabilitation and Compensation – Claim for hearing loss and tinnitus – Whether injury or disease arose in the course of employment to the Commonwealth in 1955 – Australian Cadet Corps not included as employees of the Commonwealth – Whether injury or disease was caused or aggravated in later service of the Commonwealth – Unsatisfactory evidence to conclude the date of the injury – Commonwealth prejudiced by lack of contemporaneous records – No evidence of mistake absence from Australia or reasonable cause for delay in application – Decision under review affirmed

Immigration and Citizenship

[C1 and Minister for Immigration, Multicultural Affairs and Citizenship](#) [2013] AATA 519; 24/7/2013; Senior Member D Letcher, QC

Citizenship – Character – Whether applicant is of good character – Criminal offence – Assault of child – Decision under review affirmed

Social Security

[Asayeheng and Secretary, Department of Education, Employment and Workplace Relations and Anor](#) [2013] AATA 523; 25/7/2013; Mr P Wulf, Member

Pensions, benefits and allowances – Newstart Allowance – Sickness Allowance – Disability Support Pension – Failure to declare full amount of income earned – Recovery of overpayments – Whether overpayments recoverable – Deceitful conduct when receiving benefits – No special circumstances – Recovery charge applicable – Decisions under review affirmed

[Beugelsdyk and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 510; 22/7/2013; Dr I Alexander, Member

Pensions – Disability support pension – Back condition – Whether the applicant's impairment rating was 20 points or more under the Impairment Tables – Decision under review affirmed

[Bradley and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 514; 22/7/2013; Professor R Creyke, Senior Member

Pensions, benefits and allowances – Disability pension – Youth allowance – Start date of social security benefit – Backdating of benefit – Exemptions in sections 13 and 15 of the *Social Security (Administration) Act 1999* (Cth) – Decision under review affirmed

[Dicton and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 513; 19/7/2013; Dr A Frazer, Member

Disability support pension – Qualification requirements – Applicant has impairments – Applicant's impairment 20 points under Impairment Tables – Applicant does not have a continuing inability to work – Does not meet active participation in program of support – applicant not qualified for disability support pension – Decision under review affirmed

[Gash and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 515; 20/7/2013; Dr R McRae, Member

Disability support pension – Morbid obesity – Non-insulin requiring diabetes mellitus – Hypertension – Continuing inability to work – Decision under review affirmed

[Menzies and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 520; 24/7/2013; Senior Member N Isenberg

Whether start date of payment is correct – Date of actual lodgement of claim form – Earlier date on which application is deemed to be lodged – Criteria not met – No discretion – Decision under review affirmed

[Menzies and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 521; 24/7/2013; Senior Member N Isenberg

Whether start date of payment is correct – Date of actual lodgement of claim form – Earlier date on which application is deemed to be lodged – Criteria not met – No discretion – Decision under review affirmed

[Robinson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 511; 22/7/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Calculation of start date – Claim form lodged more than 13 weeks of initial contact with Centrelink – No basis for a start date referable to date of that initial contact with Centrelink – Subsequent contact with Centrelink – Claim form lodged more than 14 days and within 13 weeks of that subsequent contact with Centrelink but lateness of claim not due to medical condition or special circumstances – No basis for a start date referable to date

of that subsequent contact with Centrelink – Further contact with Centrelink – Start date referable to date of that further contact and not earlier – Decision under review affirmed

[Xie and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 506; 16/7/2013; Senior Member JF Toohey

Newstart Allowance – Language Literacy and Numeracy Program – Language Literacy and Numeracy Supplement – Whether applicant qualified for Supplement after transfer to Adult Migrant English Program – Meaning of the Department of State responsible for education and training – Decision under review affirmed

Taxation

[Jakjoy Pty Ltd and Commissioner of Taxation](#) [2013] AATA 526; 25/7/2013; Senior Member CR Walsh

Capital gains tax – Small business relief – Capital gains tax concessions – Whether commercial properties owned and leased out by applicant “active assets” – “Active asset test” considered – “Exceptions” – Assets whose main use is to derive rent cannot be an “active asset” – Use of “Guide” with boxed “Theme statement” contained in legislation in statutory interpretation considered – Use of “Example” contained in legislation in statutory interpretation considered – Use of extrinsic materials, such as an Explanatory Memorandum, in statutory interpretation considered – Commissioner’s objection decision affirmed

[WJBS and Anor and Commissioner of Taxation](#) [2013] AATA 518; 23/7/2013; Senior Member BF McCabe

Assessable income – Income according to ordinary concepts – Investment in business by the applicant – Reckless behaviour – Decisions under review affirmed – Penalty upheld

Veterans' Affairs

[Chattington and Repatriation Commission](#) [2013] AATA 524; 25/7/2013; Senior Member RG Kenny

Disability pension – Defence service with Royal Australian Navy – Statements of Principles for posttraumatic stress disorder, depressive disorder, alcohol dependence, gastro-oesophageal reflux disease, diabetes mellitus, sleep apnoea and gout – Clinical onset – Whether veteran experienced a category 1A or 1B stressor – Relevance of “dissociative amnesia” to experiencing a category 1A or 1B stressor – Whether obesity or alcohol consumption related to defence service – Decision under review affirmed

[Oliver and Repatriation Commission](#) [2013] AATA 525; 25/7/2013; Deputy President SD Hotop

Veterans' entitlements – Veteran served in Royal Australian Navy from 1952 to 1958 – Veteran rendered eligible war service (being operational service) from March to November 1953 – Veteran experienced passive smoking throughout operational service and subsequently in civilian life from 1963 to 1979 – Veteran contracted ischaemic heart disease in 1976 – Veteran died from ischaemic heart disease in 1980 – Applicant claimed pension as widow of veteran in October 2010 on basis that veteran’s death

war-caused – Reasonable hypothesis that veteran's death related to operational service
– Reasonable hypothesis not disproved beyond reasonable doubt – Veteran's death
war-caused – Decision under review set aside

[Reinhard and Repatriation Commission](#) [2013] AATA 522; 25/7/2013; Senior
Member N Isenberg and Dr H Haikal-Mukhtar, Member

Disability pension – Morbid obesity – Whether condition is related to service – Whether
caloric intake cannot be compensated by physical activity for the year immediately
before clinical onset – 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
Kaluza v Repatriation Commission	[2013] AATA 424
Sullivan v Civil Aviation Safety Authority	[2013] AATA 425
Hansen v Civil Aviation Safety Authority	[2013] AATA 437

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Secretary, Department of Families, Housing, Community Services and Indigenous Affairs v Mahrous	[2012] AATA 355	[2013] FCAFC 75 [2012] FCA 1275



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