



AAT Bulletin

ISSUE NO. 33/2013

19 AUGUST 2013

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

CONTENTS

AAT Recent Decisions	2
Child Support.....	2
Compensation	2
Freedom of Information	2
Practice and Procedure	3
Social Security.....	3
Taxation	4
Appeals Finalised	5
Appeals lodged.....	5
Appeals finalised	5

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

[McLeod and Child Support Registrar](#) [2013] AATA 565; 12/8/2013; Dr P McDermott RFD, Senior Member

Departure prohibition order – Child support debt – Not desirable to revoke order – Not appropriate for the Tribunal to “look behind” a child support assessment – No evidence of relevant ATO assessments – Decision under review affirmed

Compensation

[Brady and Comcare](#) [2013] AATA 559; 9/8/2013; Deputy President SD Hotop

Commonwealth employees – Applicant sustained compensable injury during training period while in receipt of only base salary – Applicant subsequently received additional payments for nightshift and overtime – Calculation of amount of compensation payable to applicant for incapacity for work – Calculation of applicant’s normal weekly earnings (NWE) – Applicant’s NWE does not include nightshift payments or overtime rates – Amount of compensation payable to applicant for incapacity for work calculated on that basis – Decision under review affirmed

[Dwyer and Comcare](#) [2013] AATA 564; 12/8/2013; Senior Member N Bell and Dr W Isles, Member

Commonwealth employees – Whether applicant suffered aggravation of pre-existing degenerative neck condition – Decision under review affirmed

Freedom of Information

[Pangilinan and Secretary, Department of Immigration and Citizenship](#) [2013] AATA 574; 16/8/2013; Senior Member N Bell

Whether all reasonable steps taken in locating documents – Document lost or non-existent – Public interest exemptions – Privacy exemptions – Personal information – whether exemptions correctly applied – Decision under review is varied

Practice and Procedure

[The Applicant and Comcare and Anor](#) [2013] AATA 538; 2/8/2013; Professor RM Creyke, Senior Member

Matter settled under s 42C – Application by third party for access to documents and terms of agreement – Unreasonable disclosure of personal information – Application denied

Social Security

[Adams and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 560; 9/8/2013; Deputy President K Bean

Newstart Allowance – Receipt of arrears of weekly compensation payments in respect of period during which applicant receiving Newstart Allowance – Whether amount recovered from arrears lump sum correctly determined and calculated – Whether "special circumstances" such that part of compensation should be treated as not having been paid – Decision under review affirmed

[Cruickshank and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 575; 16/8/2013; 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 – More than one loss of function – Impairment Tables – Decision under review affirmed

[Fillery and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 572; 15/8/2013; Deputy President RP Handley

Disability support pension – Whether applicant's injuries fully diagnosed, treated and stabilised – Applicant's knee condition not fully treated and stabilised – Decision under review affirmed

[Jessup and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 571; 15/8/2013; Deputy President RP Handley

Disability support pension – Qualification – Applicant had not received specialist assessment of his condition during the claim period – Whether applicant has impairment rating of 20 points or more under the Impairment Tables – Whether applicant's condition was fully diagnosed, treated and stabilised at the date of claim or during the claim period – Decision under review affirmed

[Vesnaver and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 570; 13/8/2013; Dr A Frazer, Member

Disability support pension – Qualification requirements – Applicant has impairments – applicant's impairments not considered permanent or sufficient rating – Applicant not qualified for disability support pension – Decision under review affirmed

Taxation

[Confidential and Commissioner of Taxation](#) [2013] AATA 569; 14/8/2013; Senior Member E Fice

Income tax – GST shortfall – Income tax shortfall – Evasion – Penalty – Remission of penalty – Burden of proof – Discharging burden of proof – Undisclosed income – T-Accounts – Asset Betterment Statements – Decisions under review affirmed

[Taxpayer and Commissioner of Taxation](#) [2013] AATA 566; 2/8/2013; Senior Member CR Walsh

Private rulings – Whether private ruling binding on Commissioner – Fringe benefits tax – Housing fringe benefit – “scheme” implemented differently than “scheme” described in private ruling and private ruling application – “business use” areas less than described in “scheme” in private ruling and private ruling application – Commissioner’s objection decision affirmed

[The Hotel Apartment Purchaser and Commissioner of Taxation](#) [2013] AATA 567; 13/8/2013; Deputy President SE Frost

GST – Increasing adjustments – GST-free going concern – Supply of all things necessary for the continued operation of an enterprise – Carrying on the enterprise until the day of supply – Agreement in writing that the supply was of a going concern – Intent that some or all of the supplies would be neither taxable supplies nor GST-free supplies – Time limit on recovery by the Commissioner – Event causing supply to become or stop being a taxable supply – Proportion of non-creditable use – Objection decision 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
Dyke v Repatriation Commission	[2013] AATA 472

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Theo v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2012] AATA 58	[2013] FCA 805 [2012] FMCA 528
Peters v Comcare	[2012] AATA 636	[2013] FCA 808
Sauvao v Minister for Immigration, Multicultural Affairs and Citizenship & AAT	[2012] AATA 817	[2013] FCA 827



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](#). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](#). Those terms provide that section 182A of the *Copyright Act 1968* applies.