



## 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.

### Child Support

[Parent A and Child Support Registrar and Anor](#) [2013] AATA 562; 9/8/2013; Mr S Webb, Member

Percentage of care – Boarding school – Court orders for equal parental responsibility for youngest child – Meaning of ‘care period’ – Meaning of ‘pattern of care for the child’ – ‘actual care’ cannot apply to both parents at the same time – Determination of the extent of actual care of a child is not strictly limited to the number of nights – Discretion to consider alternative methods of calculating actual care – Relevant factors – Actual care apportioned on an equal basis – Decision under review affirmed

### Compensation

[Cullen and Australian Postal Corporation](#) [2013] AATA 578; 16/8/2013; Miss EA Shanahan, Member

Shoulder injury – Secondary or separate psychological injury – Termination of entitlement to compensation – Alternative employment – Continuing disability and incapacity for work – Availability of suitable employment

[Hargreaves and Telstra Corporation Limited](#) [2013] AATA 579; 16/8/2013; Deputy President JW Constance

Adjustment disorder with depression and anxiety – Whether applicant partially or totally incapacitated for work as a result of injury – Whether applicant incurred costs for medical treatment – Whether injury resulted in permanent impairment – Decision under review in application 2011/3899 set aside – Decision under review in application 2012/4454 affirmed

[Perera and Comcare](#) [2013] AATA 589; 22/8/2013; Professor RM Creyke, Senior Member

Commonwealth Employees – Anxiety disorder – Whether reasonable administrative action – Whether taken in a reasonable manner in respect of employment – Decision under review affirmed

[Rand and Comcare](#) [2013] AATA 580; 19/8/2013; Professor RM Creyke, Senior Member, and Dr B Hughson, Member

Commonwealth employees – Anxiety and depression – Nature of adjustment disorder – Nature of personality disorder – Bullying and harassment in the workplace – Whether there was contribution to a material extent/significant degree by employment – Impact of non-employment factors on injury – Predisposition to development or aggravation of injury – Decision under review affirmed

## Corporations

[Sullivan and Anor and Australian Securities and Investments Commission](#) [2013] AATA 592; 23/8/2013; Senior Member BJ McCabe

Cancellation of Australian Credit Licence – Banning order – Contravention of credit legislation – Fit and proper person – False statements in official documentation – Legislative and regulatory requirements not met – The decision under review regarding Mr Sullivan is varied – Decision under review affirmed

## Immigration and Citizenship

[Kim and Minister for Immigration and Citizenship](#) [2013] AATA 568; 15/7/2013; Senior Member N Bell

Application for citizenship by conferral – Non- permanent resident – Whether applicants held a permanent visa – Applicants held temporary visas – Decision under review affirmed

## Practice and Procedure

[Laffer and Secretary, Attorney-General's Department](#) [2013] AATA 585; 20/8/2013; The Hon RJ Groom AO, Deputy President

Application for a review of decision of Social Security Appeals Tribunal – Whether application lodged within 28 days – Whether 28 day period is reckoned exclusive of day decision furnished to applicant – Meaning of “day” – Application lodged electronically at 6.29 pm on 28th day – Application lodged within 28 days

[Levi and Companies Auditors and Liquidators Disciplinary Board and Australian Securities Investment Commission \(Joined Party\)](#) [2013] AATA 576; 16/8/2013; Deputy President RP Handley

Cancellation of registration of a liquidator under s 1292 of the *Corporations Act 2001* – Power to stay or otherwise affect the operation or implementation of a decision under review – Whether stay necessary to secure effectiveness of hearing and determination of the application for review – Prospects of success – Prejudice to parties - Public interest – possibility of criminal prosecution – Confidentiality orders sought – Hearings to be in public except in exceptional circumstances – Whether it is desirable to make an order by reason of the confidential nature of any evidence or matter or for any other reason – Applications refused

[Low and Commissioner of Taxation](#) [2013] AATA 549; 1/8/2013; Deputy President PE Hack SC

Application for direction under s 37(2) of *Administrative Appeals Tribunal Act 1975* refused

[Warren and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 563; 12/7/2013; Senior Member GD Friedman

Extension of time to lodge application for review – Application refused

[Zoric and Australian Postal Corporation](#) [2013] AATA 594; 19/7/2013; Senior Member GD Friedman

Interlocutory proceeding – Application to stay decision of respondent – Refusal to stay the implementation of the reviewable decision

## **Social Security**

[Bays and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 590; 22/8/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Widow Allowance – Entitlement to Arrears – Determining correct date of effect – Application for review – Decision under review is affirmed

[Confidential and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 582; 20/8/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Carer payment – Statutory definition of “carer” – Meaning of “constant care” in Guide to Social Security – Significance of *Carer Recognition Act* – Requirements for constant care not met by applicant – Decision under review affirmed

[Gunning and Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education](#) [2013] AATA 595; 23/8/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Youth Allowance – Criteria for regarding a person as independent – Applicant not prevented from living at home of parents because of extreme family breakdown or other similar exceptional circumstances – Not unreasonable to expect the applicant to live at home of parents – Applicant receiving continuous support from parents – Applicant not regarded as independent – Decision under review affirmed

[Hosking and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 596; 23/8/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Newstart Allowance – Method of payment – Power of SSAT to review decisions relating to the method of payment of a social security benefit – Effect of restriction on SSAT exercising powers and discretions of Secretary – Powers of AAT on review – Decision under review affirmed

**Jamieson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 588; 22/8/2013; Dr M Denovan, Member

Pensions, benefits and allowance – Disability support pension – 20 points or more under the Impairment Tables – Decision under review affirmed

**Reyhanli and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Anor** [2013] AATA 587; 22/8/2013; Senior Member G Ettinger

Assurance of Support for wife who obtained visa to enter Australia from Turkey – Couple separated a short time later – Debt incurred when wife was granted Special Benefit, Austudy and Newstart allowance – Assurance of Support properly entered into – Cannot be withdrawn once visa issued – No special circumstances to enliven discretion to end Assurance of Support before end of two year period – Decision under review affirmed

**Schostakowski and Secretary, Department of Education, Employment and Workplace Relations** [2013] AATA 586; 21/8/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Settlement of compensation claim – Lump sum compensation payment includes component referable to lost earnings and capacity to earn – Imposition of preclusion period – Special circumstances not established – No part of settlement treated as not having been received – Preclusion period not shortened – Decision under review affirmed

## **Taxation**

**B.E.R.T. Pty Ltd as Trustee for the B.E.R.T. Fund No. 2 and Commissioner of Taxation** [2013] AATA 584; 20/8/2013; Justice JA Logan RFD, Presidential Member and Deputy President PR Hack SC

Fringe benefits tax – Approved worker entitlement funds – Whether public trading trust – Whether unit trust – Decision under review affirmed

**KFBC and Commissioner of Taxation** [2013] AATA 577; 16/8/2013; Senior Member BJ McCabe

Superannuation – Non-concessional contributions – Excess contributions – Commissioner's discretion regarding excess contributions – Special circumstances – Objection decision affirmed

## **Veterans' Affairs**

**McDougall and Repatriation Commission** [2013] AATA 583; 20/8/2013; Dr P McDermott RFD, Senior Member and Dr GJ Maynard, Brigadier (Rtd), Member

Pensions and benefits – Cervical spondylosis – Conflict of professional evidence – No evidence of condition – 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>National Australia Bank Limited v Georgoulas</b>	<a href="#">[2013] AATA 553</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Kline v Official Secretary to the Governor General &amp; AAT</b>	<a href="#">[2012] AATA 247</a>	<a href="#">[2013] HCATrans 180</a> <a href="#">[2012] FCAFC 184</a>
<b>Anti-Doping Rule Violation Panel v XZTT</b>	<a href="#">[2012] AATA 728</a>	<a href="#">[2013] FCAFC 95</a>
<b>Bell v Commissioner of Taxation</b>	<a href="#">[2012] AATA 45</a>	<a href="#">[2013] HCATrans 179</a> <a href="#">[2013] FCAFC 32</a> <a href="#">[2012] FCA 1042</a>

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