



AAT Bulletin

ISSUE NO. 35/2013

2 SEPTEMBER 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
Civil Aviation	2
Compensation.....	2
Customs.....	3
Practice and Procedure	3
Social Security	4
Taxation	4
Veterans' Affairs.....	5
Appeals	6
Appeals lodged	6
Appeals finalised.....	6
Statements of Principles	7
New Statements of Principles.....	7
Amended Statements of Principles.....	8

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.

Civil Aviation

[Anderson and Civil Aviation Safety Authority](#) [2013] AATA 613; 29/8/2013; Senior Member AK Britton and Air Vice-Marshal F Cox AO (Rtd), Member

Cancellation of commercial pilot (helicopter) licence — Whether the Applicant is a fit and proper person to hold a commercial pilot's licence — Whether the Applicant operated a helicopter in a reckless manner — Whether the Applicant failed to disclose medical conditions to the Respondent — Decision under review affirmed

[Oasis Flight Training Pty Ltd and Civil Aviation Safety Authority](#) [2013] AATA 600; 23/8/2013; Senior Member E Fice

Air Operator's Certificate — Flying training — General aviation charter and aerial work — Safety Rules — Smoking within 15m of an aircraft — Restriction on advertising of commercial operations — Recreational aircraft and flying training — Infringement notices — Allowing a student to fly solo in an aircraft without a licence — False and misleading information on an AOC application — Standard of proof — Decision under review affirmed

Compensation

[Burke and Comcare](#) [2013] AATA 619; 30/8/2013; Deputy President PE Hack SC

Claims — Whether notice of injury given to relevant authority as soon as practicable after employee became aware of injury — Whether relevant authority would not be prejudiced if notice treated as sufficient notice — Whether failure to notify result of ignorance, mistake or other reasonable cause — Decision under review affirmed

[Chun and Comcare](#) [2013] AATA 603; 27/8/2013; Senior Member JF Toohey and Dr IS Alexander, Member

Medical treatment — Psychiatric injury — Whether Comcare liable for costs of personal trainer — Whether use of personal trainer was medical treatment — Whether it was reasonable medical treatment — Decision under review affirmed

[Crouch and Comcare](#) [2013] AATA 608; 29/8/2013; Deputy President RP Handley

Commonwealth Employees — Whether applicant suffers from a disease in accordance with the Act — Whether applicant's employment contributed to a significant degree to her condition — Whether applicant's condition resulted in incapacity for work or impairment — No specific diagnosis found — Employment did not contribute to a significant degree to applicant's condition — Decision under review affirmed

[Dango and Comcare](#) [2013] AATA 597; 23/8/2013; Deputy President JW Constance [2013] AATA 597; 23/8/2013; Deputy President JW Constance

Depression — Whether employment contributed to a significant degree — Whether reasonable administrative action taken in a reasonable manner — Decision under review affirmed

[Wraight and Telstra Corporation Limited](#) [2013] AATA 615; 30/8/2013; Senior Member BJ McCabe

Workplace injury or disease — Reasonable administrative action — Performance management in the workplace — Prior illness — Psychiatric condition — Decision under review affirmed

Customs

[H.A.G. Import Corporation \(Australia\) Pty Ltd and Chief Executive Officer of Customs](#) [2013] AATA 599; 23/8/2013; Senior Member J Handley

Revocation of Tariff Classification Orders (TCOs) by the initiation of a delegate of the respondent — Section 269SD requires the delegate to have a belief on a particular day that if a TCO in force on that day was not in force and an application for it was lodged it would not have been made — Process of revocation conditional on a TCO being in force and a belief having been held — Revocation of TCOs retrospective to the date of the belief — Tribunal entitled to examine the belief — Belief confined to absence of full description of goods — Delegate did not have a belief of substitutable goods being produced in Australia — Decision heard and varied

Practice and Procedure

[Echelon National Security Agency Pty Ltd and Australian Skills Quality Authority](#) [2013] AATA 602; 27/8/2013; Senior Member AF Cunningham

Application for reinstatement — No evidence of error — Application dismissed

[Repacholi and Civil Aviation Safety Authority and Transcoast Enterprises Pty Ltd \(Joined Party\)](#) [2013] AATA 598; 23/8/2013; Deputy President SD Hotop

Request for order staying decision under review — Prospects of success of application for review — Hardship to applicant and joined party if stay order not made — Risk to public safety and safety of air navigation if stay order made — Desirable to make order staying operation of part of decision under review — Such order appropriate for purpose of securing effectiveness of hearing and determination of application for review — Partial stay order made

[Toben and Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education](#) [2013] AATA 614; 30/8/2013; Deputy President K Bean

Extension of time — Jurisdiction — Whether applicant made a request for remission of his HECS-HELP debt due to "special circumstances" — Whether reviewable decision — Applicant's correspondence properly construed as a complaint rather than request for remission — No reviewable decision — No jurisdiction — Application for extension of time refused

Social Security

[Cutting and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 616; 30/8/2013; Deputy President RP Handley

Disability support pension — DSP — Impairment tables — Continuing inability to work — Applicant meets impairment rating requirement — Applicant has severe impairment — Decision under review set aside

[Dudic and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 605; 28/8/2013; Senior Member AF Cunningham

Disability support pension — Overseas applicant — Anxiety and depression — Impairment rating — Condition not fully treated and stabilised — Decision under review affirmed

[Owaied and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 607; 28/8/2013; Ms R Pertou, Member

Special benefit — Spouse visa — Ineligibility for social security benefits for 104 weeks after arrival — Substantial change of circumstances beyond applicant's control — Limited discretion — Criteria to be met on date of claim — Decision under review affirmed

[Richards and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 609; 29/8/2013; Miss EA Shanahan, Member

Carer allowance — Workers' compensation periodic payments — Payment of weekly earnings for six weeks for period in 2011 — Impact, if any, of working credits — Applicant's reliance on Centrelink advice — Applicant has multiple Centrelink registration numbers (CRNs) — Data from one CRN provided — Remitted for reconsideration

[Saleh and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 610; 29/8/2013; Senior Member JF Toohey

Disability support pension — Back pain — Depression and bipolar disorder — Thyroid condition — Dental problems — Whether impairment rate 20 or more points — Decision under review affirmed

Taxation

[Bai and Commissioner of Taxation](#) [2013] AATA 612; 29/8/2013; Deputy President SE Frost

Amended assessments for four income years — Commissioner's opinion in respect of each year that there was evasion — Administrative penalty imposed at 50 per cent for recklessness — Taxpayer's burden of proof — Tribunal not satisfied that there was no evasion — Objection decisions set aside and varied so as to allow objections in part — Administrative penalty at 50 per cent upheld — No remission

[Chang and Commissioner of Taxation](#) [2013] AATA 611; 29/8/2013; Deputy President SE Frost

Amended assessments for four income years — Commissioner's opinion that there was evasion in three of those years — Administrative penalty imposed at 50 per cent for recklessness — Taxpayer's burden of proof — Tribunal satisfied no evasion in the three income years — Objection decisions set aside and objections allowed in full — Taxpayer establishes

excessiveness of fourth amended assessment — Objection allowed in part — Administrative penalty remitted in full

[Hartley and Commissioner of Taxation](#) [2013] AATA 601; 26/8/2013; Professor R Deutsch, Deputy President

Income — Whether the applicant conducted a business of share trading — Consideration of factors indicative of a business being conducted — Decision under review affirmed

[SJ Buller Pty Ltd and Commissioner of Taxation](#) [2013] AATA 617; 30/8/2013; Senior Member FD O'Loughlin

WINE EQUALISATION TAX — Associated producer — Whether a producer is under an obligation or might reasonably be expected to act in accordance with the directions, instructions or wishes of the other producer — Penalty — Decision under review affirmed

[ZKBN and Commissioner of Taxation](#) [2013] AATA 604; 27/8/2013; Senior Member RG Kenny

Australian citizen working outside Australia during relevant tax years — Whether applicant an “Australian resident” — Meaning of “resident” and “resident of Australia” — Relevance of circumstances on last day of financial year to the issue of residence — Applicant a resident according to ordinary concepts — Extension of definition by reference to “means” and “includes” — Unnecessary to consider domicile test as alternative test for residence — Commissioner’s objection decision affirmed

Veterans' Affairs

[McLeod and Repatriation Commission](#) [2013] AATA 606; 28/8/2013; Deputy President RP Handley

Disability pension — Applicant saw operational service in Vietnam — Whether applicant suffers from posttraumatic stress disorder — Whether posttraumatic stress disorder is war-caused — *Deledio* test — Whether applicant experienced a category 1(A) or 1(B) stressor — Tribunal not satisfied beyond reasonable doubt that the incapacity did not arise from the war-caused disease — Decision set aside and remitted

Appeals

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
Pala v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2013] AATA 543

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Bray v Comcare	[2012] AATA 522	ACD49/2012
Commissioner of Taxation v Fabig & Dickinson	[2013] AATA 25 [2013] AATA 26	[2013] FCAFC 99
Calvista Australia Pty Ltd v AAT & Director of Classification Board	[2013] AATA 91	[2013] FCA 860
Australian Postal Corporation v Sinnaiah	[2012] AATA 891	[2013] FCAFC 98
Yao v Minister for Immigration and Citizenship (No 2)	[2013] AATA 209	[2013] FCA 873

Statements of Principles

This section of the Bulletin provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from 4 September 2013.

Malignant neoplasm of the anus and anal canal - No. 51 of 2013

<http://www.comlaw.gov.au/Details/F2013L01638>

Malignant neoplasm of the anus and anal canal - No. 52 of 2013

<http://www.comlaw.gov.au/Details/F2013L01639>

Fibrosing interstitial lung disease - No. 53 of 2013

<http://www.comlaw.gov.au/Details/F2013L01640>

Fibrosing interstitial lung disease - No. 54 of 2013

<http://www.comlaw.gov.au/Details/F2013L01642>

Asbestosis – No. 55 of 2013

<http://www.comlaw.gov.au/Details/F2013L01643>

Asbestosis – No. 56 of 2013

<http://www.comlaw.gov.au/Details/F2013L01644>

Sudden unexpected death – No. 57 of 2013

<http://www.comlaw.gov.au/Details/F2013L01645>

Sudden unexpected death – No. 58 of 2013

<http://www.comlaw.gov.au/Details/F2013L01646>

Guillain-Barre syndrome – No. 59 of 2013

<http://www.comlaw.gov.au/Details/F2013L01647>

Guillain-Barre syndrome – No. 60 of 2013

<http://www.comlaw.gov.au/Details/F2013L01648>

Malignant neoplasm of the larynx – No. 61 of 2013

<http://www.comlaw.gov.au/Details/F2013L01649>

Malignant neoplasm of the larynx – No. 62 of 2013

<http://www.comlaw.gov.au/Details/F2013L01650>

Hypertension – No. 63 of 2013

<http://www.comlaw.gov.au/Details/F2013L01652>

Hypertension – No. 64 of 2013

<http://www.comlaw.gov.au/Details/F2013L01651>

Gastro-oesophageal reflux disease – No. 65 of 2013

<http://www.comlaw.gov.au/Details/F2013L01653>

Gastro-oesophageal reflux disease – No. 66 of 2013

<http://www.comlaw.gov.au/Details/F2013L01654>

Motor neurone disease – No. 67 of 2013

<http://www.comlaw.gov.au/Details/F2013L01655>

Motor neurone disease – No. 68 of 2013

<http://www.comlaw.gov.au/Details/F2013L01656>

Amended Statements of Principles

The Tribunal has been advised that the following instruments amending the Statements of Principles for the specified conditions have been amended at the direction of the Specialist Medical Review Council. They take effect from **26 June 2013**.

Lumbar spondylosis – No. 69 of 2013

<http://www.comlaw.gov.au/Details/F2013L01657>

Lumbar spondylosis – No. 70 of 2013

<http://www.comlaw.gov.au/Details/F2013L01658>



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](https://creativecommons.org/licenses/by/3.0/au/). 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](https://www.austlii.edu.au/au/other/dfat/special/aat/). Those terms provide that section 182A of the *Copyright Act 1968* applies.