



## AAT Bulletin

ISSUE NO. 36/2013

9 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.

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Enquiries regarding this publication may be directed to [aatweb@aat.gov.au](mailto:aatweb@aat.gov.au).

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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

[Hull and Australian Postal Corporation](#) [2013] AATA 635; 5/9/2013; Deputy President SA Forgie

Injury – Cause – Aggravation – Incapacity – Decisions affirmed

Rehabilitation program – Failing to undertake rehabilitation program – Whether reasonable excuse – Decision affirmed

Rehabilitation program – Whether rehabilitation program should be varied to removed requirement that employee undertake it at former place of employment – Decision affirmed

Reimbursement of reasonable travel expenses – Whether entitled to reimbursement for travel expenses necessitated by employee's moving residence to regional area and continuing to consult city-based surgeon

PRACTICE AND PROCEDURE – Stare decisis – Whether bound by judgments of Federal Magistrates' Court/Federal Circuit Court

WORDS AND PHRASES – “have regard to”

[Iliffe and Comcare](#) [2013] AATA 631; 3/9/2013; Professor RM Creyke, Senior Member and Dr B Hughson, Member

Commonwealth employees – Adjustment reaction with mixed emotional factors – Migraine – Whether arising out of or in the course of employment – Whether reasonable administrative action taken in a reasonable manner – Failure to obtain a benefit – Decision under review affirmed

[Sethi and Comcare](#) [2013] AATA 620; 30/8/2013; Senior Member E Fice

Workers' compensation – Medical treatment – Incapacity payments – Rehabilitation program – Return to work plan – Vocational assessment – Repetitive work injury – Right wrist – Chronic pain syndrome – Decision under review affirmed

[Thappa and Comcare](#) [2013] AATA 629; 3/9/2013; Mr S Webb, Member

Psychological injury claim – Significant employment contribution – Disease – Reasonable administrative action – Undertaken in a reasonable manner – Decision under review affirmed

## Freedom of Information

[Chemical Trustee Limited and Ors and Commissioner of Taxation and Chief Executive Officer, AUSTRAC \(Joined Party\)](#) [2013] AATA 623; 30/8/2013; The Hon BJM Tamberlin QC, Deputy President, Deputy President SE Frost and Deputy President FJ Alpins

Request for access to documents – Exempt documents – Claims for exemption pursuant to ss 33, 37 and 38 of the *Freedom of Information Act 1982* (Cth) – Damage to international relations of the Commonwealth – Whether documents divulge information communicated in confidence by a foreign government, authority of a foreign government or international organisation to the Commonwealth – Whether prejudices or discloses investigative procedures – Whether discloses “protected information” – Decisions under review set aside and substituted decisions made

## Immigration and Citizenship

[Liu and Minister for Immigration, Multicultural Affairs and Citizenship](#) [2013] AATA 622; 30/8/2013; Senior Member E Fice

General eligibility for citizenship – General residence requirements – Ministerial discretion relating to the spouse of an Australian citizen – Overseas absences – Close and continuing relationship with Australia – Decision under review affirmed

[Taniela and Minister for Immigration, Multicultural Affairs and Citizenship](#) [2013] AATA 632; 4/9/2013; Senior Member AK Britton

Visa cancellation – Character test – Ministerial Direction No 55 – Consideration of the applicant’s criminal history – Consideration of the applicant’s ties to Australia – Consideration of the applicant’s risk of reoffending – Decision under review affirmed

## Practice and Procedure

[Cohen and Secretary, Department of Education, Employment and Workplace Relations and Anor](#) [2013] AATA 636; 29/8/2013; Senior Member JL Redfern

Application dismissed under s 42A(2) of the *Administrative Appeals Tribunal Act 1975* – Application for reinstatement under s 42A(9) – Principles to be applied – Failure to appear – Failure to comply with directions – Prejudice to respondent and other party – Application for reinstatement refused

[Beiruti and Commissioner of Taxation](#) [2013] AATA 634; 5/9/2013; Deputy President SA Forgie

Extension of time – Relevant principles – Tribunal without power to review objection decision even if time extended – Review sought of non-crediting of PAYG withholding credits – Whether encompassed in review of assessment – No jurisdiction – Extension of time refused

## Social Security

### [Cao and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 591; 22/8/2013; Senior Member AK Britton

Overpayments and debt recovery – Whether deposits into Applicant’s bank account constitute income – Whether the debt should be written off – Whether the debt should be waived – Decision affirmed

### [Chang and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 625; 30/8/2013; Professor RM Creyke, Senior Member

Disability support pension – Disability support pension suspended after leaving Australia – Whether an ‘Australian resident’ under s 1220 of the *Social Security Act 1991* – Decision under review affirmed

### [Fletcher and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 633; 4/9/2013; Deputy President PE Hack SC

Debt – Whether released from debt on discharge from bankruptcy – Whether debt incurred by means of fraud – Decision under review affirmed

### [Lawson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 627; 3/9/2013; Senior Member AF Cunningham

Disability support pension – Diagnosed conditions of anxiety/depression and opiate dependency – Conditions not fully treated and stabilised – Decision under review affirmed

### [Phillips and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 618; 30/8/2013; Deputy President K Bean

Disability support pension – Qualification – Whether applicant’s medical conditions are fully diagnosed, investigated, treated and stabilised – Applicant’s conditions were not fully diagnosed and treated during the relevant period – Conditions therefore do not attract any impairment points – Applicant not qualified for disability support pension – Decision under review affirmed

## Taxation

### [AP Energy Investments Limited and Commissioner of Taxation](#) [2013] AATA 626; 2/9/2013; Senior Member CR Walsh

Capital gains tax and foreign residents – When foreign resident can disregard a capital gain or loss from CGT events – Disposal of shares by foreign company in Australian resident company – When an asset is “taxable Australian property” – “Taxable Australian real property” – “Indirect Australian real property interest” – “Principal asset test” (PAT) – Whether applicant passed the PAT – Whether the sum of market value of test (Australian resident) entity’s assets that are “taxable Australian real property” (TARP) exceeds the sum of the market value of its assets that are not “taxable

Australian real property" (non-TARP) – Commissioner's objection set aside and applicant's objection allowed in full

[Confidential and Commissioner of Taxation](#) [2013] AATA 624; 30/8/2013; Senior Member FD O'Loughlin

Goods and Services Tax – Input tax credits – Whether a supply was made – Penalty – Whether intentional disregard or failure to take reasonable care

[Russell and Commissioner of Taxation](#) [2013] AATA 621; 30/8/2013; Senior Member G Lazanas

Income tax – Deductions – Self-education expenses – Work expenses – Home office expenses – Depreciation – Onus of proof – Substantiation requirements – Disallowance of PAYG credits claimed not reviewable – Objection decision under review affirmed

## **Veterans' Affairs**

[Higgins and Repatriation Commission](#) [2013] AATA 630; 3/9/2013; Dr P McDermott RFD, Senior Member

Pensions and benefits – Widow's pension – Death of veteran – Operational service – Cerebrovascular accident – Statement of Principles apply – Hypertension – Reasonable hypothesis connecting death with circumstances of service – Not satisfied beyond reasonable doubt that death was not war-caused – Decision under review set aside and substituted

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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>Guden v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2013] AATA 380</a>
<b>Preston Super Access Pty Ltd v Australian Trade Commission</b>	<a href="#">[2013] AATA 537</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Robson v Military Rehabilitation and Compensation Commission</b>	<a href="#">[2012] AATA 809</a>	<a href="#">[2013] FCAFC 101</a>
<b>Deas v Issa</b>	<a href="#">[2013] AATA 292</a>	<a href="#">[2013] FCA 892</a>
<b>Kalm v AAT &amp; Minister for Immigration Multicultural Affairs and Citizenship</b>	<a href="#">[2013] AATA 87</a>	<a href="#">[2013] FCA 890</a>

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