



## AAT Bulletin

ISSUE NO. 38/2013

23 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](mailto:aatweb@aat.gov.au).

### CONTENTS

<b>AAT Recent Decisions</b> .....	<b>2</b>
Compensation.....	2
Immigration and Citizenship .....	2
Practice and Procedure .....	2
Social Security .....	2
Taxation .....	3
Veterans' Affairs.....	4
<b>Appeals</b> .....	<b>5</b>
Appeals lodged .....	5
Appeals finalised.....	5
<b>Recent developments</b> .....	<b>6</b>
Administrative Arrangements.....	6

---

## 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

[Barons and Comcare](#) [2013] AATA 667; 19/9/2013; Deputy President SD Hotop and Dr J Chaney, Member

Commonwealth employee – Applicant travelled by aircraft from Perth to Cocos Islands on 1 March 2010 for purpose of employment by Commonwealth – Applicant suffered scrotal cellulitis (Fournier's gangrene) on 2 March 2010 – Applicant treated with antibiotic medication including gentamicin on 3 March 2010 – Applicant subsequently developed bilateral sensorineural hearing loss – Applicant claimed compensation – Applicant's scrotal cellulitis not a compensable injury – Applicant's bilateral sensorineural hearing loss not a compensable injury – Decision under review affirmed

### Immigration and Citizenship

[Gow and Minister for Immigration and Citizenship](#) [2013] AATA 662; 17/9/2013; Senior Member N Isenberg

*Australian Citizenship Act 2007* – Australian citizenship by conferral – Did not satisfy general residence requirements – Convictions of assault – Person's confinement in prison – Circumstances that warrant discretion not be exercised – Decision affirmed

### Practice and Procedure

[Li and Tax Practitioners Board](#) [2013] AATA 669; 20/9/2013; Senior Member AK Britton

TAXATION AND REVENUE – Tax agents – Application to stay cancellation of registration as a tax agent – Fit and proper person – Stay refused

### Social Security

[Ahern and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 665; 18/9/2013; Senior Member N Bell

Disability support pension – Unlimited portability of payment – Whether applicant resumed residence in Australia – Decision under review set aside

[Bilney and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 659; 13/9/2013; Senior Member G Ettinger

DSP – Date of commencement – Assets test – Value of farming trusts – Date Applicant applied for DSP and eligibility – Value of Kojonup property – Decisions affirmed

**Johansson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 660; 16/9/2013; Mr S Webb, Member

Disability Support Pension – Compensation for work injury – Three lump sum payments over seven years – Combination of lump sum payments when calculating preclusion period – Erroneous information – No special circumstances – Periodic payments period – Start of lump sum preclusion period not correct – Decision varied

**Mallis and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 658; 12/9/2013; Ms K Hogan, Member

Pension bonus scheme – Applicant not registered during relevant period – Applicant applying for retrospective registration for pension bonus scheme – Whether applicant satisfied work test during work periods – Applicant had been in receipt of disability support pension – Applicant not eligible for pension bonus – Decision under review affirmed

**VMXC and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 663, 17/9/2013; Deputy President RP Handley

Pensions – Disability support pension – Whether applicant's impairments are rated 20 points or more under the Impairment Tables – Whether she has a continuing inability to work – Decision under review affirmed

## **Taxation**

**Gerbic and Commissioner of Taxation** [2013] AATA 664; 17/9/2013; Deputy President IR Molloy

Income tax – Capital gains tax (CGT) – Joint tenants – No exemption as a trustee – Main residence exemption not applicable – Liable to pay 50% of the capital gain on disposal – Objection decision affirmed

**Harrison and Commissioner of Taxation** [2013] AATA 657; 26/8/2013; Senior Member BJ McCabe

Pensions – Overseas pension entitlements – Lump sum payments – Ordinary income – Exceptional circumstances – Exception to the general rule – Objection decisions under review affirmed

**Perry and Commissioner of Taxation** [2013] AATA 671; 20/9/2013; Senior Member RG Kenny

Claims for unsubstantiated deductions – Tax shortfall – Recklessness by taxpayer in making claims – Imposition of administrative penalty – No basis for remittal of penalty – Commissioner's objection decision affirmed

**Sutton and Commissioner of Taxation** [2013] AATA 661; 16/9/2013; Mr S Webb, Member

Excess non-concessional superannuation contributions tax – Concessional contributions – Limit on deductions – Personal superannuation contribution deductions in excess of taxable income not allowable – Excess amount treated as non-concessional contributions – Non-concessional contributions cap – Cap exceeded – Excess amount subject to excess contributions tax – Calculation correct – Decision affirmed

## Veterans' Affairs

[Binns and Repatriation Commission](#) [2013] AATA 655; 13/9/2013; Deputy President SD Hotop

Veterans' entitlements – Disability pension – Applicant served in Royal Australian Navy 1988-1992 – Applicant involved in motorcycle accident while travelling to Base to perform duty during defence service – Applicant claimed disability pension for head injury – Tribunal not satisfied that applicant suffered head injury or traumatic brain injury in motorcycle accident – Applicant subsequently contracted frontal lobe dysfunction – Frontal lobe dysfunction not defence-caused – Decision under review affirmed

[Holborow and Repatriation Commission](#) [2013] AATA 666; 18/9/2013; Senior Member JL Redfern and Dr I Alexander, Member

Special rate of pension – Whether applicant satisfies s 24(1)(c) of the *Veterans' Entitlements Act 1986* – Accepted post-traumatic stress disorder, psychoactive substance abuse or dependence, lumbar spondylitis and osteoarthritis affecting both knees – Whether prevented from participating in remunerative work because of war-caused injuries and/or disabilities alone – Whether suffered loss of earnings that would not be suffering but for the war-caused incapacity – Decision set aside and substituted with decision that applicant entitled to disability pension at special rate

[Hopwood and Repatriation Commission](#) [2013] AATA 668; 19/9/2013; Ms R Perton, Member

Pension at special rate – Whether war caused conditions alone cause of inability to work – Reason why applicant not working during assessment period – Decision under review affirmed

[Knight and Repatriation Commission](#) [2013] AATA 672; 20/9/2013; Senior Member J Handley

Applicant served on HMAS *Sydney* in two limited periods in 1970 and 1971 – Each voyage into Vung Tau harbour of very limited duration – Hypotheses of depression by cigarette smoking (with a sub-hypothesis of erectile dysfunction) and alcohol abuse – Many other non-service events contributed to smoking and alcohol consumption – Satisfied beyond reasonable doubt the illnesses are not war-caused – Decision affirmed

[Palmer and Repatriation Commission](#) [2013] AATA 670; 20/9/2013; Senior Member RG Kenny

Widow's pension – Operational service with Australian Army – Death from carcinoma of the stomach – Statement of Principles concerning malignant neoplasm of the stomach – No material pointing to the presence of *Helicobacter pylori* – Clinical onset – Reasonable hypothesis of relationship to eligible war service not raised – Death not war-caused – Decision affirmed

---

## 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 [AustLI](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

### Appeals lodged

---

CASE NAME	AAT REFERENCE
<b>Cao v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2013] AATA 591</a>
<b>Pangilinan v Minister for Immigration, Multicultural Affairs and Citizenship &amp; AAT</b>	<a href="#">[2013] AATA 574</a>

---

### Appeals finalised

---

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>Soames v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs</b>	<a href="#">[2013] AATA 473</a>	<a href="#">[2013] FCA 938</a>

---

---

## Recent developments

---

This section of the Bulletin contains information about recent legal changes that affect the AAT or other important developments.

### **Administrative Arrangements**

The Australian Government recently made changes to the names of certain ministers, departments and secretaries. Changes to the Administrative Arrangements took effect on 18 September 2013. The Administrative Arrangements Order of 18 September 2013 can be viewed on [ComLaw](#).

© Commonwealth of Australia 2013



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](mailto: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/page/aatlii.html). Those terms provide that section 182A of the *Copyright Act 1968* applies.