



# 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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## CONTENTS

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

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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.

### Bankruptcy

[Pescott and Inspector-General in Bankruptcy](#) [2013] AATA 680; 24/9/2013; Deputy President SA Forgie

Contribution assessments – Fringe benefits – Value of fringe benefits – Housing right benefit – Assessing value of right – Identifying nature of right as right to occupy or as a lease – Assessment by reference to rental value – Consideration of principles – Assessment of rental value when consideration wholly in kind or partly in kind – Adjourn further consideration of value of garden maintenance and any other relevant matters

Contribution assessments – Fringe benefits – Identifying provider of right – Identifying whether provided under a right to occupy given by the owner or, under a lease or otherwise by spouse – Reconciliation of provisions relating to housing right fringe benefit with those relating to support provided by way of lodging (including board) – Right to occupy given by owner does not exclude certain income under modified definition of “fringe benefit” – Right to occupy provided by spouse may do so

PRACTICE AND PROCEDURE – Estoppel – Whether Tribunal bound to adopt finding of facts made by differently constituted Tribunal in reviewing contribution assessment relating to earlier contribution assessment period – Not bound by those findings – Whether should, as matter of discretion, adopt those findings of fact – Findings not adopted

### Compensation

[Chang and Military Rehabilitation and Compensation Commission](#) [2013] AATA 677; 24/9/2013; Senior Member RG Kenny, and Dr GJ Maynard, Brigadier (Rtd), Member

Military Compensation – Impairment for “left pre-patella soft tissue injury” and “aggravation of sciatica with early signs of lumbar spondylosis at L5/S1” – Relevance of work-related psychiatric conditions (“major depressive disorder” and “anxiety disorder”) to assessment under Table 9 of the “Guide to the Assessment of the Degree of Permanent Impairment” Edition 2.1, Part 2 – Contribution by psychiatric conditions to assessment of impairment under Table 9.5 but not under Table 9.6 – Increase in impairment under Table 9.5 from 10% to 20% – Impairment of 0% under Table 9.6 of the Guide – Decision under review set aside

[Costa and Military Rehabilitation and Compensation Commission](#) [2013] AATA 694; 27/9/2013; Senior Member RM Creyke and Dr B Hughson, Member

Military compensation – Service in the Royal Australian Air Force – Major depressive disorder – Bruxism – Date of injury – Aggravation of injury – Whether service contributed to condition to a material degree – Decision under review affirmed

[Van Duren and Military Rehabilitation and Compensation Commission](#) [2013] AATA 688; 26/9/2013; Professor RM Creyke, Senior Member

Military compensation – Entitlement to incapacity payments under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) section 19 – Incapacitated for period from October 2004 to March 2006 – Orders varied under s 43

## **Immigration and Citizenship**

[Smith and Minister for Immigration and Border Protection](#) [2013] AATA 687; 26/9/2013; Deputy President SA Forgie

MIGRATION – Visa cancellation – Character grounds – Violent behaviour - Risk to the Australian community – Decision affirmed

## **Practice and Procedure**

[ACN 092 138 442 Pty Ltd \(In Liquidation\) and Commissioner of Taxation](#) [2013] AATA 690; 27/9/2013; Senior Member JL Redfern

Proceedings – Applicant in liquidation – Leave granted by Court to lodge objection to assessment – Whether leave extended to authority to apply to the Administrative Appeals Tribunal for review of the objection decision – Whether director has standing to commence review proceedings against objection decision – Lack of authority to commence proceedings – Application may be validated by leave granted retrospectively – No order made

[Jones and Civil Aviation Safety Authority](#) [2013] AATA 674; 20/9/2013; Senior Member BJ McCabe

STAY APPLICATION – Cancellation of pilot's licence – Appropriate and desirable to grant stay – Secure the effectiveness of the hearing and decision – Time needed to gather technical evidence – Stay application granted

## **Social Security**

[Charlton and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 692; 27/9/2013; Mr S Webb, Member

Age Pension – Partner Allowance – Small private business – Annual income based on taxation returns – Loss reported in drought years – Increased income in subsequent years – No record increased annual business income reported – Business income not taken into account - Over payment – Debt – No action taken to rectify notices setting out incorrect income – No special circumstances – Decision varied

[Clancy and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 679; 24/9/2013; Senior Member N Bell

Disability support pension – Cancellation of payment – Whether DSP correctly cancelled – Notice to provide further information – Failure to comply with requirement to provide further information – Whether special circumstances apply – Decision under review set aside

**De Vries and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 691; 4/9/2013; Miss EA Shanahan, Member

Disability support pension – Medical conditions not fully diagnosed/treated and stabilised – Does not satisfy s 94(1)(b) of the Social Security Act 1991– Decision affirmed

**EI-Moustafa and Secretary, Department of Social Services (Formerly Secretary, Department of Education, Employment and Workplace Relations)** [2013] AATA 686; 26/9/2013; Ms R Pertou, Member

Newstart allowance – Whether partnered or single – Despatch of notices – Date of deemed receipt of notice – Whether review undertaken by Secretary of cancellation decision – Whether review sought 13 weeks after Secretary’s decision – Decision affirmed

**Laffer and Secretary, Attorney-General’s Department** [2013] AATA 676; 13/9/2013; The Hon RJ Groom AO (Deputy President)

January 2013 Tasmanian bushfires – Australian Government Disaster Recovery Payment – Volunteer fire fighter – Whether “adversely affected” by bushfires – Decision under review affirmed

**Sazegar and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 685; 25/9/2013; Senior Member N Isenberg

Pensions – Disability support pension – Whether the applicant’s conditions were fully diagnosed, treated and stabilised – Whether applicant’s conditions attract an impairment rating of at least 20 points – Whether the applicant has a continuing inability to work – Decision set aside

**Shore and Secretary, Department of Education, Employment and Workplace Relations** [2013] AATA 683; 16/8/2013; Senior Member GD Friedman

Paid arrears of Newstart allowance – Decision under review affirmed

**Stevens and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs** [2013] AATA 675; 23/9/2013; Senior Member AF Cunningham

Disability support pension – Overseas claimant – Australian citizen married and residing in Vietnam – Whether an Australian resident at time of cancellation of pension – Decision under review affirmed

**Sultan and Secretary, Department of Education, Employment and Workplace Relations** [2013] AATA 678; 24/9/2013; Mr P Wulf, Member

Newstart Allowance – Unemployment as a result of a voluntary act – Whether work unsuitable due to medical condition – Whether distance and costs associated with travel excessive – Whether resignation reasonable – Eight week unemployment non-payment period – Decision under review affirmed

## Taxation

[The Trustee for the SR & K Hall Family Trust and Commissioner of Taxation](#) [2013] AATA 681; 24/9/2013; Senior Member RW Dunne

SUPERANNUATION GUARANTEE – Whether applicant's workers were employees or independent contractors – Indicia – Common law employees – Contracts wholly or principally for labour – Burden of proof – Objection decisions under review affirmed

## Veterans' Affairs

[Dunn and Repatriation Commission](#) [2013] AATA 673; 20/9/2013; Deputy President SD Hotop

Veterans' entitlements – Disability pension – Rate of disability pension – Special rate – Applicant applied for increase in rate of pension – Applicant then over 65 years – Last paid work – Applicant working as employee of another person when stopped undertaking last paid work – Applicant had not been working for that person for continuous period of at least 10 years that began before applicant turned 65 – Applicant not eligible for special rate of pension – Decision under review affirmed

[Prior; Repatriation Commission and](#) [2013] AATA 684; 24/9/2013; Deputy President RP Handley, and Dr M Couch, Member

Widow's pension – Death from suicide – Nuclear testing in Monte Bello islands – Veteran flew planes involved in Operation Mosaic – Veteran suffered from on-going skin condition causing chronic pain – Whether veteran rendered British nuclear test defence service – Whether veteran was exposed to ionising radiation – Whether veteran developed Pemphigus Erythematosus from ionising radiation exposure – Reasonable hypothesis satisfied – Not satisfied beyond reasonable doubt that incapacity did not arise from war-caused disease – Decision affirmed

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## Appeals

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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

**No appeals lodged**

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### Appeals finalised

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CASE NAME

AAT REFERENCE

COURT REFERENCE

**AP Group Limited v Commissioner of Taxation**

[\[2012\] AATA 409](#)

[\[2013\] FCAFC 105](#)

**Wallis v Secretary, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education**

[\[2013\] AATA 256](#)

[\[2013\] FCA 978](#)

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