



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

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

[GB Shaw & Co Pty Ltd trading as Dalby Air Maintenance and Civil Aviation Safety Authority](#) [2013] AATA 736; 11/10/2013; Deputy President PE Hack SC

Cancellation of a certificate of approval – Breach of condition of stay – Whether fit and proper person – Decision affirmed

[Marsh and Civil Aviation Safety Authority](#) [2013] AATA 729; 10/10/2013; Deputy President PE Hack SC

Cheating by examination candidates – Whether applicant gave another person information about questions contained in examination paper being information that might give anyone unfair advantage in examination – Decision under review set aside

Suspension of licence – Whether applicant is not fit and proper person to have responsibilities and exercise and perform functions and duties of holder of licence – Decision under review set aside

Compensation

[Mason and Military Rehabilitation and Compensation Commission](#) [2013] AATA 717; 8/10/2013; Deputy President RP Handley

Military Rehabilitation and Compensation – Claim for compensation for dependants of deceased member – Member suffered from hypertension – Member died from sudden cardiac death during a service approved football match – Whether death was a service death – Whether member received appropriate clinical treatment of hypertension from RAAF medical staff – No material contribution – Decision affirmed

[Matthews and Commonwealth Securities Limited](#) [2013] AATA 726; 9/10/2013; Senior Member RG Kenny

Applicant claimed injured at work in 2011 – Claims rejected in determinations made by respondent in June 2011 and August 2011 – Request in December 2012 for respondent to allow extension of time for request to reconsider determinations – Request refused – Application to review refusal of request – Consideration of factors relevant to exercise of discretion to allow extension of time – Length of delay – Explanation of delay – Prospects of success of substantive claims – Prejudice to respondent – Decision set aside and extension of time allowed

[O’Kane and Comcare](#) [2013] AATA 722; 8/10/2013; Professor RM Creyke, Senior Member

Commonwealth employees – Claim for hearing loss and tinnitus – Whether injury or disease – Whether arose out of or in the course of employment – Whether prejudiced by lack of contemporaneous records – Whether injury notified as soon as practicable – Decision relating to

compensation for binaural hearing loss and tinnitus affirmed – Decision relating to permanent impairment set aside

Customs

[Vestas – Australian Wind Technology Pty Limited and Chief Executive Officer of Customs](#) [2013] AATA 721; 8/10/2013; Deputy President SA Forgie

Application for tariff concession order (TCO) – Whether valid – Whether at time of application material showed reasonable grounds for asserting that application meets core criteria – Whether contained information required by TCO application form – Whether included particulars of inquiries to assist in establishing there were reasonable grounds for believing no producers in Australia of substitutable goods – Decision set aside

[Woolworths Limited and Chief Executive Officer of Customs](#) [2013] AATA 730; 11/10/2013; Deputy President RP Handley

Tariffs - Meaning of TCO 9200879 – Separate tariff advice issued for ‘Ripstick’ caster board – Whether caster board complies with tariff clarification and word description of TCO 9200879 and TCO 9204091 – Whether a caster board is a skateboard or a snakeboard – Duty paid under protest – Decision affirmed

Immigration and Citizenship

[Madziva and Minister for Immigration and Border Protection](#) [2013] AATA 713; 18/9/2013; Deputy President PE Hack SC

Citizenship – Requirement to be of good character – Conviction for minor assault – Decision under review set aside and remitted

Practice and Procedure

[Avetmiss Easy Pty Ltd and Australian Skills Quality Authority](#) [2013] AATA 732; 17/9/2013; Deputy President JW Constance

Application for reinstatement – Whether application dismissed in error – Fairness of the decision to abandon proceedings – Whether applicant company informed of the effect of dismissal – Application for reinstatement refused

[Hampson and Commissioner of Taxation](#) [2013] AATA 731; 11/10/2013; Senior Member G Ettinger

Application for extension of time in which to lodge application for review of objection decision – Goods and services tax – Refusal to refund GST – Claim for refund lodged more than four years after the end of the tax period – Merits of case – Extension of time refused

[Rose and Comcare](#) [2013] AATA 735; 2/10/2013; Mr S Webb, Member

Stay application – Relevant factors – Psychiatric disease – Invalidity retirement – Decision accepting liability for psychological injury overturned after five years – Adverse effect on applicant’s mental health – Difficult financial circumstances – Risk applicant not able to afford medical treatment if stay not granted – Some capacity to repay debt if application unsuccessful – Evidence to be tested to ascertain merit – Stay desirable to secure effectiveness of hearing – Stay granted

Social Security

[Bennett and Secretary, Department of Social Services](#) [2013] AATA 728; 10/10/2013; Senior Member AF Cunningham

Disability support pension – Conditions of depression, back condition, diabetes, foot/calf condition, tenosynovitis wrist, obesity and neutrophilia, thrombocytosis and anaemia – 20 point impairment rating not satisfied – Decision under review affirmed

[Christian and Secretary, Department of Social Services](#) [2013] AATA 716; 10/10/2013; Mr S Webb, Member

Family tax benefit – Baby bonus – Applicant overseas for more than three years – Maximum period of eligibility for FTB exceeded – Not eligible for FTB or baby bonus – Decision affirmed

[Hermann and Secretary, Department of Social Security](#) [2013] AATA 711; 4/10/2013; Senior Member RW Dunne

Pensions, benefits and allowances – Overpayment of disability support pension – Debt due to the Commonwealth – Waiver of right to recover debt – Waiver in special circumstances considered – Meaning of "knowingly" – Decision under review varied

[Hopkins and Secretary, Department of Social Services](#) [2013] AATA 725; 9/10/2013; Senior Member JF Toohey

Debt – Disability support payment – Overpayment – Whether debt correctly calculated – Whether special circumstances – Decision under review affirmed

[Li and Secretary, Department of Social Services](#) [2013] AATA 724; 9/10/2013; Senior Member JF Toohey

Benefits – Special benefit – Assurance of support – Chinese pension directed to wife in China – Ordinary income test – Direct deduction income test – Whether direct deduction income test should apply – Decision under review affirmed

[LYPG and Secretary, Department of Social Services and Anor](#) [2013] AATA 719; 8/10/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Family tax benefit – Running away from home not "an event" – "Reasonable steps" to return the child to mother's care – Decision under review affirmed

[Morris and Secretary, Department of Social Services](#) [2013] AATA 718; 8/10/2013; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Parenting Payment – Family Tax Benefit – Crisis Payment – Debt raised – Debts more than six years old – Debt period extended by review – Debts recoverable under law – Debts cannot be waived – Debts cannot be written-off – Decision under review affirmed

[Stergiopoulos and Secretary, Department of Social Services \(formerly Families, Housing, Community Services and Indigenous Affairs\)](#) [2013] AATA 720; 9/9/2013; Senior Member J Handley

Application to the Social Security Appeals Tribunal (SSAT) for review of a decision of an Authorised Review Officer (ARO) made on 6 January 2006 – Decision concerned rate of entitlement to Age Pension under the hardship provisions – SSAT convened in March 2006 – Application was withdrawn before review was completed – Application made to the SSAT in September 2012 to review the decision of the ARO of 6 January 2006 – SSAT did not review that decision – Decision that any entitlement commenced from the date of the application to the SSAT in September 2012 – Applicant was then receiving proper entitlement to Age Pension – Application to the SSAT in 2012 was more than 13 weeks after notice of the decision of the ARO was received – Entitlement to arrears of Age Pension exist only from date of application to SSAT in 2012 – Decision under review affirmed

Taxation

[Lakatos and Commissioner of Taxation](#) [2013] AATA 712; 4/10/2013; Senior Member BJ McCabe

Goods and Services Tax – Entitlement to input tax credits – Calculation of penalty based on tax shortfall – Penalty correctly imposed – Not appropriate to remit penalty – Objection decision affirmed

Veterans' Affairs

[Muras and Repatriation Commission](#) [2013] AATA 727; 9/10/2013; Senior Member N Bell and Dr H Haikal-Mukhtar, Member

Special rate of pension – Whether applicant satisfies s 24(1)(c) of the *Veterans' Entitlements Act 1986* – Accepted conditions are lumbar spondylosis, bilateral osteoarthritis of the knees, hearing loss, tinnitus – Whether applicant ceased remunerative work for reasons other than his war-caused incapacity – Decision under review set aside

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
Taniela v Minister for Immigration, Multicultural Affairs and Citizenship & AAT	[2013] AATA 632
Clement v Comcare	[2013] AATA 638
Bai v Commissioner of Taxation	[2013] AATA 612

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Cremona v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2013] AATA 349	[2013] FCA 1003
Baranski v Comcare	[2012] AATA 115	[2012] FCA 925 [2013] FCAFC 31 [2013] HCASL 174

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