



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

| | |
|-----------------------------------|----------|
| AAT Recent Decisions | 2 |
| Compensation | 2 |
| Immigration and Citizenship | 2 |
| Social Security | 3 |
| Taxation | 4 |
| Veterans' Affairs..... | 4 |
| Appeals | 6 |
| Appeals lodged | 6 |
| Appeals finalised..... | 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

[Gough and Military Rehabilitation and Compensation Commission](#) [2013] AATA 757; 23/10/2013; Professor RM Creyke, Senior Member

Military compensation – Service in the Army Reserve – Paget’s disease – Whether service contributed to condition to a material degree – Decision under review affirmed

[Kennedy and Comcare](#) [2013] AATA 696; 27/9/2013; Senior Member Toohey and Dr Couch, Member

Claim for psychological condition with consequent physical conditions in 2007 – Claim for aggravation in 2010 – Whether employment contributed to significant degree – Whether reasonable administrative action taken in a reasonable manner – Decision under review affirmed

[Northcote and Telstra Corporation Limited](#) [2013] AATA 756; 23/10/2013; Deputy President RP Handley

Applicant had pre-existing back injury from previous employment – Current employer provided applicant with ergonomically unsuitable chairs over an 18 month period – Whether frank injury or aggravation of disease – Whether aggravation of condition is compensable under the *Safety, Rehabilitation and Compensation Act 1988* – Whether aggravation of ailment was significantly contributed to by applicant’s employment – Decision set aside

[Rahimovski and Commonwealth Bank of Australia](#) [2013] AATA 755; 23/10/2013; Deputy President JW Constance

Permanent impairment – Time at which the Tribunal is to be satisfied that the injury has been suffered – Appropriate order for costs – Decision under review remitted to the respondent for reconsideration

Immigration and Citizenship

[LFHY and Minister for Immigration and Border Protection](#) [2013] AATA 763; 25/10/2013; Deputy President RP Handley

Visa refusal – Bridging visa pending determination of protection visa application – Protection visa refused – Failed character test – Substantial criminal record – Direction 55 – Seriousness and nature of conduct – Unlikely to reoffend – Other considerations – Best interests of the child – No non-refoulement obligations – Decision affirmed

Social Security

[Abel and Secretary, Department of Social Services](#) [2013] AATA 766; 25/10/2013; Deputy President PE Hack SC

Newstart allowance – Connection failure – Reconnection failure – Penalty period – Whether delegation of Secretary's power – Whether notification of consequences of non-attendance – Decision affirmed

[Bevan and Secretary, Department of Social Services](#) [2013] AATA 708; 3/10/2013; Senior Member Bell

Disability support pension – DSP – Impairment tables – Continuing inability to work requirement – Participation in a program of support – Decision under review affirmed

[Cooper and Secretary, Department of Social Services](#) [2013] AATA 749; 21/10/2013; Deputy President Groom

Disability support pension – Mitral valve prolapse – Stress/anxiety/depression – Whether applicant's medical conditions are "fully diagnosed, treated and stabilised" – Whether the conditions attract 20 points under the Impairment Tables – Applicant not qualified for disability support pension – Decision under review affirmed

[Di Marco and Secretary, Department of Social Services](#) [2013] AATA 754; 17/10/2013; Senior Member J Toohey

Age pension – Whether applicant ever a permanent resident – Social Security Agreement between Australia and The Republic of Italy – Decision under review affirmed

[Iskandar and Secretary, Department of Social Services](#) [2013] AATA 748; 18/10/2013; Senior Member D Letcher QC

Disability Support Pension – Pensions, benefits and allowances – Physical and psychiatric impairment – Whether condition "permanent" – Whether condition fully diagnosed, treated and stabilised at relevant time – Impairment Tables – Impairment rating less than 20 points – Decision under review affirmed

[Livermore and Secretary, Department of Social Services](#) [2013] AATA 747; 18/10/2013; Senior Member JF Toohey

Disability support pension – Back condition – Post traumatic stress disorder – Gallstones – Hepatitis C – Whether conditions fully diagnosed, treated and stabilised – Decision under review affirmed

[Machielse and Secretary, Department of Social Services](#) [2013] AATA 752; 21/10/2013; Ms K Hogan, Member

Overpayment of Age Pension – Debt owed to the Commonwealth – Whether Debt Arose Solely due to an Administrative Error of the Commonwealth – Whether part of the Debt Attributable to an Administrative Error may be written off – Whether Special Circumstances Exist – Whether Debt could be Waived or Written off – Decision varied

[Palmlad and Secretary, Department of Social Services](#) [2013] AATA 761; 24/10/2013; Dr M Denovan, Member

Pensions, benefits and allowances – Disability support pension – Whether 20 points or more under the Impairment Tables – Decision affirmed

[Tey and Secretary, Department of Social Services](#) [2013] AATA 753; 22/10/2013; Deputy President PE Hack SC

Disability support pension – Whether applicant has continuing inability to work – Whether applicant has “severe impairment” – Whether applicant actively participated in program of support – Decision affirmed

[TLKB and Secretary, Department of Social Services](#) [2013] AATA 759; 24/10/2013; Senior Member BJ McCabe

Benefits and allowances – Lump sum settlement – Compensation affected payment – Preclusion period – Special circumstances – Not appropriate to exercise discretion – Decision affirmed

Taxation

[Schlottmann and Commissioner of Taxation](#) [2013] AATA 750; 22/10/2013; Dr P McDermott RFD, Senior Member

Claims for unsubstantiated deductions – Expenditure not incurred in gaining or producing assessable income – Tax shortfall – Objection decision set aside in part and affirmed in all other respects

Veterans' Affairs

[Lawler and Repatriation Commission](#) [2013] AATA 758; 24/10/2013; Senior Member G Ettinger

Service pension – Rate of pension – Whether prevented from continuing to participate in remunerative work due to accepted conditions alone – Whether a loss of salary, wages or earnings is suffered – Decision under review set aside

[Murdoch and Repatriation Commission](#) [2013] AATA 764; 25/10/2013; Ms R Perton, Member

Veterans' entitlements – Ulcerative colitis – Oral contraceptive pill – Date of clinical onset – Whether condition defence-caused – Decision affirmed

[Skinner and Repatriation Commission](#) [2013] AATA 751; 22/10/2013; Senior Member RG Kenny

Defence service with Royal Australian Navy – Collision at sea – Statements of Principles for posttraumatic stress disorder – Diagnostic criteria for respect of posttraumatic stress disorder not met – Decision affirmed

[Williams and Repatriation Commission](#) [2013] AATA 760; 24/10/2013; Dr M Denovan,
Member

Benefits and entitlements – Eligibility for pension – No connection between eligible defence
service and condition – Not entitled to any benefits – 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 [AustLII](#) have been included. Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

| CASE NAME | AAT REFERENCE |
|--|---------------------------------|
| Burke v Comcare | [2013] AATA 619 |
| Sea Shepherd Australia Limited v Commissioner of Taxation & AAT | [2012] AATA 520 |
| Rand v Comcare | [2013] AATA 580 |
| Avetmiss Easy Pty Ltd v Australian Skills Qualification Authority | [2013] AATA 732 |

Appeals finalised

| CASE NAME | AAT REFERENCE | COURT REFERENCE |
|--|--------------------------------|---------------------------------|
| Freeman v Fleetmaster Services Pty Ltd | [2013] AATA 38 | [2013] FCA 1068 |



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