



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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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.

Compensation

[FVNH and Comcare](#) [2013] AATA 832; 22/11/2013; Deputy President SA Forgie

Reservist work – Injury sustained during full time employment – Relevant weekly earnings that of the latest 2 weeks of continuous full time employment – Earnings or potential earnings of reservist work not included in compensation – Decision under review affirmed

[JQWK and Comcare](#) [2013] AATA 830; 22/11/2013; Ms R Perton, Member

Whether injury result of earlier claim – Whether condition caused or aggravated through employment – Whether employment contributed to a significant degree – Whether condition permanent – Decision under review affirmed

[Varga and Comcare](#) [2013] AATA 829; 22/11/2013; Senior Member D Letcher QC and Dr S Toh, Member

Commonwealth Employees – Depression – Whether or not the conduct which resulted in the disease suffered by the employee was reasonable administrative action taken in a reasonable manner – Decision under review affirmed

Practice and Procedure

[Confidential and Military Rehabilitation and Compensation Commission](#) [2013] AATA 804; 13/11/2013; Senior Member AF Cunningham

Jurisdiction – Validity and effect of election to sue for common law damages – Whether PTSD separate injury – No claim for compensation under *Safety, Rehabilitation and Compensation Act 1988* made prior to election – Election upheld – No compensation payable under s 24, 25 or 27 in respect of permanent impairment – Tribunal has no jurisdiction

[Singh and Secretary, Department of Social Services](#) [2013] AATA 825; 22/10/2013; Senior Member GD Friedman

Jurisdiction – Application groundless – Dismissed under s 42B(1) of the *Administrative Appeals Tribunal Act 1975*

[Coshott and Commissioner of Taxation](#) [2013] AATA 822; 20/11/2013; The Hon B Tamberlin QC, Deputy President

Stay application – Substantive proceedings seek review of an objection decision made by the Commissioner of Taxation – Whether Tribunal has the power to grant a stay – Modification of the *Administrative Appeals Tribunal Act 1975* by the *Taxation Administration Act 1953* – Tribunal has no power to grant stay

Social Security

[Applicant 1439 of 2013 and Secretary, Department of Social Services](#) [2013] AATA 821; 19/11/2013; Dr A Frazer, Member

Disability support pension – Qualification requirements – Applicant has impairments – Impairments not considered of sufficient rating – Applicant not qualified for disability support pension – Decision under review affirmed

[Coventry and Secretary, Department of Social Services](#) [2013] AATA 824; 29/10/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Disability Support Pension – Participation in Programs of Support – Decision under review affirmed

[El Mohammed and Secretary, Department of Social Services](#) [2013] AATA 819; 19/11/2013; Senior Member N Bell

Baby bonus – Claim received outside 52-week period – Whether discretion to extend the period be exercised – Decision under review affirmed

[Gawthorne and Secretary, Department of Social Services](#) [2013] AATA 823; 29/10/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Disability Support Pension – Number of impairment points – Participation in Programs of Support – Decision under review affirmed

[Hill and Secretary, Department of Social Services](#) [2013] AATA 816; 18/11/2013; Senior Member BJ McCabe

Pensions, benefits, and allowances – Disability support pension – Number of impairment points – Impairments properly diagnosed treated and stabilised during assessment period – Participation in Programs of Support – Decision under review affirmed

[Lim and Secretary, Department of Social Services](#) [2013] AATA 817; 18/11/2013; Senior Member AK Britton

Parental Leave Pay – Whether the Australian residency test is satisfied – For what period the Australian residency test must be satisfied – Special Category Visa – Applicant ineligible for Parental Leave Pay – Decision under review is affirmed

[Secretary, Department of Social Services and Muir](#) [2013] AATA 831; 22/11/2013; Senior Member J Handley

Respondent suffered extensive injuries in a motor car accident – lump sum compensation paid – house purchased before period of preclusion determined – contention that advice given by Centrelink officers of likely duration – Social Security Appeals Tribunal found amount equivalent to cost of house be treated as not having been paid – whether circumstances of Respondent were special – Decision under review set aside

[Taha and Secretary, Department of Social Services](#) [2013] AATA 833; 22/11/2013; Senior Member D Letcher QC

Disability Support Pension – 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

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
Mori v Secretary, Department of Social Services	[2013] AATA 737
Paerau v Minister for Immigration and Border Protection & AAT	[2012] AATA 798

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
IOOF Holdings Ltd v Commissioner of Taxation & AAT	[2013] AATA 239	[2013] FCA 1189
Sanctuary Lakes Pty Ltd v Commissioner of Taxation	[2012] AATA 404	[2013] HCATrans 273 [2013] FCAFC 50
Sami v Minister for Immigration and Citizenship	[2012] AATA 459	[2013] FCAFC 128 [2013] FCA 106
Comcare v Lofts & AAT	[2013] AATA 122	[2013] FCA 1197
Aspen Pharma Pty Ltd & Ors v H Lundbeck A/S & Commissioner of Patents	[2012] AATA 851	[2013] FCAFC 129
Agapis v Plumbers Licensing Board	[2013] AATA 187	[2013] FCA 1221
Guo v Minister for Immigration and Citizenship	[2004] AATA 729	[2013] HCATrans 290 [2004] FCA 1585
Demillo v Minister for Immigration and Border Protection	[2012] AATA 805	[2013] FCAFC 134 [2013] FCA 629

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