



# 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

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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.

### Civil Aviation

[Confidential and Civil Aviation Safety Authority](#) [2013] AATA 927; 20/12/2013; Senior Member E Fice

Suspension of licences – Fit and proper person – Cheating by examination candidates – Cyber exam – Cheat sheets – Construction of *Civil Aviation Regulations 1988*, reg 298A – Air Transport (Aeroplane) Pilot Licence Theory Examination – Giving information about questions contained in examination paper – Unfair advantage in examination – Decision under review affirmed

### Compensation

[Changadzo and K & S Freighters Pty Ltd](#) [2013] AATA 889; 13/12/2013; Deputy President SD Hotop and Dr J Chaney, Member

Employee of licensed corporation – Applicant suffered lower back pain when performing employment activity – Applicant suffered strain of lower lumbar spine – Applicant's lumbar strain contributed to, to a significant degree, by employment – Applicant's lumbar strain a disease – Applicant's lumbar strain a compensable injury – Respondent liable to pay compensation to applicant in respect of lumbar strain – Decision under review set aside and substituted

[Griffiths and Telstra Corporation Limited](#) [2013] AATA 902; 15/11/2013; Senior Member AK Britton

Entitlement to medical treatment and incapacity payments – Respondent made own motion decision that it was not presently liable to pay compensation for medical treatment or incapacity payments – This does not preclude the Applicant making future claims for medical treatment or incapacity payments interest – Decision under review affirmed

[Mbwana and Comcare](#) [2013] AATA 899; 17/12/2013; Deputy President RP Handley

Pre-existing degenerative back condition – Whether continues to suffer from the effects of an injury – Decision set aside and remitted

[Szajna and Australian Postal Corporation](#) [2013] AATA 898; 17/12/2013; Senior Member BJ McCabe and Dr M Sullivan, Member

Workplace injury or disease – Injury within the meaning of *Safety Rehabilitation and Compensation Act 1988* – Injury a consequence of underlying condition – Ventricular fibrillation – Decision under review affirmed

[Witschge and Military Rehabilitation and Compensation Commission](#) [2013] AATA 892; 13/12/2013; The Hon R Nicholson, Deputy President

Injuries resulting in incapacity – Earnings being in the nature of spotter's fees to a retiring travel agent – Whether deductible – Decision under review affirmed

## **Corporations**

[Maley and Australian Securities and Investments Commission](#) [2013] AATA 924; 20/12/2013; Senior Member BJ McCabe

Officers – Director of two or more companies wound up through insolvency – Disqualification from managing corporations – Director's conduct – Public interest – Decision under review affirmed

[Tarrant and Australian Securities and Investments Commission](#) [2013] AATA 926; 20/12/2013; Justice D Kerr, President and Senior Member JL Redfern

Banning order – Failure to comply with a financial services law – Failure to have reasonable basis for financial advice – Failure to disclose information about remuneration – False or misleading statements in respect of financial products – Misleading or deceptive conduct in respect of a financial product or service

Banning order – Length of banning order – No findings of fraud or dishonesty – Contraventions serious and caused loss – Applicant's lack of insight into gravity of breaches – Seven year banning order affirmed

PRACTICE AND PROCEDURE – Government policy – ASIC Regulatory Guide – Whether Tribunal must apply policy unless policy unlawful or there are cogent reasons to the contrary – Tribunal not precluded from giving no weight to policy in a particular case – Policy found to be sensible and calibrated – Policy applied by Tribunal

PRACTICE AND PROCEDURE – Power of Tribunal to limit scope of review – Limits of Tribunal's power to confine the reception of evidence – Relevance the criterion for admissibility of material in Tribunal – Rules of evidence not applicable

PRACTICE AND PROCEDURE – Adjournments – Failure by applicant to appear – History of non-compliance with directions – No evidence to suggest applicant's circumstances likely to change if adjournment granted – Adjournment refused

PRACTICE AND PROCEDURE – Applicant and witnesses absent from hearing – Written statements – Probative weight to be given to statements where applicant and witnesses not cross-examined

PRACTICE AND PROCEDURE – Application for dismissal of proceeding – Failure by applicant to comply with directions of the Tribunal – Circumstances in which Tribunal may dismiss application without proceeding to review the decision

## **Defence**

[O'Malley and Secretary, Department of Defence](#) [2013] AATA 893; 16/12/2013; Senior Member NA Manetta

Defence Home Ownership Assistance Scheme – Eligibility as "separated member" – Requirement that application for subsidy certificate be lodged within two years of deemed

cessation of service – Lodgement of application after expiry of two year period – Whether power to grant certificate – No power to grant certificate outside two year period – Applicant's ignorance of two-year limitation irrelevant to statutory power – Apparently inadequate dissemination of information to personnel noted – Decision under review affirmed

## **Immigration and Citizenship**

[Confidential and Minister for Immigration and Border Protection](#) [2013] AATA 818; 19/11/2013; Senior Member J Toohey and Senior Member D Letcher QC

Bridging Visa refused – Substantial criminal record – Application of Direction No 55 – Best interests of child – Whether short stay visa appropriate – Decision under review affirmed

[Contreras and Minister for Immigration and Border Protection](#) [2013] AATA 914; 19/12/2013; Senior Member E Fice

Visa cancellation under s 501(2) of *Migration Act 1958* – Applicant does not pass the character test – Primary considerations – Other considerations – Protection of Australian community – Risk to the Australian community should the applicant re-offend – Strength, duration and nature of ties to Australia – Best interests of the children in Australia – International non-refoulement obligations – Substantial criminal record – Decision under review affirmed

[Gabriel and Minister for Immigration and Border Protection](#) [2013] AATA 906; 18/12/2013; Deputy President JW Constance

Visa cancellation under s 501 of *Migration Act 1958* – Character test – Direction No 55 – Substantial criminal record – Protection of Australian community from criminal or other serious conduct – Nature and seriousness of the conduct – Risk to the Australian community should the conduct be repeated – Likelihood of engaging in further criminal or other serious conduct – Strength, duration and nature of ties to Australia – Best interests of minors in Australia affected by the decision – Whether risk of future harm acceptable – Decision under review set aside and substituted

[Goersdorf and Minister for Immigration and Border Protection](#) [2013] AATA 909; 15/10/2013; Deputy President PE Hack SC

Citizenship – General residence requirement – Special residence requirement – Decision affirmed

[Taher and Minister for Immigration and Border Protection](#) [2013] AATA 917; 19/12/2013; Senior Member E Fice

Application for citizenship – General eligibility for citizenship – General residence requirement – Ministerial discretion relating to the spouse of an Australian citizen – Overseas absences – Close and continuing association with Australia – Decision under review affirmed

[Vassiliou and Migration Agents Registration Authority](#) [2013] AATA 905; 18/12/2013; Senior Member J Handley

Applicant suspended from practice as a registered migration agent for 12 months – Conditions imposed before he can apply to resume practice – Respondent contended he (i) lodged applications for protection visas without supporting documents, (ii) caused delay in processing applications, (iii) failed to respond to notices adequately or at all issued by the respondent pursuant to s 308 and s 309 of the *Migration Act 1958*, (iv) failed to keep proper records, and (v)

improperly certified documents – Some contentions conceded – Applicant not a fit and proper person to give immigration assistance – Expiry date of suspension varied, decision otherwise affirmed

[Williams and Minister for Immigration and Border Protection](#) [2013] AATA 923; 20/12/2013; Deputy President JW Constance

Visa cancellation under s 501 of *Migration Act 1958* (Cth) – Character test – Direction No 55 – Substantial criminal record – Protection of Australian community from criminal or other serious conduct – Nature and seriousness of the conduct – Risk to the Australian community should the conduct be repeated – Likelihood of engaging in further criminal or other serious conduct – Strength, duration and nature of ties to Australia – Whether risk of future harm acceptable – Decision under review affirmed

## National Security

[CXQY and Director-General of Security](#) [2013] AATA 895; 16/12/2013; Justice D Kerr, President and Deputy President RP Handley and Senior Member JL Redfern

Adverse security assessment – Refusal of Minister to approve applicant becoming an Australian citizen – Whether applicant directly or indirectly a threat to security – What constitutes politically motivated violence – Decision under review affirmed

## Practice and Procedure

[Ripszam and Minister for Infrastructure and Regional Development](#) [2013] AATA 918; 3/12/2013; Senior Member RM Creyke

Dismissal – ‘Frivolous or vexatious’ on grounds of futility – Interests affected – No standing – Vehicles in question sold to third party – Applicant no longer has interest affected – Application dismissed

[Singh and Administrative Appeals Tribunal](#) [2013] AATA 897; 20/11/2013; Deputy President JW Constance

Jurisdiction – Frivolous and vexatious application – Rights of appeal exhausted – Tribunal has no power to review its own decisions – No jurisdiction – Application dismissed

[Von Stieglitz and Comcare and Anor](#) [2013] AATA 908; 11/12/2013; Justice D Cowdroy, Presidential Member

Summons to produce documents – Legal professional privilege claimed over certain documents – Whether legal professional privilege waived by conduct of summonsed party or respondent – Whether legal professional privilege is available to summonsed party

## Social Security

[Akguner and Secretary, Department of Social Services](#) [2013] AATA 925; 20/12/2013; Senior Member GD Friedman

Wife pension – Absence from Australia – Savings provision – Decision under review affirmed

[Anderson and Secretary, Department of Social Services](#) [2013] AATA 915; 19/12/2013; Deputy President SD Hotop and Dr J Chaney, Member

Disability support pension (DSP) – Portability – Applicant qualified for DSP – Applicant receiving DSP – Applicant's impairment not a severe impairment – Applicant not qualified for unlimited portability period for DSP – Decision under review affirmed

[Berenger and Secretary, Department of Social Services](#) [2013] AATA 896; 12/12/2013; Senior Member J Toohey

Carer allowance – Applicant claimed not to have received letter notifying him of decision – Deemed notification of refusal – Applicant did not seek review within 13 weeks – Subsequent claim for carer allowance granted – Whether payment could be backdated – Whether hearing should be postponed – Decision under review affirmed

[Bruvels and Secretary, Department of Social Services](#) [2013] AATA 901; 18/12/2013; Senior Member RG Kenny

Benefits and entitlements – Disability support pension – Applicant outside Australia for longer than the maximum portability period – Suspension of disability support pension – Applicant unaware of the change to the maximum portability period – No duty of care in Centrelink to advise of legislative change – Decision under review affirmed

[Byrne and Secretary, Department of Employment](#) [2013] AATA 894; 16/12/2013; Senior Member RG Kenny

Claim for advance under *Fair Entitlements Guarantee Act 2012* (Cth) – Eligibility criteria – Pensions, benefits and allowances – Date of ending of employment – Applicant not an Australian citizen or the holder of a permanent visa or a special category visa on employment end date – Applicant not eligible for advance – Decision under review affirmed

[CFWN and Secretary, Department of Social Services and Anor](#) [2013] AATA 913; 19/12/2013; Senior Member BJ McCabe

Pensions, benefits and allowances – Family tax benefit – Percentage of care of children – Decision under review affirmed

[Kiesecker and Secretary, Department of Social Services](#) [2013] AATA 912; 19/12/2013; Senior Member RG Kenny

Pensions, benefits and allowances – Mobility allowance paid at the higher rate – Applicant released by job search provider – Mobility allowance continued for 12 week period of grace – Applicant no longer qualified for mobility allowance – Decision under review affirmed

[Korkes and Secretary, Department of Social Services](#) [2013] AATA 903; 20/11/2013; Miss EA Shanahan, Member

Disability support pension – New Zealand citizen – Failure to satisfy residential qualifications – Decision under review affirmed

[Miller and Secretary, Department of Social Services](#) [2013] AATA 910; 26/11/2013; Deputy President PE Hack SC

Eligibility – Disability support pension – Whether impairments warrant impairment rating of 20 points – Whether continuing inability to work – Decision under review affirmed

[Reubens-Ippaso and Secretary, Department of Social Services](#) [2013] AATA 911; 16/12/2013; Dr A Frazer, Member

Disability support pension – Whether applicant's condition is fully diagnosed treated and stabilised – Whether applicant's condition attracts 20 points or more on the Impairment Tables – Decision under review affirmed

[Treloar and Secretary, Department of Social Services](#) [2013] AATA 916; 19/12/2013; Deputy President K Bean

Disability support pension – Whether lump sums received by applicant "compensation" or "ordinary income" – Whether lump sums amounted to payments under a scheme of insurance under a State law and therefore compensation for the purposes of the *Social Security Act 1991* – Decision under review set aside and remitted

[Turnbull and Secretary, Department of Social Services](#) [2013] AATA 900; 18/12/2013; Senior Member BJ McCabe

Benefits and allowances – Lump sum settlement – Compensation affected payment – Preclusion period – Unable to work due to unrelated injury – Special circumstances – Not appropriate to exercise discretion – Decision under review affirmed

## **Taxation**

[Gleeson and Commissioner of Taxation](#) [2013] AATA 920; 20/12/2013; Senior Member G Lazanas

Income tax – Deductions – Employee truck driver – Work-related expenses – Relief from substantiation – Decision under review set aside and substituted

[The Study and Prevention of Psychological Diseases Foundation Incorporated and Commissioner of Taxation](#) [2013] AATA 919; 20/12/2013; Deputy President IR Molloy

Income tax – Tax exemption – Income tax exempt entity – Deductible gift recipient – Whether charitable institution – Whether health promotion charity – Date of effect of revocation – Decision under review affirmed

## **Veterans' Affairs**

[Casey and Repatriation Commission](#) [2013] AATA 907; 18/12/2013; The Hon B Tamberlin QC, Deputy President

Special rate of pension – Whether applicant's accepted conditions alone rendered him totally and permanently incapacitated – Whether applicant prevented from continuing remunerative work by accepted conditions alone – Decision set aside and substituted with a decision that applicant entitled to special rate

[Irving and Repatriation Commission](#) [2013] AATA 904; 18/12/2013; Senior Member BJ McCabe

Pensions and benefits – Pension at the special rate – Back condition – Whether applicant incapable of working for more than eight hours per week – Decision under review 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 |
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None lodged

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### Appeals finalised

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| CASE NAME | AAT REFERENCE | COURT REFERENCE |
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| <b>Peters v Comcare</b> | <a href="#">[2012] AATA 636</a> | <a href="#">[2013] FCA 1361</a> |
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| <b>Anderson v Civil Aviation Safety Authority</b> | <a href="#">[2013] AATA 613</a> | <a href="#">[2013] FCA 1367</a> |
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| <b>Sullivan v Civil Aviation Safety Authority</b> | <a href="#">[2013] AATA 425</a> | <a href="#">[2013] FCA 1362</a> |
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| <b>Secretary, Department of Social Security v Carapeta</b> | <a href="#">[2013] AATA 285</a> | <a href="#">[2013] FCA 1369</a> |
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| <b>Vulich v Repatriation Commission</b> | <a href="#">[2012] AATA 547</a> | <a href="#">[2013] FCA 1370</a> |
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| <b>Lee v Transpacific Industries Pty Ltd</b> | <a href="#">[2012] AATA 553</a> | WAD324/2012<br><a href="#">[2013] FCA 1322</a> |
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