



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.

Compensation

[Good and Military Rehabilitation and Compensation Commission](#) [2012] AATA 653; 27/9/2012; Deputy President SD Hotop

Member of Defence Force – Applicant suffered back injury in 1971 in course of military service – Applicant claimed compensation in March 2010 – In September 2010 respondent accepted liability to pay compensation for injury – In February 2011 respondent denied liability to pay compensation for incapacity for work – Applicant is totally incapacitated for work – No medical evidence that applicant's incapacity for work results from 1971 injury – Medical evidence that applicant's incapacity for work does not result from 1971 injury – Respondent not liable to pay compensation to applicant for incapacity for work in respect of 1971 injury – Decision under review varied by changing description of 1971 injury but otherwise affirmed

[Parker and Military Rehabilitation and Compensation Commission](#) [2012] AATA 646; 25/9/2012; Senior Member RG Kenny

Posttraumatic stress disorder – Relationship to Army service occurring prior to commencement of *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Transitional provisions – Failure to give notice of accident as soon as practicable under *Commonwealth Employees' Compensation Act 1930* (Cth) – Commonwealth prejudiced by want of notice – Relevance of mistake for late notice and late claim – Relevance of ignorance about making a claim – No reasonable cause for late notice or late claim – Decision under review affirmed

[Silk and Comcare](#) [2012] AATA 638; 24/9/2012; Deputy President SD Hotop, Dr J Chaney, Member

Commonwealth employees – Applicant employed by Centrelink – Applicant suffered major depressive disorder in November 2004 – Applicant's major depressive disorder a compensable injury – Applicant had ceased to suffer effects of major depressive disorder on 13 December 2007 – Applicant not entitled to compensation for medical treatment or for incapacity for work in respect of major depressive disorder from 13 December 2007 – Applicant suffered aggravation of major depressive disorder on 26 July 2010 – Aggravation of major depressive disorder contributed to, to a significant degree, by applicant's employment – Aggravation of major depressive disorder a disease – Aggravation of major depressive disorder suffered as result of reasonable administrative action taken in reasonable manner in respect of employment – aggravation of major depressive disorder not a compensable injury – Respondent not liable to pay compensation to applicant for aggravation of major depressive disorder – Decision under review affirmed

[Vasilokopoulos and Comcare](#) [2012] AATA 639; 21/9/2012; Senior Member J Handley

Applicant employed part-time by Centrelink – Work involved sitting, twisting, bending, squatting, standing, walking and lifting bundles of moderately heavy files – Back pain first reported in 2007 – Increased episodes of pain subsequently but no report of pain or attending for treatment until after disc rupture, at home, in April 2010 – No evidence of any injury at work or proximate to rupture – No material contribution by employment – Decision under review affirmed

Immigration and Citizenship

[Wang and Minister for Immigration and Citizenship](#) [2012] AATA 658; 28/9/2012; Ms R Perton, Member

Application for citizenship by conferral – Permanent resident – Applicant aged 16 years at time of application – Applicant did not meet residence requirement – Policy considerations - Whether discretion should be exercised – Significant hardship and disadvantage – Decision under affirmed

Social Security

[Aftab and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 643; 24/9/2012; Senior Member AK Britton

Disability support pension – Portability period – Discretionary power to determine portability period is unlimited – Requirement to be terminally ill – No reliable or objective evidence

Disability support pension – Portability period – Discretionary power to extend portability period – Whether the event began or occurred during the portability period – Decision under review affirmed

[Allameddine and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 650; 26/9/2012; Senior Member N Bell, Dr M Couch, Member

Disability support pension – Impairment tables – Impairment rating – Qualification for disability support pension – Applicant does not meet requisite points – Decision under review affirmed

[Cole and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 642; 24/9/2012; Senior Member Dr KS Levy RFD

Pensions, benefits and allowances – Disability support pension – Qualification – Not an Australian resident – Not entitled to disability support pension – Effective date of cancellation – Decision under review affirmed in relation to residency – Decision under review set aside in relation to date of cancellation

Gosling and Secretary, Department of Education, Employment and Workplace Relations

[2012] AATA 649; 25/9/2012; Professor RM Creyke, Senior Member

Newstart allowance – Income maintenance period – Liquid assets test – Waiver of debt – Administrative error – Jurisdiction – Decision set aside and remitted

Hart and Secretary, Department of Education, Employment and Workplace Relations

[2012] AATA 659; 28/9/2012; Mr P Wulf, Member

Pensions, benefits and allowances – Settlement of compensation claim – Lump-sum compensation payment – Whether claim fell within exception – Whether included component that could be considered for economic loss – Imposition of preclusion period – Special circumstances not established – Decision under review affirmed

Jo and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

[2012] AATA 651; 18/9/2012; Mr C Ermert, Member

Appeal from SSAT decision – Delay in application – Explanation for delay – No prejudice to respondent – Whether merit in substantial application – Application refused

Khan and Secretary, Department of Education, Employment and Workplace Relations

[2012] AATA 641; 24/9/2012; Senior Member MD Allen

Entitlement to Newstart Allowance – Was Applicant unemployed or underemployed – Was Applicant actively seeking and willing to engage in paid work – Decision under review set aside and remitted to the Respondent

Kleimeyer and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

[2012] AATA 645; 25/9/2012; Senior Member RG Kenny

Pensions, benefits and entitlements – Applicant qualified for age pension on his 65th birthday in 1990 – Contact with Centrelink in April 2004 – No claim for age pension before 20 April 2004 – Age pension granted with effect from date of contact by applicant – Age pension not payable before April 2004 – Decision under review affirmed

Larcombe and Secretary, Department of Education, Employment and Workplace Relations

[2012] AATA 648; 26/7/2012; Ms R Perton, Member

Family Assistance – Child care benefit – Fee reduction for care of child at risk – Decision under review affirmed

Vu and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

[2012] AATA 647; 25/9/2012; Mr D Ermert, Member

Disability support pension – Lump sum compensation payment – Health problems – Financial circumstances – Inexact Centrelink advice re partner's parenting payment – Application of legislative provisions – Whether special circumstances – Decision under review affirmed

Taxation

[Barrow and Commissioner of Taxation](#) [2012] AATA 640; 21/9/2012; Senior Member CR Walsh

Energy grants credits – Off-road credits – Net fuel amounts – Fuel tax credits – Diesel fuel purchased for use in “primary production” – Diesel fuel purchased for use in “fishing operations” – Substantiation of claims – Record keeping requirements for fuel tax credits – Onus of proof on Applicant to prove that assessments are excessive – Tax agent’s records for applicant destroyed as a result of flooding of storage facility where archived records of applicant kept – 25% tax shortfall penalty for failure to take “reasonable care” to comply with a taxation law – Safe harbour exemption from penalty for engaging a registered tax agent – Whether penalties should be remitted in whole or in part – Commissioner’s objection decision set aside and Applicant’s objection allowed in part – Commissioner’s objection decision affirmed in part

[Fraser and Commissioner of Taxation](#) [2012] AATA 655; 28/9/2012; Senior Member G Ettinger

Whether payment of superannuation contribution by Applicant deductible in a year where he did not work the full year – Applicant not ‘eligible person’ – Not deductible – Decision under review affirmed

Veterans' Affairs

[Lloyd and Repatriation Commission](#) [2012] AATA 657; 28/9/2012; Senior Member GD Friedman

Veterans' entitlements – Widow's claim – Diabetes mellitus – Hypertension – Ischaemic heart disease – Whether conditions war-caused – Decision under review affirmed

[Sandow and Repatriation Commission](#) [2012] AATA 644; 25/9/2012; Deputy President DG Jarvis, Dr R Ormston, Member

Prisoner of war recognition supplement – Forced landing in Egypt in 1942 – Meaning of “interned” – 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
None lodged	

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Mulholland v Australian Electoral Commission	[2011] AATA 879	[2012] FCAFC 136
Smith v Repatriation Commission	[2012] AATA 94	[2012] FCA 1043



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