



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

[Hall and Australian Postal Corporation](#) [2012] AATA 868; 10/12/2012; Senior Member AK Britton and Dr Haikal-Mukhtar, Member

Safety, Rehabilitation and Compensation Act 1988 – Causation – Whether injury to left shoulder caused by medical treatment is an injury for which compensation is payable – Whether injury arose out of employment – Application of “but for” test – Whether injury to left shoulder was contributed to, to a significant degree, by employment – Decision under review affirmed.

[Hazelwood and Telstra Corporation Limited](#) [2012] AATA 901; 19/12/2012; Deputy President PE Hack SC

Applicant suffering carpal tunnel syndrome – Whether injury attributable to workplace – Original decision determined respondent not liable – Failure to seek reconsideration within time – Extension of time to seek reconsideration refused – Lengthy delay – Unconvincing explanation for delay – Decision under review affirmed.

[Nibbs and Comcare](#) [2012] AATA 892; 18/12/2012; Senior Member BJ McCabe

Reconsideration of an earlier determination – Entitlement to compensation – Entitlement to costs – Jurisdiction – Power to award costs – Decision under review affirmed.

[Paunovska and Comcare](#) [2012] AATA 887; 17/12/2012; Senior Member AK Britton and Dr Isles, Member

Injury – Onset of condition – Whether the employee’s employment by the Commonwealth contributed to or aggravated her medical condition “in a material degree” – Relative contribution – Reasonable administrative action – Incapacity for work – Impairment – *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Decision under review set aside.

[Sintiris and Telstra Corporation Limited](#) [2012] AATA 900; 19/12/2012; Miss A Shanahan, Member

Knee Injury – Arising out of or in the course of employment – Injury sustained during an ordinary recess or break – Injury occurring in a designated smoking area – Limited public access to grounds – Entry to buildings by security pass – At the direction or request of licensee – Liability accepted and compensation paid – Liability rescinded following review on own motion – Decisions under review set aside.

[Williams and Comcare](#) [2012] AATA 902; 19/12/2012; Deputy President JW Constance

Generalised Anxiety Disorder – Whether employment contributed to a significant degree – Whether reasonable administrative action taken in a reasonable manner – Decision under review set aside.

Freedom of Information

[Australian Broadcasting Corporation and Herald and Weekly Times Pty Limited and Anor](#) [2012] AATA 914; 21/12/2012; President D Kerr and Senior Member AK Britton

Application for Australian Broadcasting Corporation documents – Meaning of “program material” – Meaning of “in relation to” program material – Exemption – Relevance of UK Freedom of Information Act cases – Relevance of independence of the ABC – Program classifications – Salaries and payments to ABC programs – Decisions under review affirmed and set aside.

Immigration and Citizenship

[Okeke and Minister for Immigration and Citizenship](#) [2012] AATA 882; 14/12/2012; Senior Member D Letcher, QC

Cancellation of citizenship approval – Applicant charged with multiple criminal offences – Lengthy period of imprisonment – Failure to make pledge of commitment within 12 months – Applicant determined not of good character – Consideration of criminal record considerations in Australian Citizenship Instructions – Discretion to cancel approval exercised – Cancellation of child's approval resulting from cancellation of applicant's approval – Decision under review affirmed.

[Paras and Minister for Immigration and Citizenship](#) [2012] AATA 915; 21/12/2012; Ms R Perton, Member

Renunciation of Australian citizenship – Application for resumption – Reason for renunciation relevant - Whether renounced to avoid suffering significant hardship or detriment – Decision under review affirmed.

[Sirengo and Minister for Immigration and Citizenship](#) [2012] AATA 897; 19/12/2012; Deputy President DG Jarvis

Permanent resident – Application for citizenship – Applicant married to an Australian citizen – Applicant does not meet general residence requirement – Application of Australian Citizenship Instructions – Consideration of various factors to determine whether applicant had a close and continuing association with Australia – Decision under review affirmed.

[Tera and Minister for Immigration and Citizenship](#) [2012] AATA 906; 20/12/2012; Deputy President RP Handley

Visa cancellation – Direction No 55 – Character test – Substantial criminal record – Primary considerations – Other considerations – Decision under review affirmed.

Jurisdiction

[Sinnaiah and Australian Postal Corporation](#) [2012] AATA 891; 18/12/2012; The Hon B Tamberlin, QC, Deputy President and Senior Member S Webb

Interpretation – Meaning and effect of s 37(7) of the *Safety Rehabilitation and Compensation Act 1988* – Whether a general or specific suspension of Applicant's rights to compensation and institution or continuance of proceedings – Rehabilitation program determined in respect of an injury – Suspension applies in respect of the injury specified in the rehabilitation program notice but not otherwise – Jurisdiction to proceed.

COMPENSATION – Accepted back injury and right shoulder injury – Liability for other injuries denied – Claim for compensation in respect of medical treatment and incapacity for work resulting from back injury – Rehabilitation program determined in respect of right shoulder injury – Failure to undertake rehabilitation program – Suspension – application for review – Effect of suspension on other proceedings – Suspension applies to compensation and proceedings in respect of the right shoulder injury – No bar to applications proceeding – Order made.

Migration Agents

[Nguyen and Migration Agents Registration Authority](#) [2012] AATA 925; 24/12/2012; Senior Member FD O'Loughlin

Migration Agent Registration – Fit and proper person – Code of conduct – Cancellation of registration – Decision under review affirmed.

Practice and Procedure

[LVR \(WA\) Pty Ltd and Anor and Commissioner of Taxation](#) [2012] AATA 928; 21/12/2012; The Hon RD Nicholson, Deputy President

Application for dismissal – Respondent's application for dismissal on ground of non-compliance with relevant directions – Applicants filing four new witness statements – Respondent's submissions directed to directions concerning document arrangement and master index – No case by respondent otherwise in respect of new evidence – Exercise of discretion – Past record of non-compliance – Weighing of other factors – Application refused.

[Mercurius and Migration Agents Registration Authority](#) [2012] AATA 889; 18/12/2012; Senior Member JF Toohey

Application to reinstate application after dismissal for failure to appear at conferences – relevant considerations – No adequate explanation for failure to attend – Application would have very limited prospect of success of reinstated – Application for reinstatement refused.

Social Security

[Al Homedi and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 896; 19/12/2012; Dr K Breen, Member

Disability support pension – Chronic renal failure – Renal dialysis – Condition not fully treated or stabilised – Decision under review affirmed.

[Allen and Secretary, Department of Education, Employment and Workplace Relations and Anor](#) [2012] AATA 912; 21/12/2012; Ms R Perton, Member

Debt to Commonwealth due to payment of benefits to which applicant not entitled – Use of his bank account by others – Benefits paid to applicant's account due to fraud by another person – Whether waiver of debt available – applicant unable to access special circumstances waiver as another person knowingly made false statement or representations – Decision under review affirmed.

[Amohanga and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 894; 19/12/2012; Dr P McDermott, RFD, Senior Member

Pensions, benefits and allowances – Carer payment – Start day for payment of benefit – No statutory discretion for earlier start day – Decision under review affirmed.

PRACTICE AND PROCEDURE – Jurisdiction – Earlier claim for carer payment rejected – Decision made under social security law – Statutory requirement for review by Social Security Appeals Tribunal – No jurisdiction to review decision in regard to earlier claim.

[Bobera and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 922; 24/12/2012; Mr K Breen, Member

Disability support pension – Chronic pain from entrapment of the lateral cutaneous nerve of the right thigh – Depression – Diabetes – Conditions not fully treated or stabilised – Decision under review affirmed.

[Bosch and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 927; 21/12/2012; Ms K Hogan, Member

Carer Allowance – Entitlement to Carer Allowance as a Consequence of an Acute Onset of Illness – Start Date of Carer Allowance – Backdating of Start Date of Carer Allowance – Decision set aside and substituted.

CWJT and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 910; 21/12/2012; Senior Member N Bell

Parenting payment single – Whether member of a couple – Whether living separately and apart from each other on a permanent or indefinite basis - Whether marriage-like relationship – Decision under review set aside.

Fuller and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 883; 14/12/2012; Senior Member K Bean

Disability support pension – Qualification – Whether applicant’s medical conditions are fully diagnosed, investigated, treated and stabilised – Whether rateable impairments attract a rating of at least 20 points – Applicant’s rateable impairment does not attract 20 points – Decision under review affirmed.

Gebrezgabir and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 904; 19/12/2012; Mr C Ermert; Member

Eight week non-payment period – Failed to accept an offer to start work – Whether job offer suitable – Whether excuse reasonable – Whether capacity to undertake serious failure requirements – Whether severe financial hardship – Decision under review affirmed.

Hill and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 885; 17/12/2012; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Psychiatric impairment – Condition not fully diagnosed, treated and stabilised in the relevant period – No impairment rating under the Impairment Tables – Applicant not qualified for disability support pension – Decision under review affirmed.

Liu and Secretary, Department of Education, Employment and Workplace Relations [2012] AATA 886; 17/12/2012; Senior Member D Letcher, QC

Workers compensation claim – Lump sum payments – Newstart payments – preclusion period – Decision under review affirmed.

Lopez and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 903; 19/12/2012; Miss EA Shanahan, Member

Disability support pension application – Conditions not fully diagnosed, treated or stabilised – Decision under review affirmed.

Mann and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 890; 18/12/2012; Deputy President PE Hack SC

Pensions, benefits and entitlements – Disability support pension – Whether Australian resident – Applicant living in Indonesia – Permanent accommodation in Indonesia – Dependant located in Indonesia – Few assets in Australia – Decision under review affirmed.

Monaghan and Secretary, Department of Education, Employment and Workplace Relations and Anor [2012] AATA 908; 20/12/2012; Mr S Webb, Member

Sole Parent Pension – Parenting Payment (Single) – Disability Support Pension – Newstart Allowance – Family Tax Benefit – Member of a couple test – Marriage – Characteristics of relationship variable over time – Indigenous kinship and cultural obligations – Inconclusive evidence – Not established that Ms Monaghan was not living separately and apart from her husband – Decision under review set aside.

MQJJ and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 924; 24/12/2012; Professor T Sourdin, Member

Pensions – Disability support pension – Residence requirement – Decision under review set aside.

Pople and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 905; 20/12/2012; Senior Member A F Cunningham

Overseas claimant, disability support pension, no current plans to return to Australia – resident of Indonesia – Not Australian resident – Not entitled to DSP – Decision under review affirmed.

Sinclair and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 888; 18/12/2012; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Impairments to right shoulder and right leg – Date of claim – Relevant period for assessment – Impairment Tables under Schedule 1B of the *Social Security Act 1991* – Impairment Tables under the Ministerial Determination of 2011 – Conditions not fully diagnosed, treated and stabilised – Decision under review affirmed.

Stephens and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 880; 14/12/2012; Deputy President DG Jarvis and Professor D Ben-Tovim, Member

Disability support pension – Held that applicant does not have a continuing inability to work – Significant permanent impairment not fully investigated or diagnosed – Decision under review affirmed.

Tobar and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 923; 24/12/2012; Senior Member Dr KS Levy, RFD

Pensions, benefits and allowances – Disability support pension – Impairment Tables – Fully diagnosed, treated and stabilised conditions – Zero impairment points No continuing inability to work – Decision under review affirmed.

Turnbull and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 921; 24/12/2012; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical and psychiatric impairments – Impairment Tables – Not fully diagnosed, treated and stabilised – Conditions not permanent – Applicant not qualified for disability support pension during the relevant period – Decision under review affirmed.

Wilson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs [2012] AATA 929; 21/12/2012; Dr A Frazer, Member

Disability support pension – Qualification requirements – Applicant has impairment – Applicant's impairments do not attract impairment rating of 20 under Impairment Tables – Decision under review affirmed.

Taxation

Chen and Anor and Commissioner of Taxation [2012] AATA 884; 19/11/2012; Senior Member F O'Loughlin

GST – Margin Scheme, penalty – Decision under review affirmed.

Dandenong Motors Unit Trust and Commissioner of Taxation [2012] AATA 920; 24/12/2012; Senior Member FD O'Loughlin

Goods and Services Tax – Refund claims – Hold-back payments – Whether amount claimed was a negative net amount only refundable if claimed within four years – Decision under review affirmed.

Kingston and Commissioner of Taxation [2012] AATA 898; 19/12/2012; Deputy President PE Hack SC

Income tax – Tax avoidance scheme – Trusts – Distribution of income – Amendment to original assessments – Discretion to remit penalties in whole or in part – Decisions under review affirmed, set aside and remitted with directions.

Outbound Logistics Pty Ltd and Commissioner of Taxation [2012] AATA 899; 19/12/2012; Dr G Hughes, Member

Shortfall penalties – R&D expenditure – When liability incurred – Applicant's misinterpretation of the law – Reliance on advice from conflicted advisers – Reliance on "reasonably arguable position" letter – Reliance on advice from Commissioner – Taxpayer's responsibility to interpret advice in context – Whether applicant was reckless – Decision under review set aside and substituted.

[Parrish and Commissioner of Taxation](#) [2012] AATA 909; 21/12/2012; Senior Member RW Dunne

Income tax – Business of selling second-hand motor vehicles – Disclosure of income – Applicant provided summary of business activities – Understatement of net business income – Goods and services tax – Understatement of taxable supplies – Overstatement of creditable purchases – Tax audit – Administrative penalties – Objection decisions under review varied.

[Taxpayer Mr X and Anor and Commissioner of Taxation](#) [2012] AATA 917; 21/12/2012; Senior Member FD O'Loughlin

Deposits to bank accounts assessed as taxable income – Whether taxpayer's burden of proof discharged – Whether penalty payable – Decision affirmed.

Veterans' Affairs

[Abbott and Repatriation Commission](#) [2012] AATA 895; 19/12/2012; Deputy President DG Jarvis and Lt Col B Ormston (Retd), Member

Disability pension – Rate of pension payable – Special rate – Held that applicant not prevented from continuing to undertake past remunerative work by his war-caused conditions alone – Decision under review affirmed.

[Eddington and Repatriation Commission](#) [2012] AATA 926; 12/12/2012; The Hon RD Nicholson, Deputy President, Dr J Chaney, Member

Decision under review affirmed.

[Halvorson and Repatriation Commission](#) [2012] AATA 930; 21/12/2012; Deputy President SD Hotop

Veterans' entitlements – Disability pension – Applicant served in Royal Australian Air Force – Applicant rendered operational service – Applicant suffers from social phobia and psoriasis – Material before Tribunal does not raise reasonable hypothesis connecting applicant's social phobia or psoriasis with operational service – Applicant's social phobia and psoriasis not war-caused – Decision under review affirmed.

[Ransom and Repatriation Commission](#) [2012] AATA 907; 6/12/2012; Deputy President JW Constance

Decision under review set aside and substituted.

[Sandaver and Repatriation Commission](#) [2012] AATA 881; 14/12/2012; Dr KS Levy, RFD, Senior Member and Dr GJ Maynard, Brigadier (Rtd), Member

Pensions and entitlements – Compensation – War-caused injury or disease – Posttraumatic stress disorder – Statement of Principles – Hypothesis connecting injury to circumstance of service – Beyond reasonable doubt that the veteran's condition was not war-caused – Decision under review affirmed.

[St Clair and Repatriation Commission](#) [2012] AATA 911; 21/12/2012; Ms R Perton, Member

Veterans' entitlements – Depressive disorder – Haemorrhoids – Stressors – Date of clinical onset – Whether conditions war caused – Decisions under review affirmed and 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
Robson v Military Rehabilitation and Compensation Commission	[2012] AATA 809
Paerau v Minister for Immigration and Citizenship & AAT	[2012] AATA 798
Uelese v Minister for Immigration and Citizenship	[2012] AATA 793
Guppy v Australian Postal Corporation	[2012] AATA 806
Hancox v Commissioner of Taxation	[2012] AATA 836

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
O'Donoghue v AAT & Ors	2010/3732	[2012] FMCA 1191
Wilson v Minister for Immigration and Citizenship & AAT	[2011] AATA 325	[2012] FCA 1421
Minister for Immigration and Citizenship v Anochie & AAT	[2012] AATA 234	[2012] FCA 1440
Cameron v Commissioner of Taxation	[2011] AATA 386	[2012] HCATrans 360 [2012] FCAFC 76 [2011] FCA 1378
Sent v Commissioner of Taxation	[2011] AATA 198	[2012] FCAFC 187 [2012] FCA 382
Kline v Official Secretary to the Governor-General & AAT	[2012] AATA 247	[2012] FCAFC 184



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