



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.

Civil Aviation

[Sadri and Civil Aviation Safety Authority](#) [2012] AATA 656; 28/9/2012; Deputy President DG Jarvis and Senior Member E Fice

Cancellation of pilot licences – Failure on applicant's duty re safe operation of aircraft – Whether applicant a fit and proper person to hold licences – Decisions under review affirmed

[Taggart and Civil Aviation Safety Authority](#) [2012] AATA 690; 8/10/2012; Deputy President JW Constance and Miss EA Shanahan, Member

Medical standard for the issue of class 1 and 2 medical certificates – Transient global amnesia – safety-relevant condition – Degree of functional incapacity or a risk of incapacitation – With safety pilot condition – Safety of air navigation – Decision under review affirmed

Compensation

[Bowen and Australian Postal Corporation](#) [2012] AATA 704; 11/10/2012; Senior Member N Bell and Dr H Haikal-Mukhtar, Member

Commonwealth Employees – Rehabilitation plans – Restricted duties – Whether rehabilitation plans suitable – Whether restricted duties suitable – Whether suitable employment – Whether capacity for full-time restricted duties – Decision under review affirmed

[Burke and Comcare](#) [2012] AATA 706; 12/10/2012; Professor RM Creyke, Senior Member and Miss EA Shanahan, Member

Whole Person Impairment – Permanent Impairment – Comcare Guide to the Assessment of the Degree of Permanent Impairment (2nd ed) – American Medical Association's Guides to the Evaluation of Permanent Impairment – Lateral epicondylitis – Wrist sprain – Accepted injuries – Multiple impairments – Meaning of radiographically tested - Table 9.14 – Range of movement tables – Functional impairment – Personal care – Loss of grip strength – Reviewable decision set aside and remitted

[Cupitt and Military Rehabilitation and Compensation Commission](#) [2012] AATA 696; 10/10/2012; Deputy President SD Hotop and Dr J Chaney, Member

Member of Defence Force – Applicant served in Royal Australian Air Force (RAAF) – Applicant suffered back injury in July 1970 arising out of or in course of RAAF service – Compensation payable to applicant in respect of back injury – Respondent paid compensation to applicant for cost of physiotherapy treatment on weekly basis – Respondent determined that compensation be paid to applicant for cost of physiotherapy treatment on monthly basis from 25 January 2011 – Reasonable medical treatment – Compensation continues to be payable to applicant for cost of Pilates exercises on weekly basis – Compensation payable to applicant for cost of passive physiotherapy treatment on monthly basis from 7 February 2012 – Decision under review set aside

[Foster and Telstra Corporation Limited](#) [2012] AATA 702; 11/10/2012; Senior Member RG Kenny and Dr GJ Maynard, Brigadier (Rtd), Member

Acceptance of liability under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) for medical treatment and compensation for an aggravation of a pre-existing and constitutional right wrist ganglion – Cessation of liability for incapacity for work or impairment or the need for medical treatment by 31 December 2007 – Development of new ganglion unrelated to previous condition or employment – Decision under review affirmed

[Luttrell and Military Rehabilitation and Compensation Commission](#) [2012] AATA 692; 9/10/2012; Senior Member RG Kenny

Acceptance of liability under the *Safety, Rehabilitation and Compensation Act 1988* for irritable bowel syndrome, chronic adjustment disorder with depressed mood, erectile dysfunction and posttraumatic stress disorder – Medication (Lyrica) administered as pain reduction treatment for (non-accepted) lateral cutaneous nerve syndrome – Consequential improvement in symptoms of accepted psychiatric conditions – Treatment - “in relation to” accepted conditions – Compensation payable for administering Lyrica – Decision under review set aside

[Sagiqi and Comcare](#) [2012] AATA 705; 11/10/2012; Senior Member N Bell and Dr I Alexander, Member

Commonwealth Employees – Accepted condition – Applicant no longer entitled to compensation – Claim for permanent impairment – Applicant not entitled for permanent impairment – Whether applicant continues to suffer the effects of her condition – Whether her employment made a material contribution to her new conditions – Decision under review affirmed

[Simmons and Comcare](#) [2012] AATA 687; 5/10/2012; Mr S Webb, Member

Accepted shoulder injury – Canberra-based employment in International Deployment Group – Normal weekly earnings included Operational Response Group deployment allowance – Rehabilitation program – Offer of suitable modified duties in the Operational Response Group – Offer rejected for personal reasons – Transfer to employment in Sydney outside the International Deployment Group – Notional earnings would not include deployment allowance – Normal weekly earnings reduced – Decision under review affirmed

Customs

[RPB2 Pty Ltd trading as Reliance Pacific and Chief Executive Officer of Customs](#) [2012] AATA 694; 9/10/2012; Deputy President JW Constance

Classification of goods – Entitlement to Tariff Concession Order 9501125 - of polymers of propylene – Articles for the conveyance or packing of goods, of plastics – Smartpads – Decision under review affirmed

Immigration and Citizenship

[Ropiha and Minister for Immigration and Citizenship](#) [2012] AATA 689; 8/10/2012; Senior Member JL Redfern

Class TY, Subclass 444 Special category (Temporary) visa – Cancellation – Character test – Substantial criminal record – Protection of the Australian community – Real risk of re-offending – Whether nature of the risk is unacceptable – Strength, duration and nature of ties to Australia – Arrived as a baby – Best interest of minor children – Other considerations – Decision under review set aside

Social Security

[Hallak and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 700; 11/10/2012; Senior Member N Bell

Disability support pension – Impairment tables – Applicant does not meet impairment rating requirement – Decision under review affirmed

[Kartchev and Secretary, Department of Education, Employment and Workplace Relations](#) [2012] AATA 686; 5/10/2012; Mr C Ermert, Member

Newstart Allowance – Participation failure – Reasonable excuse – Persistent failures – Serious failures – Eight-week suspension of participation payments – Decision set aside

[Soames and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 699; 11/10/2012; Senior Member N Bell

Disability support pension – Asset test – Disposition of assets – Whether money held on trust for wife – Whether hardship provisions apply to Applicant – Decision under review affirmed

[Secretary, Department of Education, Employment and Workplace Relations and Walters](#) [2016] AATA 701; 11/10/2012; Senior Member K Bean

Receipt of lump sum compensation payments – Determination of compensation preclusion periods – Whether arrears of income maintenance properly included in compensation lump sums giving rise to preclusion periods – Whether redemption lump sum relates to more than one event – Commencement of second preclusion period – Whether exercise of discretions conferred by s 1184K and s 1237AAD should be remitted where debt amount unknown – Decision under review set aside and exercise of relevant discretions remitted for consideration once debt amount known.

[Weller and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 697; 10/10/2012; Senior Member BJ McCabe

Disability support pension – Application for a stay of the reviewable decision – Nature of the Tribunal's power to stay a decision – Danger of a large debt accruing – Failure of applicant to appear at hearing – Effect of delay – Stay not appropriate where it is an incentive to delay resolution of proceedings – Decision stayed until 15 October 2012.

Taxation

[Hirezi and Ors and Commissioner of Taxation](#) [2012] AATA 688; 8/10/2012; Senior Member BJ McCabe

GST – Penalties – Recklessness – Failure to properly account for transactions – Liability of taxpayer for work undertaken by professional advisers – Insufficient evidence to suggest penalties incorrect – Decision under review affirmed

[Subloo's Investments Pty Ltd and Ors and Commissioner of Taxation](#) [2012] AATA 703; 11/10/2012; Deputy President PE Hack SC

Goods and services tax – Failure to report sales of apartments and account for GST – Penalties imposed – Decision not to remit penalties – Did not contact Commissioner to report difficulties – Intentionally and repeatedly disregarded the provisions of the legislation – Decisions affirmed

[The Taxpayer and Commissioner of Taxation](#) [2012] AATA 695; 21/9/2012; Senior Member BJ McCabe

Private rulings – Deferral of losses from a primary production business – Whether a private ruling exists – Whether the taxpayer's business activities should be considered separately – Admissibility of additional facts – Impermissible to alter the factual background of Commissioner's ruling – Decision under review affirmed

Veterans' Affairs

[Prendergast and Repatriation Commission](#) [2012] AATA 698; 10/10/2012; Senior Member J Handley

Operational service – Severe foot injury accepted as war-caused – Whether instability in foot caused him to fall resulting in injuries to shoulders – Whether injury was bilateral rotator cuff syndrome – Whether that injury is war-caused – Assessment – Special rate – Farmer – Under 65 at date of claim – Whether war-caused injuries alone prevent applicant from undertaking remunerative work – VRB decision set aside

[Wright and Repatriation Commission](#) [2012] AATA 683; 5/10/2012; Deputy President DG Jarvis and Dr R Ormston, Member

Disability pension – Rate of pension payable – Special rate – Applicant prevented from undertaking remunerative work by accepted conditions alone – Decision under review 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
A.P. Group Limited v Commissioner of Taxation	[2012] AATA 617

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Shail Superannuation Fund v Commissioner of Taxation	[2011] AATA 940	VID52/2012
McDonald v Repatriation Commission	[2012] AATA 344	QUD303/2012
Heiner v Minister for Immigration and Citizenship & AAT	[2012] AATA 236	VID384/2012
McKenzie v Repatriation Commission	[2012] AATA 108	VID249/2012
Amir v Minister for Immigration and Citizenship & AAT	[2012] AATA 191	[2012] FCA 1102 [2012] FCA 879



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