



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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CONTENTS

Statements of Principles	2
New Statements of Principles	2
Amended Statements of Principles	2
AAT Recent Decisions	3
Bankruptcy	3
Compensation	3
Immigration and Citizenship	4
Social Security	4
Sports Anti-Doping	5
Veterans' Affairs	5
Appeals	6
Appeals lodged	6
Appeals finalised	6

Statements of Principles

This section of the Bulletin provides information on recent developments in relation to Statements of Principles made by the Repatriation Medical Authority for the purposes of the [Veterans' Entitlements Act 1986](#) and the [Military Rehabilitation and Compensation Act 2004](#).

New Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following new Statements of Principles. They take effect from **31 October 2012**.

[Myeloma – No. 69 of 2012](#)

[Myeloma – No. 70 of 2012](#)

Amended Statements of Principles

The Tribunal has been advised that the Repatriation Medical Authority has made the following instruments amending the Statements of Principles for the specified conditions. They took effect on **29 August 2012**.

[Malignant neoplasm of the prostate – No. 77 of 2012](#)

[Malignant neoplasm of the prostate – No. 78 of 2012](#)

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.

Bankruptcy

[Pescott and Inspector-General in Bankruptcy](#) [2012] AATA 727; 23/10/2012; Dr G Hughes, Member

Compulsory income contribution assessment – Value of fringe benefit – Bankrupt residing in home provided by spouse – Value of a rural property – Decision under review affirmed

Compensation

[Anstee and Comcare](#) [2012] AATA 731; 24/10/2012; Hon. B Tamberlin QC, Deputy President and Dr M Couch, Member

Whether claim is barred for failure to give written notice as soon as practicable – Written notice given – Whether Applicant suffered compensable injury – Applicant does not suffer from a compensable injury as a result of rugby incident – Decision under review affirmed

[Fellows and Military Rehabilitation and Compensation Commission](#) [2012] AATA 735; 25/10/2012; Senior Member JF Toohey

Permanent impairment of lower legs and wrists – Medical evidence that Applicant could work for 20 hours a week in suitable employment – Applicant's incapacity payments reduced accordingly – Applicant relocated to Kuwait – Applicant claimed unable to secure suitable employment in Kuwait – Whether respondent liable to continue to pay full incapacity payments – Relevant labour market – Decision under review varied as to rate of incapacity payments but otherwise affirmed

[Jiang and Australian Postal Corporation](#) [2012] AATA 724; 22/10/2012; Senior Member AK Britton and Dr W Isles and Dr S Toh, Members

Whether incapacitated for employment – Conflicting medical evidence – Whether an injury (other than a disease) or a disease injury – Whether employment contributed to injury to a significant degree – Chronic regional pain syndrome – Decision under review affirmed

[Kirton and Australian Postal Corporation](#) [2012] AATA 732; 24/10/2012; Dr P McDermott RFD, Senior Member

Commonwealth corporation employee – Injury to ankle – Aggravation of injury – Ongoing pain and discomfort – Claim for treatment of injury – Medical opinion as to cause of pain and discomfort – Pain and discomfort not caused by injury or aggravation of injury – Decisions under review affirmed

PRACTICE AND PROCEDURE – Medical report not filed – Summoned material – No objection to admission of report at hearing – Tribunal sought to allow Applicant to call report author as witness – Applicant did not seek to call witness for cross-examination – Submission that cannot call own witness for cross-examination – General Practice Direction – No ownership of a witness – Submission to exclude report rejected

[Von Stieglitz and Comcare](#) [2012] AATA 729; 22/10/2012; Mr S Webb, Member

Interlocutory application – Injury claim – Requirement to undergo a medical examination – Challenge to requirement – request for compliance orders – Request for findings as to a ‘reasonable excuse’ – Prospective opinion and declaratory ruling not appropriate – No jurisdiction – s 57 requirement not a matter of tribunal procedure – Rights of the parties – Statutory mechanism – Impartial role of the tribunal – Fairness and justice to parties – Request for order rejected

Immigration and Citizenship

[Macdonald and Minister for Immigration and Citizenship](#) [2012] AATA 733; 24/10/2012; Deputy President RP Handley

Application for Australian citizenship by conferral – Application refused on grounds Applicant does not meet residence requirement under *Australian Citizenship Act 2007* (Cth) – Applicant arrived in Australia on an assisted migrant visa in 1969 – Applicant told on return flight from United Kingdom in 2009 that he did not have a valid visa – Visa issued to Applicant on payment of fee – Visa issued by airline official only valid for three months – No documentation provided to Applicant at time visa issued as to its duration – No entry made in Applicant’s passport at time visa issued – Applicant an unlawful citizen due to misapprehension of the duration of the visa he was issued – Whether administrative error occurred – Ministerial discretion under s 22(4A) of Australian Citizenship Act – Whether discretion should be exercised – Decision under review set aside and remitted

Social Security

[Boucaut and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 726; 23/10/2012; Senior Member JF Toohey

Age pension – Whether Applicant residing in Australia at the relevant time – Relevant considerations – Applicant residing in Thailand – Applicant planned to remain in Thailand for the foreseeable future – Decision under review affirmed

[Bourne and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 723; 22/10/2012; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant time-frame for assessment – Physical impairment in neck, hands and lower back – Conditions not 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

[Kruse and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 738; 25/10/2012; Senior Member N Bell

Newstart allowance – Disability support pension – Deemed claim – Incorrect or inappropriate claims – Whether Applicant made correct claim when qualified for another more appropriate social security payment – Decision under review affirmed

Sports Anti-Doping

[XZTT and Anti-Doping Rule Violation Panel](#) [2012] AATA 728; 23/10/2011; Justice Kerr, President and Dr T Nicoletti, Member

Decision to make entries in the Register of Findings – Adverse analytical finding – Presence of metabolite of cocaine detected – In-Competition test conducted when athlete was competing outside Australia – Role of sporting administration body and CEO of ASADA – Interrelationship between the National Anti-Doping Scheme, the anti-doping rules of the national and international sporting organisations and the World Anti-Doping Code – Allegation of conflict of interest of member of Anti-Doping Rule Violation Panel considered – Implications of breaches of procedural requirements imposed by the World Anti-Doping Code – Nature of finding required to be made – Whether the Anti-Doping Rule Violation Panel may make ‘possible’ findings – Whether “use” In-Competition finding justified in light of amount detected – Decisions set aside – Entry to be made in Register in terms directed by Tribunal – Consequences for contingent recommendations as to penalty

PRACTICE AND PROCEDURE – Jurisdiction – Adequacy of identification of decision(s) for which review sought – Scope of power to remit a matter for reconsideration in accordance with directions

Veterans' Affairs

[King and Repatriation Commission](#) [2012] AATA 725; 23/10/2012; Senior Member JF Toohey, Dr I Alexander, Member

Prostate cancer – Erectile dysfunction – Hypothesis that veteran’s operational service led to change in diet and to continuing high fat intake leading to prostate cancer – Whether reasonable hypothesis raised linking veteran’s prostate cancer to operational service – No dispute that increase in animal fat consumption satisfied relevant SOP factor – Whether related to service – whether more than a temporal link – 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
Cross v SM Britton & Dr Haikal-Mukhtar	[2012] AATA 632
A P Group Limited v Commissioner of Taxation	[2012] AATA 617
Commissioner of Taxation v Boyn	[2012] AATA 660

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Ruautu Tara v Minister for Immigration and Citizenship & AAT	[2012] AATA 79	[2012] FCA 1146



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