



## 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

<b>Recent Developments.....</b>	<b>2</b>
Access to Justice (Federal Jurisdiction) Amendment Bill 2011 .....	2
<b>AAT Recent Decisions.....</b>	<b>3</b>
Civil Aviation .....	3
Compensation.....	3
Immigration .....	4
Maritime Law.....	5
Social Security .....	5
Taxation .....	6
Veterans' Affairs.....	6
<b>Appeals.....</b>	<b>8</b>
Appeals lodged .....	8
Appeals finalised.....	8

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## Recent Developments

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### **Access to Justice (Federal Jurisdiction) Amendment Bill 2011**

The Access to Justice (Federal Jurisdiction) Amendment Bill 2011 passed through the Senate on 22 November 2012. The Bill contains amongst other things, amendments to the provisions of the *Administrative Appeals Tribunal Act 1975* relating to fees (Schedule 5). Amendments to the AAT Act will commence on a date set by Proclamation

The Bill repeals section 29A of the AAT Act. That section specifies that an application is not taken to be made unless a prescribed fee has been paid. The Bill also introduces a new section 69C to give the Tribunal a discretion to dismiss an application if a fee has not been paid within the time specified in the *Administrative Appeals Tribunal Regulations 1976*. The intention is that the Regulations will contain all machinery provisions relating to the payment of fees. These changes will enable the Tribunal to deal with the payment of fees more flexibly.

The Bill also broadens the regulation-making power in section 70 of the AAT Act. This will enable Regulations to be made that provide for the imposition of fees on government agencies that unsuccessfully appeal or defend decisions in proceedings before the Tribunal.

Further information about the Bill can be found at:

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld:%22legislation/bill/home/r4725%22>

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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

[Hanley and Civil Aviation Safety Authority](#) [2012] AATA 820; 21/11/2012; Senior Member G Ettinger

Pilots – Cancellation of licences to pilot helicopters and instructor ratings – Revocation of Instrument of Approval as Chief Flying Instructor – Unplanned demonstration of autorotation – Whether helicopter was operated when unairworthy – Conflict of evidence regarding how the helicopter was moved back to the hangar between the pilot and the owner/passenger/student – Fit and proper person – Decision under review affirmed

[Sullivan and Civil Aviation Safety Authority](#) [2012] AATA 827; 22/11/2012; Deputy President PE Hack SC

Cancellation of commercial pilot (helicopter) licence – Preliminary arguments – Applicant seeking to have decision under review set aside summarily – Whether CASA lacked power to make cancellation decision – Whether cancellation decision was exhausted by court order of suspension – Decision sought by applicant declined

### Compensation

[Guppy and Australian Postal Corporation](#) [2012] AATA 806; 16/11/2012; Senior Member BJ McCabe and Dr M Sullivan, Member

Claim for compensation under the *Safety, Rehabilitation and Compensation Act 1988* – Work-related condition – Degree of permanent impairment – The way in which impairment is assessed – Decision under review affirmed

[King and Military Rehabilitation and Compensation Commission](#) [2012] AATA 808; 19/11/2012; Senior Member RG Kenny

Injury occurring prior to commencement of *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Transitional provisions – *Commonwealth Employees' Compensation Act 1930* (Cth) – Notice of accident – Notice not given as soon as practicable – Commonwealth prejudiced by want of notice – Absence of operative mistake or reasonable cause for lateness of notice and claim – Decision under review affirmed

[Pamic and Comcare](#) [2012] AATA 831; 23/11/2012; Senior Member J Handley

Applicant fell in car park adjacent to workplace after parking her car and when walking towards building intending to commence work – Sudden back pain with referred pain into left hip and left leg – Attempt to place weight onto right leg to regain stability unsuccessful – Prior back and right leg injuries accepted by respondent – Liability continuing at date of fall – Similar symptoms

experienced subsequent to the initial injuries – Whether injuries arose out of employment – Whether a causal connection – Chain of causation not broken – Decision under review set aside

[Robson and Military Rehabilitation and Compensation Commission](#) [2012] AATA 809; 19/11/2012; Deputy President RP Handley and Dr W Isles, Member

*Safety, Rehabilitation and Compensation Act 1988* – Applicant served in Rwanda during 1990s – Applicant developed post-traumatic stress disorder as a consequence of service in Rwanda – Applicant suffered severe injuries in a parachute accident in 2004 – Applicant developed major depressive disorder as a result of parachute accident – Whether parachute accident caused Applicant to develop further post-traumatic stress disorder – Guide to the Assessment of the Degree of Permanent Impairment (Second Edition) – Table 5.1 – 50% impairment – Decisions under review set aside

[Sambastian and Australian Postal Corporation](#) [2012] AATA 822; 22/11/2012; Deputy President DG Jarvis and Professor PL Reilly AO, Member

Commonwealth employee – Refusal to undertake rehabilitation program – Applicant did not have reasonable excuse for refusal or failure to undertake rehabilitation program – Date at which existence of reasonable excuse is to be determined – Whether consideration should be confined to excuses proffered by applicant – Whether suspension of entitlement to compensation applied to all entitlement under Safety, Rehabilitation and Compensation Act, or only to entitlement for compensation for injury referred to in rehabilitation program – Meaning of "reasonable excuse" – Decision under review affirmed

PRACTICE AND PROCEDURE – Jurisdiction – AAT decision in proceedings arising from claim for compensation made after refusal by applicant to undertake rehabilitation program – Held that AAT had no jurisdiction to determine status of its decision, or rights or liabilities of parties by virtue of s 37(7) of Safety, Rehabilitation and Compensation Act

[Westwood and Military Rehabilitation and Compensation Commission](#) [2012] AATA 816; 20/11/2012; The Hon. B Tamberlin QC, Deputy President

Whether there is a civilian component to the calculation of Applicant's normal earnings – If civilian component found, on what basis should calculations be made – Reconstructed invoices not reliable records – Tax returns reflect declining income from sporadic civilian business activities for relevant period – Asserted intention of Applicant to pursue full-time combat role – Decision under review set aside and remitted for recalculation

## **Immigration**

[Sauvao and Minister for Immigration and Citizenship](#) [2012] AATA 817; 20/11/2012; Senior Member N Bell

Visa cancellation – Character test – Substantial criminal history – Applicant New Zealand citizen – Application of Direction 55 – Seriousness of conduct and risk of further offending – Protection of Australian community outweighing all other factors – Decision under review affirmed

## Maritime Law

[Pratt and Australian Maritime Safety Authority](#) [2012] AATA 825; 22/11/2012; Deputy President PE Hack SC

Review of decision and appeals – Recognition of overseas qualification – Issued a certificate of recognition – Certificate issued in error – Applicant seeks review of the decision – Error does not create an entitlement – Bound by legislative framework – Decision under review affirmed

## Social Security

[Dodson and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 813; 15/11/2012; Ms K Hogan, Member and Dr J Chaney, Member

Disability support pension – Portability period – Extension of portability period for serious illness – Decision under review affirmed

[Hyde and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 832; 23/11/2012; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – Recovery of overpaid pension – Debt not written off – No severe financial hardship – No administrative error – No special circumstances – Decision under review set aside and substituted

[Johnston and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 828; 22/11/2012; Senior Member N Bell

Age pension – Asset test – Calculation of value of applicant's assets – Whether sale of proceeds of property to be calculated – Whether applicant's assets exceeded assets limit – Whether applicant disposed of asset – Decision under review affirmed

[K and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 819; 21/11/2012; Senior Member JF Toohey and Dr I Alexander, Member

Carer allowance – Disabled child – Whether applicant provides daily care – Whether child has a declared disability – Whether level of care provide is intense – Decision under review affirmed

[Kallioinen and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 810; 24/10/2012; Senior Member N Bell

Age Pension – Pensioner concession card – Residency requirement – Decision under review affirmed

[Sultana and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 826; 22/11/2012; Senior Member JF Toohey

Disability support pension – Back, shoulder, hernia and knee conditions – Whether conditions treated and stabilised – Tribunal satisfied that treated and stabilised impairments rated 20

points – Tribunal not satisfied applicant had continuing inability to work – Decision under review affirmed

## **Taxation**

[Lack and Commissioner of Taxation](#) [2012] AATA 823; 22/11/2012; Deputy President PE Hack SC

Income tax – Applicants participated in a profit-washing scheme through a unit trust – Commissioner authorised to make amended assessments – Remission of penalties denied – Objection decisions under review affirmed

[Neimanis and Commissioner of Taxation](#) [2012] AATA 814; 20/11/2012; The Hon. B Tamberlin QC, Deputy President

Refusal to release applicant from taxation debt – Whether applicant would suffer serious hardship if required to satisfy tax debt – If serious hardship, whether debt should be released – Disposal of assets without making provision for tax liabilities – Consideration of financial relations of household – Decision under review affirmed

[Watsford and Commissioner of Taxation](#) [2012] AATA 815; 20/11/2012; Senior Member E Fice

Assessable Income – Employee Share Scheme – Fully paid ordinary shares – Termination of employment – Exercise of options – Deed of release – Audit in relation to discounts on shares or rights provided under an Employee Share Scheme – Discount on a share or right – Discount to be included in a taxpayer's assessable income – Qualifying share or right – Onus of proof – Shortfall penalty – Remission of penalty – Objection decision under review affirmed

## **Veterans' Affairs**

[Barrie and Repatriation Commission](#) [2012] AATA 821; 21/11/2012; Senior Member S Penglis and Dr A Frazer, Member

Whether applicant able to work more than 8 hours a week – Finding by Veterans Review Board that applicant able to work more than 8 hours a week upheld – Decision to reduce pension to 70% of the general rate with effect from 20 July 2002 affirmed – Decision to further reduce pension to 60% of the general rate from 8 August 2011 not affirmed – Turns on its own facts

[Eddington and Repatriation Commission](#) [2012] AATA 807, 14/11/2012; Deputy President RD Nicholson and Dr J Chaney, Member

Disability pension – Application for review of decision of Veteran's Review Board – Conflict in expert evidence – Alternative opinions favouring post-traumatic stress disorder or depressive disorder – Overlap of symptoms – Whether applicant's condition alone met statutory requirements concerning remunerative earnings – Parties to file with the Tribunal and serve on each other a draft of the orders which they consider to be appropriate in the circumstances

[Oldacres-Dear and Repatriation Commission](#) [2012] AATA 818; 15/11/2012; The Hon R Nicholson, Deputy President

Disability pension – Incapacity arising out of or attributable to service – Veteran contracting diabetes mellitus – Enlisted aged 15 years and commencing smoking prior to age 16 – Whether requirement of Statement of Principles established – Whether smoking defence-caused – Decision under review set aside and substituted

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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
<b>Anti-Doping Rule Violation Panel v XZTT</b>	<a href="#">[2012] AATA 728</a>
<b>Lee v Transpacific Industries Pty Ltd</b>	<a href="#">[2012] AATA 553</a>

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### Appeals finalised

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CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>SZOQQ v Minister for Immigration and Citizenship &amp; AAT</b>	<a href="#">[2010] AATA 662</a>	<a href="#">[2012] HCATrans 292</a> <a href="#">[2012] FCAFC 40</a> <a href="#">[2011] FCA 1237</a>
<b>Trudu v Comcare</b>	<a href="#">[2012] AATA 286</a>	QUD277/2012
<b>Minister for Immigration and Citizenship v Makasa</b>	<a href="#">[2011] AATA 719</a>	<a href="#">[2012] FCAFC 166</a> <a href="#">[2012] FCA 321</a>

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