



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.

Anti-Doping

[Toskas and Anti-Doping Rule Violation Panel](#) [2012] AATA 662; 1/10/2012; Senior Member J Handley

Applicant registered with Victorian Athletic League – Australian Sports Anti-Doping Authority authorised to test athletes under anti-doping arrangement – Whether applicant refused or failed without compelling justification to submit to sample collection or otherwise evaded sample collection – Breach of anti-doping rules – Whether applicant's particulars and details of the adverse finding correctly entered on the Register of Findings – Decision under review affirmed

Compensation

[Dunn and Military Rehabilitation and Compensation Commission](#) [2012] AATA 672; 4/10/2012; Senior Member BJ McCabe

Causal connection between military service and depression – Deseal-reseal work – Presumption of a causal link between workplace and certain health conditions – Workplace made a material contribution to the onset of depression – Decision set aside and substituted

[Singh and Comcare](#) [2012] AATA 652; 26/9/2012; Senior Member AK Britton; Dr H Haikal-Mukhtar, Member

Rehabilitation program – Failure to undertake return to work plan – Whether there was a reasonable excuse – Reliability of expert witness – Professional detachment – Decision under review set aside

Higher Education

[Nourian and University of Newcastle](#) [2012] AATA 680; 4/9/2012; Senior Member AK Britton

Student's enrolment cancelled – Jurisdiction conferred by *Higher Education Support Act 2003* (Cth) – Application dismissed

[Wood and Secretary, Department of Industry, Innovation, Science, Research and Tertiary Education](#) [2012] AATA 674; 4/10/2012; Senior Member JF Toohey

Jurisdiction – Whether Tribunal has jurisdiction to review decision concerning payment of fees – No jurisdiction

Immigration and Citizenship

[NRWK and Minister for Immigration and Citizenship](#) [2012] AATA 661; 28/9/2012; Senior Member AK Britton

Visa cancellation – Confidentiality – Character test – Ministerial Direction – Consideration of the applicant's criminal history – Consideration of the applicant's ties to Australia – Consideration of the applicant's risk of reoffending – Decision under review affirmed

[Puafisi and Minister for Immigration and Citizenship](#) [2012] AATA 679; 21/9/2012; Senior Member AK Britton

Visa cancellation – No jurisdiction

[Saunders and Minister for Immigration and Citizenship](#) [2012] AATA 666; 29/8/2012; Senior Member BJ McCabe

General residency test – Relevant defence service – Decision under review affirmed

Practice and Procedure

[Campbell-Maruca and Ors and Registrar of Indigenous Corporations](#) [2012] AATA 678; 4/10/2012; Hon. B Tamberlin, QC, Deputy President

Application to exclude representative solicitors – Potential for conflict of interest - Discretion of the Tribunal to determine how a matter is to be conducted before it – Power of the Tribunal to exclude representative – Application to exclude solicitors dismissed

[Carbone and Comcare](#) [2012] AATA 665; 2/10/2012; Professor RM Creyke, Senior Member

Applications — Reinstatement — Jurisdiction to reinstate - No error of Tribunal - Statutory interpretation – Application refused

[Wake and The Commissioner of Patents and Anor](#) [2012] AATA 669; 3/10/2012; Deputy President DG Jarvis

Jurisdiction of the AAT under *Patents Act 1990* (Cth) - Disputes between interested parties re patent applications – Determination under s 32 of name in which application should proceed –

Utility of AAT reviewing determination where Commissioner also makes eligible person declaration under s 36 – Relationship between ss 32 and 36

Claim by applicant to be co-inventor of patent – Application by Other Party for summary dismissal – Application refused

[Wiegand and Comcare](#) [2012] AATA 623; 18/9/2012; Deputy President DG Jarvis

Claim for compensation arising from employment – Assessment of compensation – Fresh evidence as to date of injury – Held that fresh evidence not admissible

Social Security

[Acevski and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 685; 5/10/2012; Mr C Ermert, Member

Disability Support Pension – Workplace injuries – Assessment of impairments – Impairment Tables – Whether twenty points – Decision under review affirmed

[Fenton and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 670; 3/10/2012; Dr P McDermott, RFD, Senior Member

Pensions, benefits and allowances – Age pension – Assets test – Assessable assets – Investment in superannuation fund – Value of assets held by superannuation fund – Decisions under review affirmed

[Hynninen and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 664; 2/10/2012; Senior Member Dr KS Levy RFD

Pensions, benefits and allowances – Disability support pension – Impairment tables – Applicant suffered from “permanent” impairment – Impairment not attributed at least 20 points under the impairment tables in Schedule 1B – No continuing inability to work – Decision under review affirmed

[Lin and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 663; 2/10/2012; Senior Member N Bell; Dr M Couch, Member

Disability support pension – Impairment tables – Impairment rating – Qualification for DSP – Continuing inability to work – Whether applicant’s migraine condition prevents her from undertaking work – Decision under review set aside

[Neraas and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 676; 3/8/2012; Senior Member AK Britton

Age pension claim – Allowable asset limit – Decision under review affirmed

[Nguyen and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 684; 5/10/2012; Mr C Ermert, Member

Disability support pension – Decision of SSAT to cease payment of DSP – Application to stay decision – Interests of persons affected by an order – Hardship suffered by refusal of stay – Likelihood of recovery of moneys – Prospect of success of application for review – Extension of time for application for review – Refused to stay the operation of the decision under review

[Plavan and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 671; 3/10/2012; Senior Member JF Toohey

Age pension – Assets test – Whether applicant's assets exceeded assets limit – Valuation of properties disputed – Assets exceeded assets limit on any valuation – Whether hardship provisions applicable – Decision under review affirmed

[Sherwood and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 682; 5/10/2012; Dr P McDermott, RFD, Senior Member

Family Tax Benefit – Claim for benefit from earlier financial year – Time limit for effective claim – Claim made out of time – Compensation for Detriment caused by Defective Administration – Decision under review affirmed

Taxation

[Boyn and Commissioner of Taxation](#) [2012] AATA 660; 28/9/2012; Professor R Deutsch, Deputy President

Whether amended assessed tax payable had been correctly calculated – Correct method of calculation of taxable component of employment termination payment – Most favourable allocation of deductions – Decision under review set aside

[Lynton and Commissioner of Taxation](#) [2012] AATA 667; 2/10/2012; Dr G Hughes, Member

Excess contributions tax – Honest mistake by taxpayer – Taxpayer facing financial difficulties – Whether 'special circumstances' exist – Decision under review affirmed

Veterans' Affairs

[Matheson and Repatriation Commission](#) [2012] AATA 668; 3/10/2012; Senior Member RG Kenny; Dr GJ Maynard, Brigadier (Rtd), Member

Benefits and entitlements – Disability pension payable at 90% of the general rate – Eligibility for special rate of pension – Incapacity from war-caused conditions sufficient to prevent applicant

undertaking remunerative work for more than 8 hours per week – Applicant not prevented by reason of incapacity from war-caused conditions, alone or substantially, from continuing to undertake remunerative work – No loss of salary, wages or earnings that would not be suffered if free from incapacity – Decision under review affirmed

[Ralston-Smith and Repatriation Commission](#) [2012] AATA 673; 4/10/2012; Dr P McDermott, RFD, Senior Member

Benefits and entitlements – Applicant interned as a civilian by Japanese military forces during World War II – Applicant's father had lived in Australia between 1919 and 1921 – Individuals under 21 years take the domicile of their father – Applicant's father was not domiciled in Australia – 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
Vulich v Repatriation Commission	[2012] AATA 547
Nelson v Commissioner of Taxation	[2012] AATA 579
Telstra Corporation Limited v Zomer	[2012] AATA 601

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Commissioner of Taxation v Qantas Airways Limited	[2010] AATA 977	[2012] HCA 41 [2011] FCAFC 116
Teuila v Minister for Immigration and Citizenship & AAT	[2012] AATA 351	[2012] FCA 1056
Khan v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2011] AATA 608	[2012] FCA 1060
Scott v Minister for Immigration and Citizenship	[2012] AATA 400	WAD199/2012
Sloan v Repatriation Commission	[2011] AATA 424	[2012] FCA 1079



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