



AAT Bulletin

ISSUE NO. 4/2012

22 OCTOBER 2012

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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Enquiries regarding this publication may be directed to aatweb@aat.gov.au.

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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.

Child Support

[Kenyon and Child Support Registrar](#) [2012] AATA 714; 15/10/2012; Deputy President PE Hack SC

Failure to pay child support — Significant debt — Unable to travel overseas due to a departure prohibition order — Wishes to reside permanently in Indonesia — No greater capacity to repay — Departure overseas would not impair the present arrangements to repay decision — Reconsideration of decision conditional on Registrar's ability to continue to receive deductions from Centrelink entitlements — Decision set aside and remitted to the Registrar

Compensation

[Ferguson and Commonwealth Bank of Australia](#) [2012] AATA 718; 17/10/2012; Senior Member JF Toohey and Dr M Couch, Member

Major Depressive Disorder — Applicant claimed condition developed as a result of bullying and harassment — Respondent accepted employment contributed to condition — Whether result of reasonable administrative action taken in a reasonable manner — Meaning of administrative action — Appraisal — Counselling — Whether significant contribution by reasonable administrative action required — Decision under review affirmed

[Miller and Comcare](#) [2012] AATA 715; 16/10/2012; The Hon RJ Groom AO, Deputy President

Call centre operator — Pre-existing degenerative cervical spondylosis — Episode of severe pain — Whether work contributed to aggravation of cervical spondylosis to a significant degree — Meaning of "aggravation" — Meaning of "significant degree" — Decision under review set aside

Freedom of Information

[Corby and Australian Federal Police](#) [2012] AATA 713; 15/10/2012; Deputy President PE Hack

Request for access to documents — Claims for exemption pursuant to ss 22, 33, 33A, 36, 37, 40, 41 and 42 of the *Freedom of Information Act 1982* (Cth) — Decisions under review varied, substituted, remitted for reconsideration and affirmed

[Khorrarnadel and Department of Human Services](#) [2012] AATA 707; 12/10/2012; Senior Member AK Britton

Exemptions — Could not be found or do not exist — Proper search — All reasonable steps — Legal professional privilege — Irrelevant material — Decisions under review set aside, and affirmed

Immigration and Citizenship

[Shao and Minister for Immigration and Citizenship](#) [2012] AATA 709; 15/10/2012; Senior Member N Bell

Application for citizenship — Applicant married to Australian citizen — Applicant does not meet residence requirements — Exercise of discretion — Application of Australian Citizenship Instructions — Whether applicant has a close and continuing association with Australia — Whether applicant has a permanent or enduring physical or mental incapacity — Decision under review affirmed

Social Security

[Garvey and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 721; 19/10/2012; Mr P Wulf, Member

Pensions, benefits and allowances — Age pension — Australian residency requirements — Not permanent resident for 10 years — Temporary visas only for majority of time — United Kingdom international agreement repealed — Decision under review affirmed

[Jones and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 708; 15/10/2012; Deputy President DG Jarvis

Assurance of support — Cannot be withdrawn once visa issued — Visa ceasing to be of effect upon assurees being granted citizenship — Distinction between cancellation and cessation of visa — Relationship between security bond and assurance of support — Guide to Social Security Law not followed — Held that applicant should not be released from assurance of support or security bond before end of ten-year period — Decision under review affirmed

[Murphy and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 711; 15/10/2012; Dr K Breen, Member

Disability support pension — Plantar fasciitis — Depression — Conditions not fully treated or stabilised — Decision under review affirmed.

[Nicoll and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 722; 19/10/2012; Dr KS Levy RFD, Senior Member

Pensions, benefits and allowances — Disability support pension — Physical, intellectual or psychiatric impairment — Impairment Tables — Applicant not qualified for disability support pension — Decision under review affirmed

[Sazegar and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 712; 15/10/2012; Senior Member JF Toohey

Disability support pension — Back condition — Psychological condition — Whether Post Traumatic Stress Disorder or Adjustment Disorder — Whether conditions treated and stabilised during relevant period — Whether continuing inability to work — Finding that conditions treated and stabilised — Impairment rating twenty points — No continuing inability to work — Decision under review affirmed

Taxation

[Nash and Commissioner of Taxation](#) [2012] AATA 719; 17/10/2012; Deputy President R Deutsch

General interest charge — When general interest charge is due and payable — Requirement of a pre-existing liability — Liability that is contingent or is pending, threatened or expected is not sufficient — Commissioner's ability to remit does not affect the incurring of the liability at earlier stage — Decision under review set aside

[Yrorita and Commissioner of Taxation](#) [2012] AATA 716; 16/10/2012; Senior Member G Ettinger

Superannuation — Withdrawal of funds by taxpayer to be paid into another fund — Second fund not 'regulated superannuation fund' — Amount withdrawn not rolled over — Amount withdrawn not declared in the Applicant's income tax return for relevant year, 2007 — Whether fraud or evasion — Applicant did not make appropriate inquiries regarding legalities of withdrawal — Whether extreme hardship or other relevant mitigating circumstances — No substantiation of Applicant's claim that he paid for his son's surgery as claimed — Decision under review varied to remit penalties

Veterans' Affairs

[Bagnall and Repatriation Commission](#) [2012] AATA 720; 17/10/2012; Senior Member AK Britton and Dr IS Alexander, Member

Pensions — Anxiety disorder not otherwise specified — Whether defence-caused — Date of clinical onset — Whether experienced a category 2 stressor — Serious physical disability — Chronic pain — No link to service — Decision under review affirmed

[Will and Repatriation Commission](#) [2012] AATA 710; 15/10/2012; Senior Member AF Cunningham

Veteran's pension — AVM condition — Whether war caused — Whether failure of appropriate medical treatment materially contributed to or aggravated the disease — No evidence of inappropriate medical treatment — Disease not contributed to in a material degree or aggravated by defence service — 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
Wynnum Holdings No 1 Pty Limited & Anor v Commissioner of Taxation	[2012] AATA 616
Doherty v Inspector-General of Bankruptcy	[2012] AATA 635

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Baker v Minister for Immigration and Citizenship & AAT	[2011] AATA 622	[2012] FCAFC 145 [2012] FCA 300
Bell v Commissioner of Taxation	[2012] AATA 45	[2012] FCA 1042



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