



AAT Bulletin

ISSUE NO. 6/2012

5 NOVEMBER 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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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 took effect on **31 October 2012**.

[Giant cell arteritis – No. 71 of 2012](#)

[Giant cell arteritis – No. 72 of 2012](#)

[Solar keratosis – No. 73 of 2012](#)

[Solar keratosis – No. 74 of 2012](#)

[Acute lymphoblastic leukaemia – No. 75 of 2012](#)

[Acute lymphoblastic leukaemia – No. 76 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.

Civil Aviation

[Barnes and Civil Aviation Safety Authority](#) [2012] AATA 756; 1/11/2011; Senior Member E Fice and Dr R Blakley, Member

Class 2 medical certificate – Class 1 medical certificate – Private Pilot (aeroplane) Licence – Application for medical certificates – Risk to the safety of air navigation – Type II diabetes mellitus – Refusal to undertake further testing – Decision under review affirmed

Compensation

[Roxas and Comcare](#) [2012] AATA 747; 30/10/2012; Senior Member JF Toohey and Dr SH Toh

Neck and thoracic sprain – Liability accepted for incapacity and medical treatment – Liability denied for permanent impairment and non-economic loss – Aggravation of neck sprain – Liability accepted – Whether effects of aggravation had ceased – Whether Tribunal could consider continuing effects of original injury – Reviewable decision concerned aggravation only – Decision under review affirmed

Claim for permanent impairment arising from original injury – Liability denied – Tribunal satisfied applicant had permanent impairment – Whether permanent impairment could be assessed on Comcare Guide – Proper approach where Comcare Guide not applicable – American Medical Association Guides – Assessment of chronic pain – Matter adjourned for assessment based on clinical judgment

[Smith and Telstra Corporation Limited](#) [2012] AATA 749; 30/10/2012; Senior Member BJ McCabe

Claim for compensation under *Safety, Rehabilitation and Compensation Act 1988* (Cth) – Compensation paid over a long period – Refusal to accept ongoing incapacity – Long standing congenital problems – Degenerative change – Break in causation – Decision under review affirmed

[Thompson and Comcare](#) [2012] AATA 752; 31/10/2012; Professor RM Creyke, Senior Member, and Dr B Hughson, Member

Commonwealth Employees – Accepted condition of adjustment disorder – Whether depressive disorder due to performance appraisal – Whether employee entitled to incapacity payments from a work-related condition – Whether liability for work-related condition excluded because the condition was due to reasonable administrative action undertaken in reasonable manner – Decisions under review affirmed

Health and Community Services

[Bundaberg Friendly Society Medical Institute Limited and Australian Community Pharmacy Authority](#) [2012] AATA 748; 30/10/2012; Senior Member BJ McCabe

Pharmaceutical benefits – Approval to supply pharmaceutical benefits – Private hospital – Number of licensed beds – Other approved health services – Sufficient number of licensed beds and/or patients to satisfy *National Health (Australian Community Pharmacy Authority Rules) Determination 2011* (Cth) – Decision under review set aside and substituted

Social Security

[Deakin and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 745; 30/10/2012; Senior Member RG Kenny

Pensions, benefits and allowances – Disability support pension – Relevant period for assessment – Physical impairment in left knee and lower back – Back condition not fully diagnosed, treated and stabilised in the relevant period – No impairment rating under the Impairment Tables for back condition – Rating of 10 points under Table 4 of Impairment Tables for left knee condition – Applicant not qualified for disability support pension – Decision under review affirmed

[Kellalea and Secretary, Department of Industry, Innovation, Science, Research and Tertiary Education](#) [2012] AATA 761; 2/11/2012; Dr KS Levy RFD, Senior Member

Pensions, benefits and allowances – Student Start-up scholarship – Relocation scholarship – Accredited higher education course – Preparatory course – Diploma of Music – Ministerial Determination – Use of government policy in decision making process – No sufficient nexus between successful completion of diploma course and entry into bachelor course – Decision under review affirmed

[Takai and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 746; 30/10/2012; Dr P McDermott RFD, Senior Member

Pensions, benefits and allowances – Disability support pension – International Agreement – Date of effect of grant of pension – Deemed date – Decision under review affirmed

[Taylor and Secretary, Department of Education, Employment and Workplace Relations](#) [2012] AATA 751; 31/10/2012; Ms R Perton, Member

Single parent payment – Youngest child's 8th birthday – Automatic loss of single parent payment – Transfer to newstart allowance – Quarantined from transfer if payments commenced before 1 July 2001 – Limited discretion available – Decision under review affirmed

Taxation

[Australian Medical Services Pty Ltd and Commissioner of Taxation](#) [2012] AATA 758; 1/11/2012; Professor R Deutsch, Deputy President

Nominal interest component of the superannuation guarantee contribution imposed under the *Superannuation Guarantee (Administration) Act 1992* – Whether nominal interest could be remitted – Decision under review affirmed

[Building Company Owner and Commissioner of Taxation](#) [2012] AATA 755; 1/11/2011; Deputy President SE Frost

Income tax – Money transferred to individual from company of which the individual was a shareholder and director – Whether amounts can be characterised as loans – Whether amounts assessable as unfranked dividends – Documentation of loans – Discretion if deemed dividend arose because of an honest mistake or inadvertent omission – Administrative penalty – Whether behaviour was reckless – Shortfall interest charge – Decisions under review set aside

[Dickinson and Commissioner of Taxation](#) [2012] AATA 762; 2/11/2012; Deputy President PE Hack SC and Senior Member BJ McCabe

Contributions – Excess contributions tax – Discretion to move excess contribution to another financial year – Discretion to be exercised only where there are special circumstances – Decision under review affirmed

[NaughtsnCrosses Pty Ltd and Innovation Australia](#) [2012] AATA 743; 24/10/2012; Deputy President PE Hack SC

Tax concessions – Research and development – Innovation or high levels of technical risk required – Six registered activities – Claimed to satisfy criteria – Activities not systematic, investigative and experimental – Decision under review affirmed

[Rigoli and Commissioner of Taxation](#) [2012] AATA 757; 1/11/2011; Senior Member E Fice

Assessment of income – Income tax – Failure to furnish income tax returns – Default assessment – Partnership – Depreciation – Onus of proof – Credibility of witnesses – Manufacturing polystyrene and cardboard boxes – Decisions set aside and remitted

[SDI Group Pty Ltd and Commissioner of Taxation](#) [2012] AATA 763; 2/11/2012; Dr G Hughes, Member

GST exemption – Supply of a going concern – Requirement for agreement – Requirement for the agreement to be in writing – Determination set aside

Veterans' Affairs

[Martin and Repatriation Commission](#) [2012] AATA 744; 29/10/2012; Senior Member JF Toohey and Dr I Alexander, Member

Claim for war widow's pension – Operational service – Malignant neoplasm of the prostate – Whether veteran's service led to change in diet and to continuing high fat intake – No reasonable hypothesis raised – Decision under review affirmed

[Onorato and Repatriation Commission](#) [2012] AATA 759; 1/11/2012; Senior Member G Ettinger and Dr I Alexander, Member

Widow's pension – Operational service – Claim that the veteran's death was war-caused – Remittal from Federal Court – Tribunal finds that applicant's death was war-caused – Decision under review set aside and substituted

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
Lloyd v Repatriation Commission	[2012] AATA 657

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Tuitaalili v Minister for Immigration and Citizenship & AAT	[2011] AATA 144	[2012] HCA Trans 222 [2012] FCAFC 24 [2011] FCA 1224



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