



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.

Compensation

[Jarrett and Military Rehabilitation and Compensation Commission](#) [2012] AATA 837; 27/11/2012; Senior Member RG Kenny

Military service in Australian Army – Work related injury or disease – Seborrhoeic dermatitis of the ears – No medical evidence to support relationship between disease and army service – Respondent not liable to pay compensation for incapacity or impairment – Decision under review affirmed

Freedom of Information

[Francis and Department of Defence](#) [2012] AATA 838; 27/11/2012; Deputy President DG Jarvis

Application for amendment of personal records – Consideration of Australian Book of Reference 1991 – Naval and Medical Hospital Instructions (ABR 1991) – Meaning of "guidance" – Meaning of "have regard to" – Direction to amend record of opinion of medical officer re suitability for service on submarines – Reviewable decision not to amend records otherwise affirmed

Immigration

[Mirik and Minister for Immigration and Citizenship](#) [2012] AATA 835; 26/11/2012; Deputy President JW Constance

Cancellation of a Class BF Transitional (Permanent) visa – Direction [no. 55] – Visa refusal and cancellation under s 501 *Migration Act 1958* (Cth) – Character test – Substantial criminal record – Primary considerations – Protecting the Australian community from harm – The seriousness and nature of the conduct – The risk that the conduct may be repeated – Strength, duration and nature of ties to Australia – Australia's non-refoulement obligations – Other considerations – Effect on members of family – Extent of any impediments if removed from Australia – Compensation to be paid to victim – Decision under review affirmed

[Paniora and Minister for Immigration and Citizenship](#) [2012] AATA 766; 5/11/2012; Senior Member D Letcher, QC

Visa cancellation – Character test – Substantial criminal record – Ministerial Direction No 55 applied – Protection of the Australian community – Risk of future harm unacceptable – Decision under review affirmed

[Wu and Minister for Immigration and Citizenship](#) [2012] AATA 834; 26/11/2012; Senior Member JF Toohy

Visa cancellation – Substantial criminal record – Applicant convicted of intentionally importing child pornography offence material and knowingly possessing child exploitation material decision – Application of Direction 55 – Relevant considerations – Decision under review affirmed

Practice and Procedure

[Scerri and Comcare](#) [2012] AATA 791; 13/11/2012; Mr S Webb, Member

Summons to a third party to produce documents – Objection on grounds of abuse of process, oppression, relevance and fishing – No legitimate purpose – Summons set aside

Social Security

[Lim and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 773; 6/11/2012; Senior Member AK Britton

Disability support pension – Whether applicant has an impairment rating of 20 or more under the Tables for the Assessment of Work-Related Impairment for Disability Support Pension – Whether any or all of those conditions were fully diagnosed, treated and stabilised – Applicability of Table 20 – Decision under review affirmed

[Peronie and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 842; 29/11/2012; Dr K Breen, Member

Disability support pension – Lumbar disc prolapse – Chronic depression and anxiety – Conditions not fully treated or stabilised – Decision under review affirmed

[Pham and Secretary, Department of Education, Employment and Workplace Relations](#) [2012] AATA 839; 27/11/2012; Ms R Perton, Member

Youth allowance – Cancellation due to respondent's findings regarding relationship status of applicant's parents – Fresh application for youth allowance – Start date – Impact of application to Social Security Appeals Tribunal more than 13 weeks after decision by authorised review officer – Decision under review affirmed

[Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Lind](#) [2012] AATA 840; 28/11/2012; Senior Member BJ McCabe

Age pension – Valuation of an asset – Principal home exempt – Land adjacent to principal home on separate title – Discretion to treat land as being on same title – Definition of value – Implications surrounding providing legal access – Decision set aside and remitted

[Tekiela and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 833; 26/11/2012; The Hon RJ Groom AO, Deputy President

Age pension – Applicant in Australia on visitor's visa only – Now residing in Poland - Whether an Australian resident – Social Security (International Agreements) Act 1999 – Agreement between Australia and Poland – Applicant not an Australian resident – No discretion – Decision under review affirmed

Taxation

[Bocaz and Commissioner of Taxation](#) [2012] AATA 847; 30/11/2012; Senior Member G Lazanas

Income tax – Deduction claimed by Applicant in respect of share of interest expenses and other expenses relating to residential properties tenanted to ex-husband and son – Whether non-commercial arrangements – Decision set aside and remitted for reconsideration

[Hancox and Commissioner of Taxation](#) [2012] AATA 836; 27/11/2012; Senior Member RW Dunne

Income tax – Living-away-from-home allowance – Travel allowance – Fly-in fly-out worker – Claims for work-related travel expenses – Substantiation – Whether assessment excessive – Administrative penalty – Recklessness – Objection decision under review affirmed

Veterans' Affairs

[Applicant 22 of 2012 and Repatriation Commission](#) [2012] AATA 830; 23/11/2012; Ms Hogan, Member

Service Pension – War Widow's Pension – Service Pension Income Test – Similar in Character – Whether the British and Australia War Widow's Pensions are Similar in Character

[Neal and Repatriation Commission](#) [2012] AATA 843; 30/11/2012; Senior Member AF Cunningham

Defence service – Whether multiple sclerosis was materially contributed to or aggravated by service – Claimed that delay of diagnosis and stress and anxiety resulting from category 2 stressor suffered during service materially aggravated the disease – Tribunal found no causal connection between service and multiple sclerosis disease nor a category 2 stressor as defined in the SOP – Decision under review affirmed

[Simpson and Repatriation Commission](#) [2012] AATA 845; 30/11/2012; Deputy President RP Handley and Dr SH Toh, Member

Applicant suffering from Post-Traumatic Stress Disorder (PTSD) – Applicant served in Vietnam War – Whether Applicant's PTSD is war-caused – Rate of disability pension – 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
Commissioner of Taxation v Rigoli	[2012] AATA 757

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Secretary, Department of Families, Housing, Community Services and Indigenous Affairs v Abbott	[2011] AATA 754	[2012] FCAFC 172 [2012] FCA 481



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