



AAT Bulletin

ISSUE NO. 11/2012

10 DECEMBER 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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Recent developments

This section of the Bulletin contains information about recent legal or other developments that may be of interest to members and staff. Please forward any contributions you wish to be included in the Bulletin or suggestions for topics to legalandpolicy@aat.gov.au.

New Practice Direction – Timing of requests under section 50A of the *Archives Act 1983* or section 60A of the *Freedom of Information Act 1982*

On 5 December 2012, the President of the Tribunal, the Hon Justice Duncan Kerr, issued a Practice Direction on the timing of requests under section 50A of the *Archives Act 1983* or section 60A of the *Freedom of Information Act 1982*. The issuing of the Practice Direction follows a Memorandum of Understanding entered into by the Tribunal and the Inspector-General of Intelligence and Security in October 2012.

The Practice Direction is now available on the AAT website:

<http://www.aat.gov.au/LawAndPractice/PracticeDirectionsAndGuides/PracticeDirections/TimingOfRequestsPracticeDirection.htm>.

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

[Connors and Comcare](#) [2012] AATA 863; 3/12/2012; Mr S Webb, Member

Accepted injury – Aggravation of episode of schizophrenia – Claim for permanent impairment compensation – Failure to appear – Application dismissed – Request for reinstatement – Factors to be considered – No reasonable excuse for failure to appear – History of delays – Weak case – Applicant attempting to agitate matters in excess of jurisdiction – Request rejected

[Michalopoulos and Comcare](#) [2012] AATA 850; 3/12/2012; Mr S Webb, Member

Psychological injury claim – Alleged bullying and harassment – Adjustment disorder significantly contributed to by employment – Exclusionary factors – Performance issues – Actions taken relating to workload reporting are not administrative actions in respect of the employee's employment – Claimed injury was not suffered as a result of reasonable administrative actions – Decision under review set aside

Immigration

[Kelaart and Minister for Immigration and Citizenship](#) [2012] AATA 849; 3/12/2012; Mr S Webb, Member

Application for conferral of citizenship – Permanent residence – General residence requirements – Extensive absences from Australia within 4 year period prior to application – Periods of absence exceed statutory thresholds – Discretion – Spouse of an Australian citizen – Meaning of “close and continuing association with Australia” – Consideration of circumstances – Family ties to Australia – Ill health – Age – Overseas responsibilities, assets and business interests – Association with Australia not close and continuing – Decision under review affirmed

[WVLL and Minister for Immigration and Citizenship](#) [2012] AATA 858; 13/11/2012; Senior Member J Handley

Review of decision to cancel applicant's visa – Failure to pass character test – Applicant pleaded guilty to possession of pre-cursor chemicals used in manufacture of methamphetamine – Other adverse conduct volunteered – Applicant present in Australia for 30 years before convicted – Ministerial Direction No. 55 – Criminal conduct viewed very seriously – Remaining primary and other considerations viewed very favourably – Applicant not an unacceptable risk to the Australian community – Decision under review set aside

Intellectual Property

[Aspen Pharma Pty Ltd and Ors and Commissioner of Patents and H Lundbeck A/S \(Joined Party\)](#) [2012] AATA 851; 4/12/2012; The Hon. B Tamberlin QC, Deputy President, and Dr T Nicoletti, Senior Member

Patents – Extension of term – Extension of time application – Decision under review affirmed

Practice and Procedure

[XYZ and Australian Research Council](#) [2012] AATA 841; 27/11/2012; Senior Member JF Toohy

Jurisdiction – Application for grant under the Australian Research Council Future Fellowships Scheme – Whether Tribunal has jurisdiction to review decision not to grant an application – information concerning appeals mechanisms – Tribunal has no jurisdiction to determine the application

Social Security

[Cooley and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs and Anor](#) [2012] AATA 854; 5/12/2012; Senior Member RG Kenny

Benefits and entitlements – Family tax benefit – Failure to advise of living arrangements for dependent child – Debts to Commonwealth raised for overpayment – Write-off of debt – Capacity to repay debt – Waiver of debt – No sole Commonwealth administrative error – No special circumstances – Decision under review affirmed

Pensions, benefits and allowances – Newstart allowance – Failure to declare correct income – Failure to advise of living arrangements for dependent child – Debts to Commonwealth raised for overpayment – Write-off of debt – Capacity to repay debt – Waiver of debt – No sole Commonwealth administrative error – No special circumstances – Decision under review affirmed

[Faichney and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 856; 5/12/2012; Senior Member Dr KS Levy RFD

Pensions, benefits and allowances – Commonwealth Seniors Health Card – Applicants not qualified to receive CHSC – Superannuation payments not exempt and not non-assessable income – Decisions under review affirmed

[Knight and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 860; 6/12/2012; Mr P Wulf, Member

Pensions, benefits and allowances – Disability support pension – Rate of pension payable – Member of a couple – Financial aspects of the relationship – Nature of household – Applicant's knowledge of social and cultural aspects of relationship – No special circumstances – Decision under review affirmed

[Prerad and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 859; 6/12/2012; Senior Member JF Toohey

Disability support pension – Back and shoulder conditions – Psychiatric condition – Whether conditions treated and stabilised – Impairment ratings – Continuing inability to work – Whether applicant had actively participated in a program of support – Decision under review affirmed

[Searle and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 855; 5/12/2012; Senior Member RG Kenny

Pensions, benefits and allowances – Age pension – Reduced rate of pension – Loans made to children – Deemed income from loans – Decision under review affirmed

Taxation

[Gem Plant Hire Pty Ltd ATF The Condello Family Trust and Commissioner of Taxation](#) [2012] AATA 852; 4/12/2012; Senior Member FD O'Loughlin

Fuel Tax – User of fuel in carrying on an enterprise – Decisions under review set aside

[Waldeck and Commissioner of Taxation](#) [2012] AATA 848; 3/12/2012; Senior Member BJ McCabe

Pay as you go tax – Whether applicant was an employee – Distinction between contract of service and contract for service – Administrative Penalties – Want of reasonable care – Seeking professional advice – Penalty remitted in full – Decision otherwise affirmed

Veterans' Affairs

[Forrester and Repatriation Commission](#) [2012] AATA 846; 30/11/2012; Deputy President JW Constance and Dr KJ Breen, Member

Whether death was war-caused – Whether material raises an hypothesis connecting the death with the circumstances of the operational service – Material must point to the hypothesis – Hypertension – Aortic aneurysm – 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
Demillo v Minister for Immigration and Citizenship	[2012] AATA 805
Simmons v Comcare	[2012] AATA 687

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Christanty v Secretary, Department of Families, Housing, Community Services and Indigenous Affairs	[2012] AATA 497	[2012] FCA 1360
Bawden v Repatriation Commission	[2011] AATA 283	[2012] FCAFC 176 [2012] FCA 345
Agapis v Plumbers Licensing Board	2012/2554	[2012] FCA 1375
Civil Aviation Safety Authority v Caper Pty Ltd (No 2)	[2011] AATA 181	[2012] FCA 1305 [2012] FCA 1213



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