



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.

Bankruptcy

[Bilios and Inspector-General in Bankruptcy](#) [2012] AATA 873; 11/12/2012; Senior Member D Letcher QC

Bankrupt's obligation to pay contributions – Calculation of assessed income – Contribution assessment period – Whether calculation of assessed income correct – Decision under review set aside and substituted

Compensation

[Finch and Telstra Corporation Ltd](#) [2012] AATA 875; 12/12/2012; Senior Member BJ McCabe

Workplace injury – Liability – Whether condition has since resolved – Age related degeneration – Referred pain – Psychosocial factors – Decision set aside and substituted

[Bromfield and Military Rehabilitation and Compensation Commission](#) [2012] AATA 864; 10/12/2012; The Hon RJ Groom AO, Deputy President

Army service – In January 1999 liability accepted for "episode of mild depression" – Determination made in January 2008 ceasing liability for that condition – Whether episodes of depression continued after January 2008 – Whether those episodes of depression were contributed to in a material degree by employment in the Army – Episodes of depression did continue after January 2008 – The applicant's army service did not contribute to those episodes of depression – Decision under review affirmed

[Lee and Comcare](#) [2012] AATA 867; 10/12/2012; Deputy President PE Hack SC

Psychological injury – Host employment placement – Sudden termination – Whether reasonable administrative action taken in a reasonable manner – Decision under review affirmed

[Papandrea and Telstra Corporation Limited](#) [2012] AATA 861; 7/12/2012; Deputy President SD Hotop and Dr A Frazer, Member

Employee of licensed corporation – Applicant claimed compensation for injury to elbows – Respondent accepted liability to pay compensation to applicant for left elbow injury – Respondent paid compensation to applicant for cost of medical treatment for left elbow injury until 28 June 2011 – Respondent denied liability to pay compensation to applicant for right elbow condition – Respondent liable to pay compensation to applicant for cost of medical treatment obtained for left elbow injury until 28 August 2012 – Respondent not liable to pay compensation to applicant for right elbow condition – Decision under review varied

[Stephenson and Telstra Corporation Ltd](#) [2012] AATA 857; 6/12/2012; Senior Member BJ McCabe

Workplace injury – Aggravated ear condition – Resulting psychiatric condition – Insufficient medical evidence – Decisions affirmed

[Tapper and Transpacific Industries Pty Ltd](#) [2012] AATA 870; 11/12/2012; The Hon R Nicholson, Deputy President

Calculation of incapacity payments – Whether employee's earnings in the two weeks prior to the injury 'fairly represent' his earnings – Whether either of the respondent's proposals of a fair period more appropriate – Eligibility of applicant for allowances – Decision set aside and substituted

Customs

[Cameron Australasia Pty Ltd and Chief Executive Officer of Customs](#) [2012] AATA 865; 10/12/2012; Senior Member G Ettinger

Tariffs – Tariff Concession Order – Umbilicals imported with reelers – Whether product meets definition in the TCO – Decision under review affirmed

Defence

[Gill and Commonwealth Superannuation Corporation](#) [2012] AATA 876; 13/12/2012; Deputy President RP Handley

Defence Force Retirement and Death Benefits Scheme – Military Superannuation and Benefits Scheme – Applicant commenced a period of continuous full time service of less than 12 months – Applicant required to make an election prior to commencement of continuous full time service not to join the Military Superannuation and Benefits Scheme – Election not made prior to commencement of service

Practice and Procedure

[Dunn and Military Rehabilitation and Compensation Commission](#) [2012] AATA 853; 4/12/2012; Senior Member BJ McCabe

Taxation of costs – Request for indemnity costs – Discretion to order costs – Special reasons – Conduct of the unsuccessful party – Obligations as a model litigant – Costs to be paid on the ordinary basis

Social Security

[Cunnold and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 866; 7/12/2012; Ms K Hogan, Member

Pension bonus scheme – Non-accruing time limitation – Claim lodged outside applicable time frame – Special circumstances – Failure to notify – Decision set aside and remitted

[Hodge and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 877; 26/10/2012; Senior Member N Bell

Carer Payment– Rate and calculation of carer payment – Whether superannuation is income – Whether Applicant had reached retirement age – Decision under review is affirmed

[Wetherall and Secretary, Department of Education, Employment and Workplace Relations](#) [2012] AATA 844; 30/11/2012; Senior Member RW Dunne

Austudy – Activity test – Qualifying study – Progress rules – Whether allowable study time exceeded – Whether previous study time can be disregarded – Whether use of extrinsic material possible – Whether purposive construction of legislation can apply – Decision under review affirmed

Taxation

[Ellwood and Commissioner of Taxation](#) [2012] AATA 869; 11/12/2012; Senior Member D Letcher QC

Income tax – Whether resident of Australia for tax purposes – Domicile of origin – Domicile of choice – Meaning of resident – Decision under review affirmed

[Elvy and Commissioner of Taxation](#) [2012] AATA 862; 7/12/2012; Deputy President SE Frost, Senior Member G Lazanas

Loss deduction claim – Income Tax Assessment Act sec 8-1 – Whether losses incurred in gaining or producing assessable income – Whether intention or purpose to make profit or gain – Intention or purpose measured objectively – Surrounding facts and circumstances – Whether reasonable expectation of profit or gain – Profit-making scheme – Objection decision is affirmed

[Yung and Commissioner of Taxation](#) [2012] AATA 872; 11/12/2012; Senior Member FD O'Loughlin

Deposits to bank accounts assessed as taxable income – Whether taxpayer's burden of proof discharged – Whether taxpayer can rely on estimate of taxable income – Decision under review affirmed

Veterans' Affairs

[Booth and Repatriation Commission](#) [2012] AATA 871; 11/12/2012; Senior Member N Bell and Dr W Isles, Member

Claim for war widow's pension – Operational service – Whether veteran's service led to smoking increase – No reasonable hypothesis raised – Decision under review affirmed

[Hogben and Repatriation Commission](#) [2012] AATA 878; 13/12/2012; Senior Member N Bell and Dr W Isles, Member

Ischaemic heart disease – Atrial fibrillation – Dyslipidaemia – Veteran claimed dyslipidaemia treated inappropriately while on operational service – Whether hypothesis that Veteran's treatment of condition was inappropriate reasonable – Tribunal satisfied beyond reasonable doubt that dyslipidaemia not inappropriately treated while on operational 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
Phillips v Inspector-General in Bankruptcy	[2012] AATA 788
Woodall v Repatriation Commission	[2012] AATA 803
O'Dowd v Repatriation Commission	[2012] AATA 789

Appeals finalised

CASE NAME	AAT REFERENCE
Cyonara Snowfox Pty Ltd v Commissioner of Taxation	[2012] FCAFC 177
P v Child Support Registrar & M	[2012] FCA 1398
Tauriki v Minister for Immigration and Citizenship & AAT	[2012] FCA 1408



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