



AAT Bulletin

ISSUE NO. 3/2013

21 JANUARY 2013

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.

The AAT does not make any representation or warranty about the accuracy, reliability, currency or completeness of any material contained in this Bulletin or on any linked site. While the AAT makes every effort to ensure that the material in the Bulletin is accurate and up-to-date, you should exercise your own independent skill and judgement before you rely on it. Information contained in this Bulletin is not legal advice and is intended as a general guide only. You should rely on your own advice or refer to the full cases and legislation in relation to any proceedings.

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

CONTENTS

AAT Recent Decisions	2
Compensation.....	2
Immigration and Citizenship	2
Maritime Law.....	3
Social Security	3
Taxation	4
Veterans' Affairs.....	4
Appeals	5
Appeals lodged	5
Appeals finalised.....	5

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

[Catterick and Comcare](#) [2013] AATA 21; 17/1/2013; Professor RM Creyke, Senior Member, and Dr P Wilkins, Member

Whether applicant continues to suffer effects of accepted conditions – Whether applicant reasonably requires household assistance – Whether applicant continued to require reasonable medical treatment – Whether applicant continued to suffer incapacity for employment – Decisions under review are affirmed

[Otley and Asciano Services Pty Ltd](#) [2013] AATA 18; 16/1/2013; Deputy President SD Hotop

Employee of licensed corporation – Applicant sustained compensable injury in September 2008 – Rehabilitation – Respondent arranged for assessment of applicant's capability of undertaking rehabilitation program – Respondent required employee to undergo examination for purpose of assessment – Examination arranged – Applicant requested deferral of examination on legal advice – Applicant did not attend examination – Applicant's compensation suspended – Applicant had reasonable excuse for failing to undergo examination – Decision under review set aside

Immigration and Citizenship

[Heiner and Minister for Immigration and Citizenship](#) [2012] AATA 933; 5/12/2012; Senior Member GD Friedman

Citizenship by decent – Sole or dominant purpose test – Marriage exception does not apply – Neither of applicant's parents Australian citizens at time of birth – Decision under review affirmed

[Vea and Minister for Immigration and Citizenship](#) [2013] AATA 14; 15/1/2013; Deputy President RP Handley

Visa cancellation – Direction No 55 – Character test – Substantial criminal record – Primary considerations – Other considerations – Decision under review set aside and substituted

[Williams and Minister for Immigration and Citizenship](#) [2013] AATA 16; 16/1/2013; Senior Member GD Friedman

New Zealand citizen – Cancellation of Special Category (Temporary) visa – Conviction for causing serious injury and other offences – Character test – Exercise of discretion – Decision under review affirmed

Maritime Law

[Chapman and Secretary, Attorney-General's Department](#) [2013] AATA 20; 17/1/2013; Senior Member BJ McCabe

Issue of a Maritime Security Identity Card – Criminal record – Armed robbery – Failure to satisfy the criteria – Decision under review affirmed.

Social Security

[Chang and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 15; 16/1/2013; Senior Member AF Cunningham

Overseas claimant – New start allowance – Disability support pension – Residing in Laos – Applicant not residing in Australia at time of claims – No current plans to return to Australia – Not an Australian resident – Not entitled to new start allowance or disability support pension – Decision under review affirmed

[McGuinness and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2013] AATA 17; 16/1/2013; Deputy President PE Hack SC

Pensions, benefits and entitlements – Disability support pension – Degenerative disc disease of lumbar and cervical spine – Lack of evidence as to extent of loss of normal range of movement – Chronic anxiety, panic attacks and agoraphobia – Lack of evidence of condition – Decision under review affirmed

[Mosha and Secretary, Department of Education, Employment and Workplace Relations](#) [2013] AATA 19; 17/1/2013; Mr D Ermert, Member

Workplace injury – Lump sum compensation payments – Lump sum compensation preclusion period – Whether correct amount used to calculate preclusion period – Legal costs – Money used for other purposes – Money used to buy house – Money required for rates and medication – Whether special circumstances – Decision under review affirmed

[Quenin and Secretary, Department of Education, Employment and Workplace Relations](#) [2012] AATA 893; 19/12/2012; Senior Member AK Britton

Portability period – Allowable absence – Whether an acute family crisis – Whether a purpose relating to death of a family member – Decision under review set aside and substituted

[Wadsworth and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs](#) [2012] AATA 916; 21/12/2012; Senior Member AK Britton

Debt— Overpayment of disability support pension and age pension — Meaning of ‘debt solely attributable to administrative error’ — Whether all or part of the debt is attributable solely to an administrative error made by Centrelink —Whether debt should be waived due to special circumstances—Whether debt can be written off

Taxation

[Vershuer and Commissioner of Taxation](#) [2013] AATA 12; 14/1/2013; Deputy President Professor R Deutsch

Superannuation – Special circumstances – Whether contribution was made – When contribution was made – Reallocation of concessional contribution – Whether contribution made to complying superannuation fund – Whether contribution made in respect of Applicant – Discretion – Decision under review affirmed

Veterans' Affairs

[Mountford and Repatriation Commission](#) [2013] AATA 13; 14/1/2013; Senior Member RG Kenny

Operational service with Royal Australian Navy – Death from metastatic cancer of prostate – Statement of Principles for malignant neoplasm of the prostate – Clinical onset – Cessation of cigarette smoking prior to clinical onset of malignant neoplasm of prostate – Increase in animal fat consumption not related to eligible war service – Reasonable hypothesis not raised – Death not war-caused – 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
Comcare v Martinez	[2012] AATA 795
Sauvao v Minister for Immigration and Citizenship	[2012] AATA 817
Australian Postal Corporation v Sinnaiah & AAT	[2012] AATA 891

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Duarte v Minister for Immigration and Citizenship & AAT	[2011] AATA 262	[2013] FCA 9
Salton v Commonwealth Superannuation Corporation	[2012] AATA 305	[2013] FCA 12
Chun v Comcare	[2012] AATA 471	[2013] FCA 11



With the exception of the Commonwealth Coat of Arms and any third party material, this work is licensed under a [Creative Commons Attribution 3.0 Australia Licence](https://creativecommons.org/licenses/by/3.0/au/). Content from this publication should be attributed as: Administrative Appeals Tribunal, *AAT Bulletin*.

To the extent that copyright subsists in third party material, it remains with the original owner and permission may be required to reuse the material.

The terms under which the Coat of Arms can be used are detailed on the following website: <http://www.itsanhonour.gov.au/coat-arms/>.

Enquiries regarding the licence are welcome at aatweb@aat.gov.au.

This licence is limited to the *AAT Bulletin* and does not extend to the full text of AAT decisions. Separate licence terms for AAT decisions can be found on [AustLII](https://www.austlii.edu.au/au/other/dfat/page/aat.html). Those terms provide that section 182A of the *Copyright Act 1968* applies.