



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 21/2016

23 May 2016

The *AAT Bulletin* is a weekly publication containing information about recently published decisions and appeals against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. The Bulletin also regularly includes information about decisions of interest recently published in the AAT's Migration & Refugee Division. It occasionally includes information on legislative changes that affect the AAT.

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

Recent Developments	3
Co-location of AAT services in Sydney.....	3
AAT Recent Decisions	4
Compensation	4
Maritime Law	4
Migration	4
Social Security.....	5
Appeals	6
Appeals lodged.....	6
Appeals finalised	6

Recent Developments

Co-location of AAT services in Sydney

We are co-locating our offices over time, so that all services will eventually be provided from one office in each state or territory in which the Tribunal currently has offices. The AAT's Sydney office is located at **level 6, 83 Clarence Street, Sydney**. Our 55 Market Street and 580 George Street offices are now closed.

Please check the [Contact us](#) page on our website, www.aat.gov.au, for up-to-date information and contact details.

AAT Recent Decisions

This section of the Bulletin provides information about all decisions recently published in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions as well as about select decisions recently published in the Migration & Refugee Division. 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

[Bradley and Comcare](#) (Compensation) [2016] AATA 312 (16 May 2016); Ms R Perton, Member

Air traffic controller – death due to myocardial infarction – dependent wife – where deceased was a smoker – whether nature and location of work led to continuation of smoking – effect of stress - whether death employment related – decision affirmed

[Demian and Comcare](#) (Compensation) [2016] AATA 318 (17 May 2016); Senior Member Dr D Cremean

Ailment – bilateral carpal tunnel syndrome – whether compensable ailment – whether employment aggravated ailment – whether employment contributed to aggravation of an ailment to a significant degree – decision under review affirmed

[Hill and Comcare](#) (Compensation) [2016] AATA 257 (22 April 2016); Deputy President SE Frost

Incapacity payments - calculation of incapacity payments - additional death and invalidity cover - productivity contribution – Comcare directed to provide proposed decision consistent with reasons

[Overstead and Australian Postal Corporation](#) (Compensation) [2016] AATA 325 (15 April 2016); Senior Member E Fice

Workers' compensation – interlocutory application – extension of time to lodge application for review – whether there is an explanation for delay – whether a party would be prejudiced by extension of time – whether there are reasonable prospects of success – whether extending time would be fair to persons in similar positions – application refused

Maritime Law

[Townley and Secretary, Department of Infrastructure and Regional Development](#) [2016] AATA 311 (16 May 2016); Deputy President Dr C Kendall

Maritime security – maritime security identification card (“MSIC”) – adverse criminal record – MSIC required for employment on maritime and offshore facilities – whether applicant is a threat to the security of maritime transport or an offshore facility – Secretary's discretion to approve issuing of MSIC to applicant with criminal record – MSIC not granted as applicant is a threat to security – decision under review affirmed

Migration

[Kumar and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 315 (16 May 2016); Senior Member CR Walsh

Decision by Minister to refuse applicant's "Skilled – Independent (Permanent) (Class SI)" visa under discretion in s 501 (1) of the Migration Act 1958 – applicant does not pass "character test" as a result of "substantial criminal record" (as a result of being convicted of assault occasioning bodily harm) – protection of the Australian community from criminal or other serious conduct considered – best interests of minor children in Australia (the applicant's step-daughter) considered – expectation of the Australian community considered – other relevant considerations considered – decision under review set aside and substituted

[Labi and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 316 (17 May 2016); Deputy President B McCabe

Partner visa application – refused on character grounds – s 501 character test – where applicant sent threatening text messages – breach of protection order – otherwise unblemished criminal record – whether applicant likely to engage in criminal conduct – whether there is a risk the applicant will harass or intimidate another person – low risk of engaging in criminal conduct – no application for applicant to appear by video-link – expectation that applicants and witnesses appear in person unless leave is granted – decision under review set aside

[Tuimaseve and Minister for Immigration and Border Protection](#) (Migration) [2016] AATA 317 (17 May 2016); Senior Member Dr D Cremean

Cancellation of visa – character test – history of violence – deception – decision affirmed

Social Security

[Grundy and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 309 (10 May 2016); Senior Member A Cunningham

Disability support pension – failure to meet programme of support requirement – decision under review affirmed

[Janke and Secretary, Department of Social Services](#) (Social services second review) [2016] AATA 321 (19 May 2016); Senior Member AC Cotter

Debt recovery – Family Tax Benefit – whether debts due – whether debts recoverable – write off – administrative error waiver – special circumstances waiver – where write off not available – where no special circumstances – decision under review affirmed

Appeals

This section of the Bulletin provides information about appeals that have been lodged or finalised against decisions in the AAT's General, Freedom of Information, National Disability Insurance Scheme, Security, Taxation & Commercial and Veterans' Appeals Divisions. Information is only included about appeals relating to AAT decisions that have been published on [AustLII](#). Full copies of the decisions can be accessed through the hyperlinks provided below.

Appeals lodged

CASE NAME

AAT REFERENCE

Wittensleger v Australian Securities and Investment Commission

[\[2015\] AATA 902](#)

Appeals finalised

CASE NAME

AAT REFERENCE

COURT REFERENCE

None finalised

© Commonwealth of Australia 2016



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/special/aat/).