



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 4/2016

25 January 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

AAT Recent Decisions	3
Compensation	3
Education and Research	3
Practice and Procedure	3
Social Security	4
Appeals	6
Appeals lodged	6
Appeals finalised	6

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

[Rus and Comcare](#) (Compensation) [2016] AATA 18 (20 January 2016); Deputy President SA Forgie

Employee – whether employed by a Commonwealth authority under a law of the Commonwealth or under a contract of service – evidence inconclusive – decision under review affirmed

Education and Research

[JLSP and Innovation Australia](#) [2016] AATA 23 (22 January 2016); Deputy President S E Frost

INDUSTRY RESEARCH AND DEVELOPMENT – whether activity is core R&D activity – clinical trials carried out to determine safety and efficacy of a drug – definition of 'core R&D activity' – whether activity conducted for the purpose of generating new knowledge – purpose must be held by applicant R&D entity – purpose of generating new knowledge not required to be the dominant purpose but must be more than an insubstantial purpose – Tribunal finds that Activity 1 is a 'core R&D activity'

INDUSTRY RESEARCH AND DEVELOPMENT – statutory construction – respondent charged with responsibility for making finding as to whether activity is core R&D activity – demarcation between definitional and operational provisions contained within Division 355 of the *Income Tax Assessment Act 1997* – consideration of whether tax offsets would be available under operational provisions irrelevant to determination of whether definition of core R&D activity is satisfied – decision under review set aside

Practice and Procedure

[Doble Telescopic Lighting Pty Ltd and Australian Trade Commission](#) [2015] AATA 1014 (23 December 2015); Senior Member AC Cotter

Application for dismissal of application for review – whether Tribunal satisfied that application “has no reasonable prospect of success” – general principles – application for review of decision that applicant not eligible for advance under *Fair Entitlements Guarantee Act 2012* (Cth) has failed to make “effective claim” – application for review dismissed pursuant to *Administrative Appeals Tribunal Act 1975* (Cth), s 42B(1)(b)

[PQHL and Australian Securities and Investments Commission](#) [2015] AATA 1032 (19 November 2015); Deputy President JW Constance

Application for stay of decision – relevant considerations – prospects of success – public interest – stay granted

Social Security

Bell and Secretary, Department of Social Services (Social services second review) [2016] AATA 9 (15 January 2016); Senior Member AC Cotter

Disability support pension – DSP – whether 20 points or more under the impairment tables during the relevant period – value of medical evidence – decision under review affirmed

Jongerdon; Secretary, Department of Social Services and (Social services second review) [2016] AATA 17 (20 January 2016); Deputy President K Bean

Disability support pension – Whether respondent had a severe impairment during assessment period – Program of support requirements not met – Respondent not qualified for DSP during assessment period – decision under review set aside

Kobayashi and Secretary, Department of Social Services (Social services second review) [2016] AATA 19 (21 January 2016); Ms AF Cunningham, Senior Member

Overseas age pension – no valid claim made prior to International Social Security agreement coming into effect – decision under review affirmed

KTLG and Secretary, Department of Social Services (Social services second review) [2016] AATA 11 (15 January 2016); Mr S Webb, Member

Disability support pension – motor vehicle accident – compensation – preclusion period – qualification criteria for DSP – conditions causing impairment – permanence of conditions – meaning of ‘fully treated’ and ‘fully stabilised’ – reasonable treatment likely to reduce impairment – no compelling reason for not undertaking reasonable treatment – impairment rating – minimum impairment rating threshold not met – decision under review affirmed

Smith; Secretary, Department of Social Services and (Social services second review) [2016] AATA 10 (15 January 2016); Senior Member PW Taylor

Carer payment and carer allowance – cancellation of payments – mother providing care for children – mental health conditions – behavioural issues – whether constant care required – whether ‘intense’ rating under determination – whether severe incapacity to undertake paid employment – Tribunal not satisfied of severe restriction on capacity to undertake paid employment – respondent qualified for carer allowance – decision under review affirmed – respondent not qualified for carer payment – decision under review set aside and substituted

SNFY and Secretary, Department of Social Services (Social service second review) [2016] AATA 12 (15 January 2016); Senior Member BJ McCabe

Entitlements and benefits – family tax benefit – parenting payment – whether applicant had more than 35% of care during care period – applicant unable to demonstrate more than 35% of care – decisions under review affirmed

[Vergios and Secretary, Department of Social Services](#) (Social services second review) [2016]
AATA 16 (20 January 2016)

Disability support pension – whether conditions fully diagnosed, treated and stabilised – impairment ratings – continuing inability to work – whether additional medical evidence supports “severe impairment” during claim period

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
Little Joe Rigoli v Commissioner of Taxation	[2015] AATA 169
Attorney-General for the Commonwealth of Australia v The Honourable Mark Dreyfus MP	[2015] AATA 995

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](#). 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](#).