



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 4/2017

23 January 2017

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 a sample of decisions recently published in the AAT's Migration & Refugee Division and Social Services & Child Support 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
Freedom of Information	3
Practice and Procedure	3
Social Security	4
Taxation	5
Veterans' Affairs	5
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. This list also includes selected child support decisions published by the Social Services & Child Support Division and examples of recent decisions published by 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

[Alam and Comcare](#) (Compensation) [2017] AATA 31 (18 January 2017); Mrs JC Kelly, Senior Member

Psychological injury – excluded from definition of 'injury' under s 5A – reasonable administrative action taken in a reasonable manner – decision affirmed

[Davison and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 18 (6 January 2017); Dr P McDermott RFD, Deputy President

Claim for compensation for disease – coronary heart disease - Compensation (Commonwealth Government Employees) Act 1971 applicable - employment of the applicant by the Commonwealth not a contributing factor to the contraction of the disease or to the aggravation, acceleration or recurrence of the disease – decision under review affirmed

[Maffescioni and Comcare](#) (Compensation) [2017] AATA 21 (13 January 2017); Dr D Cremean, Senior Member

Elbow injury 1994 - pain reaction - depression - whether entitled to compensation in respect of medical expenses or household services and attendant care services - Applicant calling no evidence – adverse inference – decision affirmed

Freedom of Information

[VFRG and Office of the Australian Information Commissioner](#) (Freedom of information) [2017] AATA 32 (18 January 2017); Miss EA Shanahan, Member

Whether decision should be remitted for reconsideration in accordance with s 42D of the Administrative Appeals Tribunal Act 1975 – claim of fraudulent interpretation of s 47E(d) basis of Applicant's contentions – limited Statement of Facts and Contentions, T-Documents and other information available to the Tribunal – Applicant opposed to s 42D remittal – request for remittal under s 42D refused

Practice and Procedure

[Thomson and Comcare](#) (Compensation) [2017] AATA 34 (18 January 2017); Ms N Isenberg, Senior Member

Own motion reconsideration – compensation – normal weekly earnings – deployment payments and location-specific allowances – reconsideration issued during proceedings – whether reconsideration could be made to determine quantum of compensation– whether proceedings rendered abortive –

whether the respondent can undertake a reconsideration in late stages of proceedings – model litigant principles – effect of the reconsideration – whether the tribunal can provide any further relief – method of calculating normal weekly earnings – application for review dismissed

Social Security

[Ball and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 29 (18 January 2017); Senior Member A Poljak

Disability support pension – whether conditions are fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – mental health function – functioning related to alcohol, drug and other substance use – decision affirmed

[Davidson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 23 (17 January 2017); Ms N Isenberg, Senior Member

Family tax benefit – shared care percentage – pattern of care – less than 35% care – decision affirmed

[Ergun and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 33 (19 January 2017); Mr A Cameron, Member

Disability support pension – qualification – continuing inability to work – program of support – decision affirmed

[Grainger and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 26 (18 January 2017); Senior Member A Poljak

Disability support pension – Impairment Tables – whether conditions fully diagnosed, treated and stabilised – back and neck conditions – right shoulder condition – decision affirmed

[Kilner and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 22 (13 January 2017); Senior Member T Tavoularis

Disability Support Pension – whether Applicant had conditions that were fully diagnosed, treated and stabilised during relevant period – whether Applicant had 20 impairment points – Spinal condition – Adjustment disorder – Otitis / Vertigo – other conditions – Applicant only has 10 impairment points – decision under review affirmed

[Kotevski and Secretary, Department of Employment](#) (Social services second review) [2017] AATA 24 (13 January 2017); Dr T Nicoletti, Senior Member

Youth allowance - whether youth allowance can be granted from the date of the original claim - applicant failed to lodge documents on time for original decision - whether applicant lodged request for review of decision within 13 weeks - decision affirmed

[Sammut and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 27 (17 January 2017); Miss EA Shanahan, Member

Disability support pension – medical conditions of asthma, nasal polyps, sinusitis and adjustment disorder – functional impairment rating less than the required 20 points – s 94(1)(b) not satisfied – decision affirmed

[Smith and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 28 (17 January 2017); Dr L Bygrave, Member

Disability support pension – multiple medical conditions – whether medical conditions were fully diagnosed, treated and stabilised – whether applicant had impairment rating of at least 20 points – decision affirmed

[Thompson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 30 (18 January 2017); Senior Member A Poljak

Disability support pension – whether applicant's conditions were fully diagnosed, treated and stabilised – whether applicant's impairments are rated 20 points or more under the Impairment Tables – depression and PTSD – decision affirmed

Taxation

[Ishaq and Commissioner of Taxation](#) (Taxation) [2017] AATA 35 (17 January 2017); Ms G Lazanas, Senior Member

Income tax – deductions – employee – work-related motor vehicle expenses – work-related expenses for tools and toolboxes – false document regarding sale of tools – objection decision relating to income tax set aside and matter remitted to Commissioner – administrative penalty – whether failure to take reasonable care – question of remission – objection decision relating to administrative penalty affirmed

[Micallef and Commissioner of Taxation](#) (Taxation) [2016] AATA 974 (30 November 2016); Deputy President BJ McCabe

Amended assessments – whether excessive – where unexplained income – where applicant contended monies were repayments of a loan – where inconsistent evidence – where burden of proving that amended assessments were excessive not discharged – decision under review affirmed

Veterans' Affairs

[Bertram and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 25 (17 January 2017); Senior Member T Tavoularis

Pension bonus scheme – Applicant was precluded from pension bonus because of Centrelink payment of age pension – decision under review set aside – upon repayment Applicant should be considered eligible

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/COURT REFERENCE
Civil Aviation Safety Authority v Bellamy	[2016] AATA 956
Doutch v Commissioner of Taxation & Administrative Appeals Tribunal	[2016] FCAFC 166 [2015] AATA 972

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Secretary, Department of Employment v Simpson	[2016] AATA 526	[2017] FCA 9

© Commonwealth of Australia 2017



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](#).