



Administrative  
Appeals Tribunal

# AAT Bulletin

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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.

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# 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
<b>Little Joe Rigoli v Commissioner of Taxation</b>	<a href="#">[2015] AATA 169</a>
<b>Attorney-General for the Commonwealth of Australia v The Honourable Mark Dreyfus MP</b>	<a href="#">[2015] AATA 995</a>

## Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
<b>None finalised</b>		

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