



Administrative
Appeals Tribunal

AAT Bulletin

Issue No. 42/2017

16 October 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
Social Security	3
Taxation.....	3
Veterans' Affairs.....	4
Appeals.....	5
Appeals lodged	5
Appeals finalised.....	5
Jurisdiction and legislative changes	6
<i>Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017..</i>	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

[Morris and Military Rehabilitation and Compensation Commission](#) (Compensation) [2017] AATA 1635 (6 October 2017); Senior Member J Sosso

Military Compensation – where Applicant suffers from ulcerative colitis – irritable bowel syndrome – whether condition connected to military service – statement of principles concerning inflammatory bowel disease – whether Applicant was using non-steroidal anti-inflammatory drugs before clinical onset of IBD – decision under review affirmed

Social Security

[Hayles and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1637 (6 October 2017); Dr P McDermott RFD, Deputy President

Rejection of claim for disability support pension – physical impairments – most appropriate Impairment Table for assessment of impairment rating – whether applicant's impairment rating is of 20 points or more under the Impairment Tables – whether neurological or cognitive function impairment – decision under review affirmed

[Thompson and Secretary, Department of Social Services](#) (Social services second review) [2017] AATA 1638 (7 September 2017); Mrs JC Kelly, Senior Member

Age Pension – applicant's Age Pension from 10 July to 30 June based on incorrect superannuation calculation – should applicant be paid in arrears for the Age Pension based on correct superannuation calculation – section 109 of the Social Security (Administration) Act 1999 does not allow for this – decision under review affirmed

Taxation

[Ham and Tax Practitioners Board](#) (Taxation) [2017] AATA 1642 (9 October 2017); Senior Member AC Cotter

TAX AGENTS – application for renewal – whether Applicant was a fit and proper person – where Applicant had been found liable for breach of trust – where Applicant had been found liable for breach of fiduciary duties – use of Supreme Court of Queensland findings – whether Applicant had shown contrition – where Applicant initially failed to disclose potential issues – decision under review affirmed

Veterans' Affairs

[McDonald and Repatriation Commission](#) (Veterans' entitlements) [2017] AATA 1636 (6 October 2017); Dr P McDermott RFD, Deputy President and Dr G Maynard, Member

VETERANS' AFFAIRS – veteran deceased – cause of death prostate cancer – claim for pension by widow – relevant Statement of Principles – standard of proof ss 120(1), 120(3) and 120A of the Act – whether death related to operational service – whether there is a reasonable hypothesis supported by the relevant SoP – Deledio steps – factors of the SoP that as a minimum must exist are not satisfied – reasonable hypothesis not raised connecting the death of veteran with his service – widow not entitled to pension – 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
Gropel v Comcare	[2017] AATA 1290
Murfett v Secretary, Department of Social Services	[2017] AATA 1620
Prosegur Australia Pty Ltd v Ceric	[2017] AATA 1448
Read v Military Rehabilitation and Compensation Commission	[2017] AATA 1109
Zavrski v Department of Social Services	[2017] AATA 1587

Appeals finalised

CASE NAME	AAT REFERENCE	COURT REFERENCE
Frugtniet v Australian Securities and Investments Commission	[2015] AATA 128	[2016] FCA 995 [2017] FCAFC 162

Jurisdiction and legislative changes

This section of the *Bulletin* provides a summary of significant legislative changes that affect the AAT, including changes and potential changes to the AAT's jurisdiction to review decisions. Information about the AAT's jurisdiction can also be found on the [AAT website](#).

Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017

On 12 October 2017, the *Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017* (**Amendment Act**) commenced.

Among other things, the Amendment Act has created a new standalone Act, the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (**SRC (DRC) Act**), which is a re-enactment of the *Safety, Rehabilitation and Compensation Act 1988* (**SRC Act**), with modification, to cover Australian Defence Force (**ADF**) members. Broadly, the SRC (DRC) Act applies in relation to injury, disease or death relating to ADF employment that occurred from commencement of the SRC Act in 1988 to commencement on 1 July 2004 of the *Military Rehabilitation and Compensation Act 2004*.

The Amendment Act has also amended the SRC Act to remove ADF members from the scope of that Act.

The amendments affect SRC Act applications involving ADF members that were:

- before the Tribunal but not finalised by 12 October 2017, or
- lodged with the Tribunal on or after 12 October 2017.

Links to the relevant Acts are set out below:

Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017

<https://www.legislation.gov.au/Details/C2017A00108>

Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988

<https://www.legislation.gov.au/Details/C2017C00335>

Safety, Rehabilitation and Compensation Act 1988

<https://www.legislation.gov.au/Details/C2017C00334>

© 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/page/aat.html).