Reports of the Administrative Appeals Tribunal and Administrative Appeals Tribunal decisions on appeal in the Federal Court and High Court

ADMINISTRATIVE APPEALS REPORTS 2020

EDITOR KIM ROSS

REPORTERS

CATHERINE BRITTON STEPHEN CREMEAN MARCUS VETHECAN

VOL 83 — PART 6

PAGES 496-591

The mode of citation of this part will be: $83\ AAR$

TABLE OF CASES REPORTED

Part 6 — Pages 496-591

AFD16 v Minister for Immigration and Border Protection (Fed Ct of Aust)	292
Aged Care Quality and Safety Commissioner; Mercer and (Cth AAT)	
ANI15 v Minister for Immigration, Citizenship, Migrant Services and	. , 0
Multicultural Affairs (Fed Ct of Aust)	. 22
Australian Postal Corporation; Hickey v (Cth AAT)	
Australian Securities and Investments Commission; Daly and (Cth	
AAT)	583
Australian Securities and Investments Commission; Ehrenfeld v (Cth	
AAT)	286
Australian Securities and Investments Commission; Schroeder and (Cth	
AAT)	418
Australian Skills Quality Authority, Site Skills Group Pty Ltd and (Cth	
AAT)	
Burns and Commissioner of Taxation, Re (Cth AAT)	
Comcare; Flahive and (Cth AAT)	336
Comcare; WKVM and (Cth AAT)	146
Comcare; Wonson and (Fed Ct of Aust)	
Commonwealth Ombudsman; Knight and (Cth AAT)	519
Daly and Australian Securities and Investments Commission (Cth	
AAT)	
Dao v Minister for Home Affairs (Fed Ct of Aust)	270
Department of Social Services Secretary; Re Elliott and (Cth AAT)	123
Ehrenfeld v Australian Securities and Investments Commission (Cth	
AAT)	286
Elliott and Secretary, Department of Social Services (Cth AAT)	526
Eros v Minister for Immigration, Citizenship, Migrant Services and	
Multicultural Affairs (Fed Ct of Aust)	226
(Cases in bold reported in this part)	



© 2024 Thomson Reuters (Professional) Australia Limited
Lawbook Co. ABN 64 058 914 668 Published in Sydney

ISSN 0813-779X

TABLE OF CASES REPORTED

FAK19 v Minister for Immigration, Citizenship, Migrant Services and	
Multicultural Affairs (Fed Ct of Aust)	
Flahive and Comcare (Cth AAT)	336
Ford and Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Migration) (Cth AAT)	120
Gage v Minister for Immigration, Citizenship, Migrant Services and	430
Multicultural Affairs (Fed Ct of Aust)	372
Hickey v Australian Postal Corporation (Cth AAT)	
HWLJ v Minister for Immigration, Citizenship, Migrant Services and	200
Multicultural Affairs (Fed Ct of Aust)	186
Immigration and Border Protection, Minister for; AFD16 v (Fed Ct of Aust)	
Immigration and Border Protection, Minister for; Markaj v (Fed	
Ct of Aust)	562
Immigration, Citizenship, Migrant Services and Multicultural Affairs	
(Migration), Minister for; Ford v (Cth AAT)	430
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	
Minister for; ANI15 v (Fed Ct of Aust)	. 22
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	272
Minister for; Cage v (Fed Ct of Aust)	372
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	226
Minister for; Eros v (Fed Ct of Aust)	220
Minister for; FAK19 v (Fed Ct of Aust)	247
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	277
Minister for; HWLJ v (Fed Ct of Aust)	186
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	
Minister for; KXRQ v (Cth AAT)	163
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	
Minister for; LSNZ and (Cth AAT)	328
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	
Minister for; MBJY v (Fed Ct of Aust)	390
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	
Minister for; Omar and (Cth AAT)	. 58
Immigration, Citizenship, Migrant Services and Multicultural Affairs,	27
Minister for; Zada and (Cth AAT)	
Knight and Commonwealth Ombudsman (Cth AAT)	319
KXRQ v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Cth AAT)	163
LSNZ and Minister for Immigration, Citizenship, Migrant Services and	103
Multicultural Affairs (Cth AAT)	328
Mack and Department of Social Security (Cth AAT)	
Magazine Co v Federal Commissioner of Taxation (Cth AAT)	
Mahathevan v Tax Practitioners Board (Cth AAT)	33/
of Aust)	562
MBJY v Minister for Immigration, Citizenship, Migrant Services and	J02
Multicultural Affairs (Fed Ct of Aust)	300
mandental analis (1 od ot 1 aust)	590

(Cases in **bold** reported in this part)

TABLE OF CASES REPORTED

Mercer and Aged Care Quality and Safety Commissioner (Cth AAT)	78
Minister for Home Affairs; Dao v (Fed Ct of Aust)	270
Minister for Immigration, Citizenship, Migrant Services and	
Multicultural Affairs v PDWL (Fed Ct of Aust)	496
Morrison-Francis and Commissioner of Taxation (Cth AAT)	64
Omar and Minister for Immigration, Citizenship, Migrant Services and	
Multicultural Affairs (Cth AAT)	58
PDWL; Minister Immigration, Citizenship, Migrant Services and	
Multicultural Affairs v (Fed Ct of Aust)	496
Re Elliott and Secretary, Department of Social Services (Cth AAT)	123
Re Le'Sam Accounting Pty Ltd and Tax Practitioners Board (Cth	
AAT)	176
Schroeder and Australian Securities and Investments Commission (Cth	
AAT)	
Secretary Department of Social Services; Elliott and (Cth AAT)	526
Site Skills Group Pty Ltd and Australian Skills Quality Authority (Cth	
AAT)	
Social Security, Department of; Mack and (Cth AAT)	152
Tax Practictioners Board; Re Le'Sam Accounting Pty Ltd and (Cth	
AAT)	
Tax Practitioners Board; Mahathevan v (Cth AAT)	357
Taxation, Commissioner of; Morrison-Francis and (Cth AAT)	64
Taxation, Commissioner of; Re Burns and (Cth AAT)	1
Taxation, Federal Commissioner of; Magazine Co v (Cth AAT)	239
WKVM and Comcare (Cth AAT)	146
Wonson and Comcare (Fed Ct of Aust)	90
Zada and Minister for Immigration, Citizenship, Migrant Services and	
Multicultural Affairs (Cth AAT)	37

INDEX

Part 6 — Pages 496-591

ADMINISTRATIVE APPEALS TRIBUNAL

Jurisdiction and powers — Agreement between parties based on decision subsequently found to be erroneous — Whether power conferred by provisions relating to visa refusal and character test conferred discretion on Tribunal — Whether the Tribunal decision was in jurisdictional error — Whether the Tribunal decision should be quashed — Migration Act 1958 (Cth), ss 36(1C)(b), 501(1). Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v PDWL (Fed Ct of Aust)	5
Jurisdiction and powers — Reinstatement application — Social Security — Whether decision to settle proceedings was reviewable — Whether decision made by Secretary personally — Whether without prejudice communications should be considered by Tribunal — Treatment of drafting error in legislation — Social Security (Administration) Act 1999 (Cth), ss 142(1)(b), 144(s), 181, 182 — Administrative Appeals Tribunal Act 1975 (Cth), s 25(3A)(a), 42A — Acts Interpretation Act 1901 (Cth), ss 34AB, 34A. Elliott and Secretary, Department of Social Services (Cth AAT)	5
Practice — Abeyance — Whether Tribunal's review should be held in abeyance until related Federal Court proceedings completed — Where Tribunal and Federal Court may make inconsistent findings — Whether economies with one decision-maker — Where applicant's privilege in Federal Court may be compromised by proceedings in the Tribunal — Whether unjust or unfair burden on applicant to pursue proceedings simultaneously — Corporations Act 2001 (Cth), ss 920A, 920B. **Daly and Australian Securities and Investments Commission (Cth AAT)	3
Practice — Summons — Documents relating to party's preparation for proceedings — Documents on computer — Whether documents for the purposes of a proceeding — Computer held by prison authorities — Scope of Tribunal's authority to issue summons to prison authorities to allow party access to digital documents — Administrative Appeals Tribunal Act 1975 (Cth), s 40A. Knight and Commonwealth Ombudsman (Cth AAT))
IMMIGRATION	
Character test — Application for partner visa — Ministerial Direction 65 — Parental role — Whether Administrative Appeals Tribunal failed to consider relevant evidence — Whether Tribunal failed to consider claim by reference to evidence of parental role — Whether Tribunal erred in its consideration of other persons already fulfilling parental role in relation to the child — Whether Tribunal's reasoning illogical — Whether Tribunal erred by not appreciating the nature of the enquiry required by Ministerial Direction 65 — Migration Act 1958 (Cth) ss 501,501CA. Markaj v Minister for Immigration and Border Protection (Fed Ct of Aust)	2.

INDEX

IMMIGRATION — continued
Protection visa — Refusal and cancellation — Character test — Ministerial Direction No 79 — Decision of Administrative Appeals Tribunal based on agreement between parties as to powers of Tribunal — Whether the Tribunal erred in substituting decision of delegate — Whether the Tribunal's power was discretionary — Whether the Tribunal's decision was in jurisdictional error — Whether the Tribunal's decision should be quashed — Migration Act 1958 (Cth), ss 36(1C)(b), 501(1).
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v PDWL (Fed Ct of Aust)496
WORDS AND PHRASES
"Dismissed in error" — "Relating to".
Elliott and Secretary, Department of Social Services (Cth AAT)
WORDS AND PHRASES — "FOR THE PURPOSES OF A PROCEEDING"
Knight and Commonwealth Ombudsman (Cth AAT)