

DECEMBER 2024

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

ADMINISTRATIVE APPEALS REPORTS

2020-2021

EDITOR
KIM ROSS

REPORTERS
CATHERINE BRITTON
STEPHEN CREMEAN
STEPHANIE GRACE KERR
MARCUS VETHECAN

VOL 84 — PART 4

PAGES 311-408

The mode of citation of this part will be:
84 AAR

TABLE OF CASES REPORTED

Part 4 — Pages 311-408

ACN 154 520 199 Pty Ltd (in liq) v Federal Commissioner of Taxation (Fed Ct of Aust)	107
Administrative Appeals Tribunal; Prahauser v (Fed Ct of Aust)	86
Al-Huda Pty Limited v Secretary, Department of Education, Skills and Employment (Fed Ct of Aust)	41
Apted v Federal Commissioner of Taxation (Cth AAT)	288
Australia Institute of Business & Technology-International Pty Ltd v Australian Skills Quality Authority (Cth AAT)	343
Australian and International Pilots Association v Civil Aviation Safety Authority (Cth AAT)	1
Australian Capital Territory; Christensen v (Cth AAT)	278
Australian Capital Territory; Haberecht v (Cth AAT)	191
Australian Capital Territory; Kuchlmayr v (Cth AAT)	201
Australian Skills Quality Authority; Australia Institute of Business & Technology-International Pty Ltd v (Cth AAT)	343
Australian Skills Quality Authority; King Eeducational Service Pty Ltd v (Fed Ct of Aust)	392
Barque Institute Pty Ltd v Tertiary Education Quality and Standards Agency (Fed Ct of Aust)	355
Christensen v Australian Capital Territory (Cth AAT)	278
Civil Aviation Safety Authority; Australian and International Pilots Association v (Cth AAT)	1
Comcare; Gadzikwa v (Fed Ct of Aust)	59
Comcare; Mununggurr v (Fed Ct of Aust)	238
Comcare; Vasquez and (Cth AAT)	189
Department of Education, Skills and Employment, Secretary; Al-Huda Pty Limited v (Fed Ct of Aust)	41
Department of Social Services, Secretary; Elliott v (Cth AAT)	321

(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

Education, Secretary, Department of; Montenegro v (Fed Ct of Aust)	205
Elliott v Secretary, Department of Social Services (Cth AAT)	321
Farrall v National Disability Insurance Agency (Cth AAT)	265
FDFF and National Disability Insurance Agency (Cth AAT)	13
Federal Commissioner of Taxation; Apted v (Cth AAT)	288
Federal Commissioner of Taxation; Kais and (Cth AAT)	337
Gadzikwa v Comcare (Fed Ct of Aust)	59
GKD18 v Minister for Home Affairs (Fed Ct of Aust)	168
H2O Exchange Pty Ltd v Innovation and Science Australia (Fed Ct of Aust)	346
Haberecht v Australian Capital Territory (Cth AAT)	191
Holland and National Disability Insurance Agency (Cth AAT)	376
Immigration, Citizenship, Migrant Services and Multicultural Affairs, Minister for; MQGT v (Fed Ct of Aust)	225
Immigration, Citizenship, Migrant Services and Multicultural Affairs, Minister for; ZDGY v (Cth AAT)	306
Innovation and Science Australia; H2O Exchange Pty Ltd v (Fed Ct of Aust)	346
Kais and Federal Commissioner of Taxation (Cth AAT)	337
King Educational Service Pty Ltd v Australian Skills Quality Authority (Fed Ct of Aust)	392
Kuchlmayr v Australian Capital Territory (Cth AAT)	201
Mayer and National Disability Insurance Agency (Cth AAT)	20
MDCT and National Disability Insurance Agency (Cth AAT)	311
Minister for Home Affairs; GKD18 v (Fed Ct of Aust)	168
Montenegro v Secretary, Department of Education (Fed Ct of Aust)	205
MQGT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Fed Ct of Aust)	225
Mununggurr v Comcare (Fed Ct of Aust)	238
National Disability Insurance Agency; Farrall v (Cth AAT)	265
National Disability Insurance Agency; Holland and (Cth AAT)	376
National Disability Insurance Agency; Mayer and (Cth AAT)	20
National Disability Insurance Agency; MDCT and (Cth AAT)	311
National Disability Insurance Agency; PDFF and (Cth AAT)	13
Prahauser v Administrative Appeals Tribunal (Fed Ct of Aust)	86
Taxation, Federal Commissioner of; ACN 154 520 199 Pty Ltd (in liq) v (Fed Ct of Aust)	107
Tertiary Education Quality and Standards Agency; Barque Institute Pty Ltd v (Fed Ct of Aust)	355
Vasquez and Comcare (Cth AAT)	189
ZDGY v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (Cth AAT)	306

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

INDEX

Part 4 — Pages 311-408

ADMINISTRATIVE APPEALS TRIBUNAL

- Evidence — Admissibility — Material unable to be tested in cross-examination — Applicability of rules of evidence to proceedings in Administrative Appeals Tribunal — Whether probative value of evidence outweighs potential unfair prejudice — Weight to be afforded to the material admitted by the Tribunal — Evidence Act 1995 (Cth), ss 63, 135.
Kais and Federal Commissioner of Taxation (Cth AAT) 337
- Jurisdiction and powers — National Disability Insurance Scheme — Application for review of refusal to fund all requested supports — Whether Tribunal had jurisdiction to review plan other than current plan — Extent of jurisdiction — Whether Tribunal should consider deemed decision — Whether review request made within required time — Administrative Appeals Tribunal Act 1975 (Cth), ss 25, 26, 29, 42D — National Disability Insurance Scheme Act 2013 (Cth), ss 33 100, 103.
Holland and National Disability Insurance Agency (Cth AAT) 376
- Jurisdiction and powers — National Disability Insurance Scheme — Review of decision to approve Statement of Participant Supports — Interlocutory application for direction that applicant provide access to property for assessment by independent expert — Resistance by applicant — Whether Tribunal has power to compel applicant to facilitate assessment — Administrative Appeals Tribunal Act 1975 (Cth), ss 2A 33.
MDCT and National Disability Insurance Agency (Cth AAT) 311
- Jurisdiction and powers — Social security overpayment — Review of decision made by Secretary of Department of Social Services.
Elliott v Secretary, Department of Social Services (Cth AAT) 321
- Practice — Application to stay cancellation decision pending outcome of review — Registered training organisation — Refusal to renew applicant's registration — Whether stay is desirable for the purpose of securing the effectiveness of the review — Preserving the status quo — Administrative Appeals Tribunal Act 1975 (Cth), ss 44 44A(2) — Education Services for Overseas Students Act 2000 (Cth), ss 9AA and 9AB, 9AC, 11.
King Educational Service Pty Ltd v Australian Skills Quality Authority (Fed Ct of Aust) 392
- Procedural fairness — Application for recusal after matter remitted back to Tribunal from Federal Court — Whether apprehended bias for Tribunal to reconsider submissions and evidence where Tribunal had previously made significant findings as to credit against applicant — Apprehended bias established.
Australia Institute of Business & Technology-International Pty Ltd v Australian Skills Quality Authority (Cth AAT) 343
- Procedural fairness — Refusal of registration as higher education provider — Satisfaction of Higher Education Standards Framework — Practical injustice — Errors of fact — Administrative Appeals Tribunal Act 1975 (Cth), s 44 — Tertiary Education Quality and Standards Agency Act 2011 (Cth).
Barque Institute Pty Ltd v Tertiary Education Quality and Standards Agency (Fed Ct of Aust) 355

INDEX

ADMINISTRATIVE APPEALS TRIBUNAL — *continued*

- Procedural fairness — Whether Tribunal denied the appellant procedural fairness — Acceptance of an irrelevant issue not previously determined — Whether Tribunal's acceptance of respondent's expert evidence was irrational or illogical — Industry Research and Development Act 1986 (Cth) s 30E.
- H2O Exchange Pty Ltd v Innovation and Science Australia (Fed Ct of Aust)* 346

DECISION UPHELD BY TRIBUNAL

- Errors in decision later corrected by Tribunal — Whether Tribunal obliged to give reasons for corrigenda — Administrative Appeals Tribunal Act 1975 (Cth), s 43AA — Administrative Decisions (Judicial Review) Act 1977 (Cth), s 13(1).
- Elliott v Secretary, Department of Social Services (Cth AAT)* 321

WORDS AND PHRASES

- “Core R&D activities”.
- H2O Exchange Pty Ltd v Innovation and Science Australia (Fed Ct of Aust)* 346
- “Obvious error”.
- Elliott v Secretary, Department of Social Services (Cth AAT)* 321
- “Significant probative value”.
- Kais and Federal Commissioner of Taxation (Cth AAT)* 337