

# GOVERNMENT ACCOUNTABILITY – AUSTRALIAN ADMINISTRATIVE LAW

## SECOND EDITION

The second edition of *Government Accountability – Australian Administrative Law* offers an accessible and practical introduction to administrative law in Australia. The text introduces the legal principles that regulate the exercise of power by public authorities and explains the legal mechanisms that exist to remedy failures, with an emphasis on the overarching principle of accountability.

Thoroughly revised and updated to incorporate recent changes to case law and legislation, this edition offers expanded, contemporary material on public investigatory bodies, information disclosure, administrative review tribunals, the limits on juridical review, and procedural fairness. Updated case examples throughout illustrate the practical operation of these principles and assist readers to connect theory with practice.

*Government Accountability – Australian Administrative Law* provides readers with a concise introduction to the contexts, theory and application of administrative law and arms students with the knowledge and skills to successfully analyse and assess the decisions and actions of public authorities.

**Judith Bannister** is an Associate Professor at the Adelaide Law School, University of Adelaide.

**Anna Olijnyk** is a Lecturer at the Adelaide Law School, University of Adelaide.

**Stephen McDonald** is a barrister at Hanson Chambers and an Adjunct Senior Lecturer at the Adelaide Law School, University of Adelaide.

# GOVERNMENT ACCOUNTABILITY – AUSTRALIAN ADMINISTRATIVE LAW

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Judith Bannister, Anna Olijnyk and Stephen McDonald

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- R v Commonwealth Court of Conciliation and Arbitration; Ex parte Ozone Theatres (Australia) Ltd* (1949) 78 CLR 389, **518–19**
- R v Connell; Ex parte Hetton Bellbird Collieries Ltd* (1944) 69 CLR 407, **453**, **454–5**, **457**
- R v Gray; Ex parte Marsh* (1985) 157 CLR 351, **292**
- R v Hegarty; Ex parte City of Salisbury* (1981) 147 CLR 617, **248**
- R v Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598, **358–9**
- R v Hughes* (2000) 202 CLR 535, **44**
- R v Inspector-General of Penal Establishments (Vic); Ex parte Horwitz* (1908) 6 CLR 38, **335**
- R v Kessing* (2008) 73 NSWLR 22, **176**, **184**
- R v Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254, **13–14**, **28–9**, **237**, **248**, **249**, **393**
- R v MacKellar; Ex parte Ratu* (1977) 137 CLR 461, **395**
- R v Minister of State for the Interior* (1972) 20 FLR 449, **117**
- R v Murray; Ex parte Commonwealth* (1916) 22 CLR 437, **49**
- R v Quinn; Ex parte Consolidated Foods Corporation* (1977) 138 CLR 1, **248**
- R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157, **28**
- R v Sharkey* (1949) 79 CLR 121, **85**
- R v Toohey; Ex parte Northern Land Council* (1981) 151 CLR 170, **63**, **116**, **120–1**, **308**, **311**, **332**, **333**, **335**, **474–5**, **490**, **511**

- R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361, 248
- R v Watson; Ex parte Armstrong* (1976) 136 CLR 248, 422
- Racecourse Co-operative Sugar Association Ltd v Attorney-General (Qld)* (1979) 142 CLR 460, 438
- Randwick City Council v Minister for Environment* (1998) 54 ALD 682, 499
- Raybos Australia v Jones* (1985) 2 NSWLR 47, 172
- Re Aird; Ex parte Alpert* (2004) 220 CLR 308, 28
- Re AKS* [2016] SACAT 19, 263, 277
- Re Australian Bank Employees Union; Ex parte Citicorp Australia Ltd* (1989) 167 CLR 513, 417
- Re Callejo and Department of Immigration and Citizenship* (2010) 51 AAR 308, 195
- Re Canavan* (2017) 91 ALJR 1209, 357
- Re Canavan* [2017] HCATrans 199, 357
- Re Carmody; Ex parte Glennan* (2003) 198 ALR 259, 296
- Re Chapman and Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 43 ALD 139, 205, 208
- Re Control Investments Pty Ltd and Australian Broadcasting Tribunal (No 1)* (1980) 50 FLR 1, 271, 272
- Re Cram; Ex parte NSW Colliery Proprietors' Association Ltd* (1987) 163 CLR 117, 44
- Re De Brett Investments Pty Ltd and Australian Fisheries Management Authority* (2004) 82 ALD 163, 226
- Re Drake and Minister for Immigration and Ethnic Affairs* [1978] AAT 111, 264
- Re Drake and Minister for Immigration and Ethnic Affairs (No 2)* (1979) 2 ALD 634, 264–5, 288, 482–3, 485
- Re Duncan; Ex parte Australian Iron and Steel Pty Ltd* (1983) 158 CLR 535, 44
- Re Eccleston and Department of Family Services, Aboriginal and Islander Affairs* [1993] 1 QAR 60, 203
- Re Ganchov and Comcare* (1990) 19 ALD 541, 252
- Re Haneef and Australian Federal Police* (2009) 49 AAR 395, 197, 198
- Re Haneef and Department of Immigration and Citizenship* (2008) 48 AAR 153, 197, 203
- Re Haneef and Secretary, Department of Prime Minister and Cabinet* [2009] AATA 916, 198
- Re Hickman; Ex parte Fox and Clinton* (1945) 70 CLR 598, 297
- Re Howard and Treasurer of the Commonwealth* (1985) 8 ALD 484, 202, 208
- Re JRL; Ex parte C/JL* (1986) 161 CLR 342, 422, 431
- Re Kearsley Shire Council; Ex parte Hebburn Ltd* (1947) 47 SR (NSW) 416, 317, 512
- Re Lusink; Ex parte Shaw* (1980) 32 ALR 47, 422
- Re McBain; Ex parte Australian Catholic Bishops Conference* (2002) 209 CLR 372, 317, 341, 344, 345, 353, 517
- Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 198 ALR 59, 299, 382, 386

- Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S154/2002* (2003) 201 ALR 437, **413**
- Re Minister for Immigration and Multicultural Affairs; Ex parte Epeabaka* (2001) 206 CLR 128, **428**
- Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57, **231, 317, 404, 405, 406–7, 408, 416, 518**
- Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* (2003) 214 CLR 1, **410**
- Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme* (2003) 216 CLR 212, **217, 324, 416, 417**
- Re Nolan; Ex parte Young* (1991) 172 CLR 460, **393**
- Re Patterson; Ex parte Taylor* (2001) 207 CLR 391, **35**
- Re Reference under Section 11 of Ombudsman Act 1976 for an Advisory Opinion; Ex parte Director-General of Social Services* (1979) 2 ALD 86, **438, 440, 441**
- Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82, **294, 295, 296, 297, 317, 322, 345, 386, 434, 435, 510, 517, 519, 520**
- Re Residential Tenancies Tribunal (NSW); Ex parte Defence Housing Authority* (1997) 190 CLR 410, **80, 143**
- Re Roberts* (2017) 91 ALJR 1018, **357**
- Re Roberts* [2017] HCATrans 192, **357**
- Re Rudd and Minister for Transport and Reginal Services* (2001) 65 ALD 296, **271–2**
- Re Shi and Migration Agents Registration Authority* [2005] AAT 851, **271**
- Re Tracey; Ex parte Ryan* (1989) 166 CLR 518, **28**
- Re Yaa Akyaa and Rita Kufo v Minister of Immigration and Ethnic Affairs* [1987] FCA 137, **404**
- Rendell v Release on Licence Board* (1987) 10 NSWLR 499, **483–4, 517**
- Repatriation Commission v Strickland* (1990) 22 ALD 10, **486**
- RG Capital Radio Ltd v Australian Broadcasting Authority* (2001) 113 FCR 185, **91**
- Riddell v Secretary, Department of Social Security* (1993) 42 FCR 443, **481**
- Right to Life Association (NSW) Inc v Secretary, Department of Human Services and Health* (1995) 56 FCR 50, **351**
- Roadshow Films Pty Ltd v iiNet Ltd* (2011) 248 CLR 37, **355, 356**
- Roche v Kronheimer* (1921) 29 CLR 329, **99**
- Roche Products Pty Ltd v National Drugs and Poisons Schedule Committee* (2007) 163 FCR 451, **91, 310, 314**
- Rowe v Electoral Commissioner* (2010) 243 CLR 1, **388**
- Ruddock v Vadarlis* (2001) 110 FCR 491, **75, 311, 508**
- Russell v Russell* (114) 134 CLR 495, **261**
- S F v Shoalhaven City Council* [2013] NSWADT 94, **113**
- SAAG v Minister for Immigration and Multicultural and Indigenous Affairs* [2002] FCA 547, **492**
- SAAP v Minister for Immigration and Indigenous and Multicultural Affairs* (2005) 228 CLR 294, **445**
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