

KATE E SLACK

Year of call – 2015

DIRECT CONTACT DETAILS:

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PERSONAL ASSISTANT DETAILS:

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AREAS OF PRACTICE

Administrative and Public Law
Appellate Law
Constitutional Law
Regulatory Law
Statutory Entitlements Law
Workplace Investigations

EDUCATION

Bachelor of Laws (Hons), Griffith University
Bachelor of Arts in Politics and Government (Hons), Griffith University
Graduate Diploma in Legal Practice, Skills and Ethics, Griffith University

CAREER HISTORY

Kate has a predominantly public law and regulatory law practice. Her expertise is in complex judicial review proceedings (see, for example, *Byron Aged Care v Aged Care Quality and Safety Commissioner* [2022] FCA 1060 (unled against Silk) and *Jele Chemists Pty Ltd v Australian Community Pharmacy Authority* [2023] FCA 1652 (unled against Silk)) and appeals under s 44 of the *Administrative Appeals Tribunal Act 1975* (see, for example, *John Holland Pty Ltd v Bartlett* [2023] FCA 1030 (unled against Silk)).

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Kate has also appeared in a number of special leave applications and Full Court hearings in the High Court. For example, Kate appeared for the plaintiffs in two recent High Court cases on the operation and application of the power in s 51(xix) of the Constitution: the ground-breaking case of *Love v Commonwealth of Australia* (2020) 270 CLR 152 (where she was led by Stephen Keim SC) and, *Chetcuti v Commonwealth of Australia* (2021) 95 ALJR 704; [2021] HCA 25 (where she was led by Georgina Schoff SC and Georgina Costello SC). For a recent special leave application Kate appeared in, see *Leigh v Bruder Expedition Pty Ltd* (ACN 603551579) [2023] HCATrans 167 (where she was led by Ruth O’Gorman KC).

Otherwise, Kate regularly appears, both led and unled, in federal and state jurisdictions at trial and appellate level.

In June 2022, Kate was appointed Chair of the Public Records Review Committee of the Queensland State Archives. Prior to being appointed Chair, Kate was a member of the Committee for six years.

In October 2022, Kate was elected to the Executive of the Federal Litigation and Dispute Resolution Section of the Law Council of Australia. Kate also currently serves as the Editor of the Law Council of Australia’s publication, *Chapter III*.

SELECTED SIGNIFICANT CASES

***Love v Commonwealth of Australia* [2020] HCA 3; (2020) 270 CLR 152** (led by Stephen Keim SC)

Kate appeared as junior counsel for Mr Love and Mr Thoms in the High Court’s original jurisdiction. The Full Court of the High Court, by a majority of 4 Justices, agreed that persons who satisfy the tripartite test in *Mabo v Queensland (No 2)* (1992) 175 CLR 1, 70 are not ‘aliens’ as that word is used in s 51(xix) of the *Constitution*. The case is significant as it recognises the sui generis position of First Nations Australians and identifies a category of constitutional ‘non-aliens’ (the only category currently recognised in Australian law).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2020/3.html>

***Chetcuti v Commonwealth of Australia* [2021] HCA 25; 95 ALJR 1** (led by Georgina Schoff QC and Georgina Costello QC)

Kate appeared as junior counsel for Mr Chetcuti in his appeal to the Full Court of the High Court. A majority of 6 Justices found that Mr Chetcuti, born a British subject who arrived in Australia prior to the commencement of the *Nationality and Citizenship Act 1948* (Cth), was an ‘alien’ for the purposes of s 51(xix) of the *Constitution*. This case is significant because it clarified that British subjects who arrived in Australia prior to Australian citizenship being introduced as a statutory concept were non-aliens when they arrived and, whether that status could be maintained despite not taking up Australian citizenship.

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Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2021/25.html>

***Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Moorcroft* [2021] HCA 19**
(led by Stephen Keim SC)

Kate appeared as junior counsel for Ms Moorcroft responding to the Minister's appeal to the High Court. This case concerned whether the phrase "removed...from Australia" in subparagraph (d) of the definition of "behaviour concern non-citizen" in s 5(1) of the *Migration Act 1958* (Cth) refers to removal *in fact* or to *lawful* or *valid* removal in accordance with Division 8 of Part 2 of the *Migration Act 1958* (Cth).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2021/19.html>

***Willmot v State of Queensland* [2023] QCA 102** (led by C Heyworth-Smith KC and with D Schneidewin)

Kate appeared as junior counsel for the State of Queensland successfully responding to Ms Willmot's appeal to the Queensland Court of Appeal. This case concerned an appeal from a decision of Bowskill CJ to permanently stay Ms Willmot's claim for damages against the State for negligence in failing to properly monitor and supervisor her and those into whose care she was placed while she was a State Child as defined in the *State Children Act 1911* (Qld). The claim was permanently stayed because the consequences of the passage of time since the alleged events occurred meant that a fair trial was not possible. The appeal was dismissed.

Link to case: <https://archive.sclqld.org.au/qjudgment/2023/QCA23-102.pdf>

***Woodhouse v Comcare* [2021] FCAFC 95** (led by Andrew Berger QC)

Kate appeared as junior counsel for Comcare before the Full Court. The case was concerned with the interpretation of the defined terms 'injury' and 'disease' in ss 5A and 5B of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**). Specifically, the Court was asked to consider whether an employee that no longer suffers from a 'disease', as that term is defined in s 5B, is still entitled to compensation under ss 16 (medical expenses) and 19 (incapacity for work).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2021/95.html>

***King & Ors v Australian Securities and Investments Commission (No 1)* (2019) 134 ACSR 105; (2019) QCA 121**
(led by Patrick O'Shea QC, Jonathon Moore QC and Matthew Brady QC)

Kate acted as junior counsel for ASIC in the Queensland Court of Appeal in a two-week appeal brought by four officers of a substantial corporate investment vehicle who were found to have engaged in a large number of breaches of the *Corporations Act 2001* (Cth).

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Link to case: <https://www.sclqld.org.au/caselaw/QCA/2019/121>

***Leach v Comcare* [2021] FCAFC 134** (led by Andrew Berger QC)

Kate acted as junior counsel for Comcare in the Full Court of the Federal Court in an appeal which concerned the notice provisions of the *Safety, Rehabilitation and Compensation Act 1988* (Cth). This case was a rare opportunity for s 53 of the SRC Act to benefit from judicial consideration in the context of assessing whether permissible fact-finding occurred in the Administrative Appeals Tribunal.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2021/134.html>

***Kitchen v Director of Professional Services Review* [2023] FCAFC 160** (unled against Silk)

Kate acted as counsel for the Director of Professional Services Review in the Full Court responding to an application for leave to appeal a costs order. The application for leave to appeal was dismissed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2023/160.html>

***Ascic v Comcare* [2020] FCAFC 105**

Kate acted as counsel for Comcare in the Full Court of the Federal Court in an appeal which concerned the complicated transitional provisions in the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCAFC/2020/105.html>

***Byron Aged Care Limited v Aged Care Quality and Safety Commissioner* [2022] FCA 1060** (unled against Silk)

Kate acted for the Aged Care Quality and Safety Commissioner (the **Commissioner**) in the Federal Court in a judicial review application brought by Byron Aged Care Limited. The case concerned the ability of the Commissioner to issue directions under s 19 of the *Aged Care Quality and Safety Commission Rules 2018* (Cth) in the context of whether a special nurse and security guard for an aged care resident constituted “care” under the *Quality of Care Principles 2014* (Cth). The case is significant for its consideration of principles governing the grant of declaratory relief and prohibition and where the Court is invited to give an advisory opinion.

***Norouzi v The Director of the Professional Services Review Agency* [2020] FCA 1524**

Kate acted for the Director of the Professional Services Review Agency in the Federal Court in a judicial review application of two separate decisions (the first by the Committee responsible for determining whether Mr Norouzi had engaged in inappropriate practice; the second by the Determining Authority responsible for

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determining sanction). The case is significant for what his Honour Logan J found with respect to the application of the extension of time principles to the review of the Committee's decision.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/1524.html>

John Holland Pty Ltd v Bartlett [2023] FCA 1030 (unled against Silk)

Kate acted for John Holland Pty Ltd in an appeal from a decision of the Administrative Appeals Tribunal concerning application of s 19 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) and the interpretation of s 54 of the SRC Act. The appeal was allowed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1030.html>

Jele Chemists Pty Ltd v Australian Community Pharmacy Authority [2023] FCA 1652 (unled against Silk)

Kate acted for the Australian Community Pharmacy Authority responding to an application for judicial review of a recommendation made to the Secretary of the Department for Health and Aged Care that approval be granted to the second respondent to supply pharmaceutical benefits from a particular premises. The application was dismissed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/1652.html>

Soryal v Director of Professional Services [2023] FCA 326 (led by N Kidson KC)

Kate acted as junior counsel for the Director of Professional Services responding to an application for judicial review of a decision of the Director to refer Dr Soryal, a dentist, to a Professional Services Review Committee to investigate potential inappropriate conduct under Part VAA of the *Health Insurance Act 1973* (Cth). The application was dismissed.

Link to case: <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2023/326.html>

Fox Coal Pty Ltd & Anor v Minister for Resources [2023] QSC 197 (led by J Horton KC)

Kate acted as junior counsel for the Minister of Resources responding to an application for judicial review of a decision by the Minister to reject an application made by the applicants for the grant of a mineral development licence under s 186(1)(b) of the *Mineral Resources Act 1989* (Qld).

Link to case: <https://www.queenslandjudgments.com.au/caselaw/qsc/2023/197>

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General

Kate's expertise lies in complex judicial review proceedings. Kate is often briefed to provide strategy advice in contemplation of judicial review proceedings, draft Applications and appear at interlocutory and final hearings. Kate also commonly acts for respondents to judicial review proceedings.

Kate is routinely briefed to give advisory opinions as to whether special leave to appeal ought to be sought and to appear in such applications. Kate is also regularly briefed to seek, or resist, urgent interlocutory relief.

Kate appears in Royal Commissions, Inquiries and Inquests. For example, Kate appeared for a witness in the Royal Commission into the Robodebt Scheme, was engaged to advise and prepare a witness in the Aged Care Royal Commission and, was briefed by the Commonwealth of Australia in the Inquest into the Death of Faysal Ishak Ahmed in the Coroners Court of Queensland.

Kate regularly appears in the Federal Court of Australia (in addition to the aforementioned cases, see for example:

Norouzi v Determining Authority established by s 106Q of the Health Insurance Act 1973 (Cth) [2023] FCA 35
Jele Chemists Pty Ltd v Australian Community Pharmacy Authority [2022] FCA 1445
Ascic v Comcare [2022] FCA 1245
Ascic v Comcare [2021] FCA 1498
Mununggurr v Comcare [2020] FCA 1786 (led by Andrew Berger QC)
Australia Building and Construction Commissioner v Ingham [2020] FCA 1632 (led by Adrian Duffy QC)
Kitchen v Director of Professional Services Review Under s 83 of the Health Insurance Act 1973 (Cth) [2019] FCA 2022 (unled against Silk)
Leach v Comcare [2019] FCA 1698
Hutchinson v Comcare [2019] FCA 1440
Comcare v ZZRP [2019] FCA 952
Australian Securities and Investments Commission v CFS Private Wealth Pty Ltd & Ors [2019] FCA 24,

Since Kate was first called to the bar, Kate has maintained a busy merits review practise in the Administrative Appeals Tribunal in a wide array of practise areas. See, for example:

Comcare *Percival and Comcare* [2022] AATA 3728
 Selman v FedEx Express Australia [2022] AATA 2386
 Cheatham v Comcare [2022] AATA 37
 MacFarlane v TNT Australia Pty Ltd (Compensation) [2021] AATA 2239
 O'Callaghan and Comcare [2019] AATA 2511

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Mununggurr and Comcare (Compensation) [2019] AATA 1564
Kucharski and Comcare [2019] AATA 265
Graham v Comcare [2018] AATA 3013
Diehm v TNT Pty Ltd [2018] AATA 270

Military and Veterans' Entitlements	<i>Hogan and Military Rehabilitation and Compensation Commission</i> [2023] AATA 418 <i>Myles and Repatriation Commission (Veterans' Entitlements)</i> [2021] AATA 2115 <i>Cooke and Military Rehabilitation and Compensation Commission</i> [2019] AATA 1344 <i>Read and Military Rehabilitation and Compensation Commission</i> [2017] AATA 1109
National Disability and Insurance Scheme	<i>HPSC v National Disability Insurance Agency</i> [2021] AATA 725
Immigration and Citizenship	<i>Pulini v Minister for Immigration, Citizenship and Multicultural Affairs</i> [2023] AATA 59 <i>NPRT v Minister for Home Affairs (Citizenship)</i> [2020] AATA 3641
Corporations	<i>JSKN and Australian Securities and Investments Commission</i> [2017] AATA 818
Social security	<i>Nash v DSS</i> [2017] AATA 635

SERVICE

Editor of the Federal Dispute Resolution Section of the Law Council of Australia's publication, *Chapter III* (November 2022 to present)

Executive Member of the Federal Dispute Resolution Section of the Law Council of Australia (October 2022 to present)

Chair of the Queensland State Archives, Public Records Review Committee (June 2022 to present)

Member of the Federal Administrative Law Reform Working Group (with the primary purpose of advising the Law Council of Australia on matters related to the abolition and replacement of the Administrative Appeals Tribunal) (February 2023 to present)

Committee Member of the Queensland Bar Association, Bar Care Committee (2017 to present)

Committee Member of the Queensland Bar Association, New Bar Committee (2017 to present)

Convenor and Mentor, Federal Magistrate Keith Slack OAM Memorial Prize, Family Law Mentorship Program (awarded annually to the best performing student in the unit LLB243 Family Law, QUT) (2018 to present)

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Member of the Queensland State Archives, Public Records Review Committee (May 2016 to June 2022)

Council Member, Bar Association of Queensland (2017)

PAPERS AND PRESENTATIONS

Kate regularly delivers papers and presentations to conferences and clients. For example, most recently:

- in July 2023, Kate delivered a presentation entitled 'Urgent Interlocutory Applications' to Sparke Helmore Lawyers national government team and clients (over 150 attendees).
- in September 2022, Kate delivered a presentation entitled 'They can't be serious! Tips and tricks on the assessment of AAT decisions for error and how to evaluate appeal prospects' to Sparke Helmore Lawyers national government team and clients (over 220 attendees).
- in March 2022, Kate delivered a presentation entitled 'Post-*Love v Commonwealth* (2020) CLR 152 Developments' at the Law Council of Australia Migration Law Conference.
- In February 2022, Kate delivered a presentation entitled 'Misfeasance in public office' to the Commonwealth Department of Health.
- in November 2021, Kate delivered a presentation entitled 'Interlocutory injunctions under the *Building Industry (Improving Productivity) Act 2016* (Cth) to the Australian Building and Construction Commission's national team of lawyers and investigators.
- in October 2021, Kate delivered a presentation entitled 'To *Snell* and back – re-litigation in the Administrative Appeals Tribunal to Sparke Helmore Lawyers national government team and clients.
- in July 2021, Kate delivered a presentation entitled The implications of *Woodhouse v Comcare* [2021] FCAFC 95 - I feel your *Prain*, to HWL Ebsworth and ACT government lawyers.
- in March 2020, Kate delivered a presentation entitled 'Reflections on the recent High Court Decision in *Love & Thoms*: indigenous rights and immigration law' at the Law Council of Australia Migration Law Conference.
- in December 2019, Kate delivered a presentation entitled 'Arising out of, or in the course of employment: where does work end and life begin?' Law Council of Australia Comcare Hot Topics Seminar.

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