



## Interim Decision impact statement

# Toowoomba Regional Council v Commissioner of Taxation [2025] FCA 161

### **📌 Relying on this Decision impact statement**

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| <b>Venue:</b>              | Federal Court of Australia |
| <b>Venue reference No:</b> | QUD 702 of 2024            |
| <b>Judge Name:</b>         | Logan J                    |
| <b>Judgment date:</b>      | 6 February 2025            |

### **Summary of decision**

1. This Interim decision impact statement outlines the ATO’s interim response to this case, which concerns whether a shopping centre car park is a ‘commercial parking station’ as defined in subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986* (FBTAA).

2. This is relevant when considering whether a car parking benefit is provided to employees in accordance with section 39A of the FBTAA.

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3. Justice Logan determined that the shopping centre car park was not a commercial parking station.
4. In reaching this conclusion, His Honour considered the:
  - meaning of the word 'commercial' for the purpose of determining whether the shopping centre car park was a commercial parking station, and
  - facts of the scheme the subject of the Commissioner's private ruling which was considered by the Court, including whether
    - certain documents could be considered by the Court in determining whether the Commissioner's decision was correct, and
    - factual matters constituting part of the scheme could be inferred.
5. The Commissioner has appealed the decision to the Full Federal Court.
6. All legislative references in this Interim decision impact statement are to the FBTAA, unless otherwise indicated.
7. All judgment references in this Interim decision impact statement are to the judgment of *Toowoomba Regional Council v Commissioner of Taxation* [2025] FCA 161, unless otherwise indicated.

## Overview of facts

8. In November 2023, the Commissioner gave to the Toowoomba Regional Council a private ruling made for the fringe benefits tax (FBT) years ending 31 March 2023 to 31 March 2026 inclusive. In Question 1 of the private ruling application, the Commissioner was asked to rule on whether the Grand Central Shopping Centre car park was a 'commercial parking station' under section 39A on the basis of the material provided by the applicant for the private ruling which formed the scheme specified in the ruling.
9. The facts of the scheme, in relation to which the Commissioner made the private ruling, can be summarised as follows:
  - The Grand Central Shopping Centre is located in the Toowoomba central business district in Queensland and has multiple entrances.
  - On 14 June 2017, the Grand Central Shopping Centre introduced paid car parking to the public. It had previously undergone a redevelopment which doubled the floor area of the shopping centre to 90,000 square metres and the number of car parking spaces to 4,000.
  - The parking rates introduced at the Grand Central Shopping Centre were listed, noting that up to 3 hours car parking was free, up to 3.5 hours was \$2.00 and then steadily rose to \$20.00 for over 7 hours parking, which was the maximum daily rate.
  - In addition to free car parking when a car was parked for less than 3 hours, Grand Central Shopping Centre also offered reduced or free parking to its shoppers and staff in various other scenarios. For example, there was free car parking for shoppers after 6:00 pm, and for disabled shoppers and cinema patrons, and customers that lived outside Toowoomba who shopped at the Grand Central Shopping Centre for more than 3 hours were provided with all-day parking at a flat rate of \$7.50.
  - Other car parking lots around the Toowoomba central business district are operated by the Toowoomba Regional Council. The parking fees at these car parking facilities range from a maximum of \$6.00 to \$7.50 per day.

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- For the FBT year ended 31 March 2023, the car parking threshold was \$9.72.
- Grand Central Shopping Centre has a ticketless parking system that uses licence plate recognition to track parking without the need for a paper ticket.
- Upon exiting, a camera scans the licence plate details of a vehicle at the boom gates and calculates the time spent and cost incurred. The boom gates will automatically open if the customer has been parked for under 3 hours, paid at the pay stations or scanned their validation bar code (from Customer Service or the cinema). If payment is required, a credit card can be scanned at the boom gates.
- Payment machines are also located at mall entrances within the Grand Central Shopping Centre and credit card payment is accepted at the exit barriers.

## ***The meaning of the word ‘commercial’ for the purpose of interpreting ‘commercial parking station’ in subsection 136(1)***

10. His Honour observed that ‘there is no one natural and ordinary meaning in respect of the adjective “commercial” as used in the definition of “commercial parking station”’.<sup>1</sup> Further<sup>2</sup>:

[t]hat adjectival word is not to be read in isolation, either from the term of which it forms part “permanent commercial car parking facility” or from the wider context of the Act or its purpose.

11. His Honour noted that the dictionary definition of ‘commercial’ provides that when used as an adjective, “commercial” can mean “of or of the nature of commerce” or “engaged in commerce”. It could also mean ‘capable of returning a profit’.<sup>3</sup>

12. In finding there is no doubt that the Grand Central Shopping Centre car park is deployed in commerce, being a meaning that can be given to ‘commercial’, His Honour pointed out that this is not the only meaning that can be given to the word.<sup>4</sup> Given the definition of commercial parking station does have some ambiguity about it, His Honour held that it is permissible, as a matter of statutory construction, to have regard to the explanatory memorandum.<sup>5</sup>

13. In response to the Commissioner’s argument that it was appropriate to have regard to the Full Federal Court’s judgment in *Commissioner of Taxation v Qantas Airways Limited* [2014] FCAFC 168 (*Qantas Airways*)<sup>6</sup>, which found that the ‘meaning of ‘commercial parking station is ... quite clear’<sup>7</sup>, His Honour found that:

- It is necessary to read *Qantas Airways* against the background of an understanding that the controversy in that case concerned the meaning of the word ‘public’ in the definition of commercial parking station in subsection 136(1).
- The Full Federal Court did not have occasion to explore the subject of the question posed to the Commissioner for this private ruling by the applicant.

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<sup>1</sup> At [26].

<sup>2</sup> At [26].

<sup>3</sup> At [28].

<sup>4</sup> At [29].

<sup>5</sup> At [34].

<sup>6</sup> At [14].

<sup>7</sup> At [14].

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Nor did an earlier Full Federal Court have such occasion in *Virgin Blue Airlines Pty Ltd v Commissioner of Taxation* [2010] FCAFC 137.<sup>8</sup>

14. Having regard to the explanation of the definition of commercial parking station in the Explanatory Memorandum<sup>9</sup>, His Honour found<sup>10</sup>:

[t]hat explanation offers support for a meaning of the adjective “commercial” within the statutory definition as derived from an, but not the only, ordinary meaning of the word as used in context, and having regard to purpose.

15. The Court concluded that the meaning assigned to ‘commercial’ in ‘permanent commercial car parking facility’ is ‘intended to make’ or ‘aimed at’ or ‘having the potential for financial success intended to make a profit’.<sup>11</sup> That is not to say that a profit must be present, only that there may be some profit-making purpose to do with the operation of the car parking station.<sup>12</sup>

## ***The facts of the scheme the subject of the private ruling***

16. His Honour found that the facts were confined to those specified in the scheme stated by the Commissioner in the private ruling.<sup>13</sup> The scheme did not include reference to materials annexed to the private ruling application, nor more particularly, reference to the comments made in newspaper articles.<sup>14</sup>

17. However, while His Honour decided that the private ruling regime he described in *Rosgoe Pty Ltd v Commissioner of Taxation* [2015] FCA 1231<sup>15</sup> and followed by Derrington J in *Commissioner of Taxation v Eichmann* [2019] FCA 2155<sup>16</sup>, is substantially unaltered, this was subject to one caveat.<sup>17</sup> That caveat, which was supplied by the Full Federal Court’s judgment in *Eichmann v Commissioner of Taxation* [2020] FCAFC 155<sup>18</sup>, provided that<sup>19</sup>:

... a Tribunal or a Court may draw inferences from ruled facts which are both obvious in nature and where there are no other possible competing inferences that might be drawn.

18. It was noted by His Honour that there was no finding at all in the facts specified in the scheme that the Grand Central Shopping Centre car park is operated for the purpose of making a profit.<sup>20</sup>

19. His Honour considered, in particular, the facts in the scheme to the private ruling, which specified the:

- schedule of parking rates for the Grand Central Shopping Centre car park<sup>21</sup>, and

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<sup>8</sup> At [22].

<sup>9</sup> Explanatory Memorandum to the Taxation Laws Amendment (Car Parking) Bill 1992.

<sup>10</sup> At [35].

<sup>11</sup> At [35].

<sup>12</sup> At [33].

<sup>13</sup> At [12].

<sup>14</sup> At [39].

<sup>15</sup> *Rosgoe Pty Ltd v Commissioner of Taxation* [2015] FCA 1231 at [12–15].

<sup>16</sup> *Commissioner of Taxation v Eichmann* [2019] FCA 2155 at [22].

<sup>17</sup> At [6–8].

<sup>18</sup> *Eichmann v Commissioner of Taxation* [2020] FCAFC 155 at [16].

<sup>19</sup> At [9].

<sup>20</sup> At [38].

<sup>21</sup> At [41].

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- various other car parking facilities operated in the Toowoomba central business district.<sup>22</sup>

20. His Honour concluded that these facts ‘make it obvious that the Grand Central [Shopping Centre] car parking facility is being operated to a different end to a commercial car parking facility’.<sup>23</sup>

21. His Honour found that, while it is obvious from the schedule of parking rates that the Grand Central Shopping Centre car park is being operated to the end of complementing the operation of the shopping centre and it also being an attractive force that brings in business to the shopping centre and its tenants, the<sup>24</sup>:

range of free parking is inconsistent with it being operated commercially for profit, as opposed to commercially in the context of a shopping centre, not a standalone car parking facility.

22. His Honour held that the facts that were specified in the scheme were such as to conclude that the Toowoomba Grand Central shopping centre car parking facility is not a ‘commercial parking station’ as defined in subsection 136(1) and thus, is not a ‘commercial parking station’ for the purposes of section 39A.

## ATO view of decision

23. Until the appeal process is finalised, we do not intend to revise the current ATO view relating to car parking fringe benefits and the meaning of commercial parking station, as set out in Taxation Ruling TR 2021/2 *Fringe benefits tax: car parking benefits* and Chapter 16 of *Fringe benefits tax – a guide for employers* (FBT guide).

24. The ATO view in TR 2021/2 sets out the way we will administer the law as it applies to commercial car parking arrangements and is consistent with the decision in [Qantas Airways](#). This means that even if the car park has a primary purpose other than providing all-day parking and its fee structure discourages all-day parking through charging penalty rates, it can still be a ‘commercial parking station’ as defined in subsection 136(1).

## Administrative treatment

25. Pending the outcome of the appeal process, we are administering the law in accordance with the current ATO view relating to car parking fringe benefits and the meaning of commercial parking station, as set out in TR 2021/2 and Chapter 16 of the FBT guide.

## Lodgment of FBT returns by taxpayers

26. Taxpayers should continue to lodge their FBT returns in accordance with the ATO view as set out in TR 2021/2 and Chapter 16 of the FBT guide.

## Private rulings

27. If a taxpayer lodges an application for a private ruling before the appeal process in this case is finalised, we will make the private ruling in accordance with the ATO view as set out in TR 2021/2 and Chapter 16 of the FBT guide.

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<sup>22</sup> At [42].

<sup>23</sup> At [43].

<sup>24</sup> At [43].

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## **Objections**

28. Until the appeal process in this case is finalised, we do not propose to finalise objection decisions in relation to whether a car parking facility is a commercial parking station. However, if a decision is required to be made (for example, because a taxpayer gives notice requiring the Commissioner to make an objection decision), that objection decision will be made in accordance with the ATO view as set out in TR 2021/2 and Chapter 16 of the FBT guide.

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**Commissioner of Taxation**

28 March 2025

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## References

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*Related Rulings/Determinations:*

TR 2021/2

*Legislative references:*

FBTAA 39A

FBTAA 136(1)

*Case references:*

Commissioner of Taxation v Eichmann [2019] FCA 2155; 2019 ATC 20-728

Commissioner of Taxation v Qantas Airways Limited [2014] FCAFC 168; 227 FCR 554; 2014 ATC 20-477; 100 ATR 97

Eichmann v Commissioner of Taxation [2020] FCAFC 155; 280 FCR 10; 2020 ATC 20-762; 112 ATR 246

Rosgoe Pty Ltd v Commissioner of Taxation [2015] FCA 1231; 2015 ATC 20-539

Virgin Blue Airlines Pty Ltd v Commissioner of Taxation [2010] FCAFC 137; 190 FCR 150; 2010 ATC 20-226; 81 ATR 85

*Other references:*

Explanatory Memorandum to Taxation Laws Amendment (Car Parking) Bill 1992

Fringe benefits tax – a guide for employers, Chapter 16

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ATO references

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