

LAWS2010

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Substantive conditions

Failing to apply correct test OR to apply the correct test correctly

Decision-makers must apply the correct test prescribed by statute, and apply the test correctly:
Melbourne Stevedoring (see below)

Meaning of statute is determined by the reviewing court's own statutory construction — no deference to administrator: Enfield

Court determines **meaning of legal word** by its own statutory construction: May

- Where meaning of word is **sensitive to syntax and context** of statute → **question of law** to be determined by text, context, purpose of statute

No evidence for finding of fact

Melbourne Stevedoring

Here, subjective jurisdictional fact = power to cancel employer's registration if Stevedoring Industry Board **is satisfied that employer is unfit to be employer**

- Must **correctly understand the test** prescribed by statute AND **correctly apply it**
- OR **cannot base finding on NO evidence**
 - Mere insufficiency/inadequacy of evidence is not sufficient
 - Unless it implies that Board incorrectly understood test or applied incorrect test)
- → Here, NO probative evidence for finding that employer was unfit
 - Board relied on evidence of a few failures to report absence of workers (in extensive business)
- AND applied incorrect test — exercised power NOT due to unfitness — BUT to enforce obligation to closely supervise workers

Holden

- Melbourne Stevedoring applies to appeals on **question of law** generally
- **Inadequate or thin evidence suffices**
- Here, Administrative Appeals Tribunal's finding that Holden's PTSD was a disorder of sufficient severity to warrant ongoing management was based on evidence: e.g., clinical notes adduced to Tribunal
 - Notwithstanding that Tribunal **did not refer to this evidence** in reasons

Viane

NO evidence = not a skerrick of evidence

BUT finding can be based on Minister's **personal or specialised knowledge** OR based on **common knowledge** — this can be assumed

- Here, where no evidence supporting Minister's **findings re speaking of English and availability of services** in Samoa → it could be assumed that findings proceeded from **Minister's personal/specialised knowledge**
 - **Obvious inference** because of the **store of knowledge** that Minister would have developed over many years dealing with foreigners
 - Notwithstanding that **Minister's reasons did not expressly state** that he was relying on personal knowledge; and that these matters were not commonly known, and thus less likely to be personally known
- BUT obiter: If **applicant adduced evidence** → Minister would need to consider such evidence and, if necessary, answer it with further or different evidence
 - BUT here, applicant did NOT adduce evidence re these matters

... AND OBITER: Minister may draw from **accumulated knowledge of their department**

OBITER: In extreme, rare cases — Minister may make findings which could NOT have been based on evidence or their personal/specialised knowledge or common knowledge — may be based on representations which are no more than **bare assertions about course of future events**

E.g., findings re **danger that applicant may pose in the future** to Australian community; re **type of hardship applicant might personally suffer if deported**

Failing to have regard to relevant considerations

Peko-Wallsend

- Consideration is only relevant if administrator was **legally obliged to take it into account**
- Determined by **statutory construction**
 - If **expressly** stated (e.g., Minister shall/must have regard to ...) → court decides whether factors are exhaustive or inclusive
 - Otherwise, must be **implied** from **subject-matter, scope, and purpose of statute**
- **Weight** given to each consideration is **decided by decision-maker**
 - BUT if weighting is inappropriate, could amount to unreasonableness
- **Broader policy considerations are relevant** to Minister → must be considered
 - *Unless policy is unlawful (see 'Policy')*

→ Here, Minister granted land rights based on departmental report which did NOT refer to information re detriment to Peko

- Implied from statutory requirement that Commissioner comment in his report to Minister on detriment caused by land rights that Minister is bound to consider detriment

... AND **considering relevant consideration** must be based on **most recent and accurate information** that Minister has within their **actual and constructive knowledge**

- **Minister's constructive knowledge can include knowledge of Minister's department** (as here)

→ Minister was bound to consider Peko's submissions

Where statute expressly stipulates considerations — exclusive or inclusive?

Plaintiff S156

- Statute: 'The **only condition** for the exercise of the power' is that Minister thinks it is in the national interest
- → Cannot imply other considerations (e.g., AUS' and processing country's international law obligations, possibility of indefinite detentions)

Minister is not obliged to personally consider it (depends on legislative scheme): McQueen

- Here, legislative scheme required Minister to consider representations made by applicant → BUT it did NOT follow that Minister was obliged to personally read original representations — because
 - **NO express/implied statutory requirement** that Minister *personally* consider applicant's representations
 - Because Minister's functions are so extensive → **administrative necessity** for Minister to rely on department's summary
- → Where it is **appropriate to summarise representations** and **summary is accurate** and provides full account of essential content → lawful for Minister to only read summary
 - Department's behaviour is attributed to Minister → Department must consider relevant considerations
 - **Level of consideration that must be given to relevant consideration** (by Minister or delegate) = **read, identify, understand, and evaluate**
- Department gave Minister 13-page submission summarising applicant's representations → sufficed

Having regard to irrelevant considerations

Irrelevant consideration = consideration that the decision-maker is legally obliged NOT to take into account: Murphyores

- Depends on the statute — **express** limitations on power (e.g., **specific enumeration of relevant matters**) OR **implications from subject-matter** of power
- Here, statute gave power to prohibit exports of goods
- NO express limitations on power
- **Wide powers over wide range of goods** → implies no limitations
 - Reasons for prohibiting goods may be various as the goods themselves
 - **Character of some goods is inconsistent with concept that considerations must be confined to trade and commerce**
 - E.g., historical/anthropological goods; weapons of war
 - Unrestricted export of goods may produce wide variety of effects (incl. on environment)
- **When such a breadth of considerations is involved → only something amounting to lack of bona fides could justify judicial intervention**
 - **Corrupt OR entirely personal/whimsical considerations** → irrelevant
- → Minister could consider environmental impact of mining operations to decide whether to allow export of minerals
 - Sufficed that environmental considerations were bona fides (NOT corrupt/personal/whimsical)
 - AND Minister was required by ancillary legislation to consider environment

Minister is NOT allowed to exercise discretion in a way that would **thwart or run counter to statute's policy and objects**:

- Determined by construing statute as a whole
- Here, Minister refused to refer appellants' complaint re price fixing for milk and request for investigation to committee — based on **irrelevant considerations**
- Purpose of statute: to establish milk-marketing scheme
 - Complaint was unsuitable because it **raised wide issues** → irrelevant
 - Section 19(6) contemplates raising issues so wide that Minister would have to amend or revoke scheme → **implied intention of statute that even complaints calling entire scheme into question should be investigated**
 - Section 19 is the only method to investigate wide issues
 - Complaint should be resolved through **other arrangements** → irrelevant
 - **Statute imposes responsibility/duty on Minister** to address such complaints
 - To avoid **political embarrassment** to Minister → irrelevant
 - Held: 'plainly ... a bad reason'

Acting for an improper purpose

Proper purpose may be **expressly stated** OR **implied from statute's subject-matter and scope** (Toohy)

Where administrator's only purpose was improper

Toohy: Powers conferred by Planning Act, when read with definition of 'town' (= land specified by regs. to be treated as town), are to be exercised **ONLY for planning**

- *Crown's representative (here, Administrator of NT) is NOT immune from JR*
 - Here, exercising statutory powers — NOT prerogative of Crown
- Administrator declared area far larger than Darwin as town of Darwin **to defeat Aboriginal land rights claim in that area** → improper purpose

Where administrator acted for proper AND improper purposes — ground satisfied if improper purpose was substantial purpose (Thompson)