

Topic 3 Authorisation to decide (delegation and agency)

Rule: Administrative decisions are generally to be made by the person specified in the Act, unless the power has been validly delegated under the Act or, in limited cases, exercised by an authorised agent accepted by the courts. 行政决定通常应由法律中指定的人员作出，除非该权力已根据法律被合法委托，或在特定情况下由法院认可的授权代理人行使。

写这个案件里指定人员行没行使权力

Delegation

解释题目法条，谁的权利，能授权给谁

Acts Interpretation Act 1901 (Cth)

s 34AAA 法律中指定的职位或官员 Decision-making power to be exercised by person holding the office or position stated in the Act providing for the decision-making power

s 34AAB **Ministers** can authorize another Minister/ a member of the Executive Council to act on their behalf and perform their functions

-Must in writing

s34AB Effect of delegation

(1) Where an Act confers power on a person or body (in this section called the authority) to delegate a function, duty or power:

(a)部分或全部 the delegation may be made either generally or as otherwise provided by the instrument of delegation;

(b)不能转授权 the powers that may be delegated do not include that power to delegate;

(c)视为本人作出 a function, duty or power so delegated, when performed or exercised by the delegate, shall, for the purposes of the Act, be deemed to have been performed or exercised by the authority;

(d)不是放弃自己权力 a delegation by the authority does not prevent the performance or exercise of a function, duty or power by the authority; and

(e) if the authority is not a person, section 34A applies as if it were.

写自己名 Delegates are not acting as agents for a principal. Where a delegate is exercising the power delegated to him, he may validly exercise that power in his own name.(Re Ombudsman)

Agency

写有权人名 Where an authority [decision-maker in Act] has not delegated his power but he has authorized another to act in exercise of his power, the act is to be done in the name of the authority(Re Ombudsman)

Test

决定必须亲自做还是可指定别人 Does the decision have to be made personally by the designated decision-

maker? (O'Reilly (1982) 153 CLR 1 at 11)

Depends on:

1. 权力性质 the nature of the power
 - 涉及重要权利 aboriginal land right is an important right so unsuitable for lower officials(NSW Aboriginal Land Council v Minister Administering the Crown Lands Act)
2. 操作必要 practical necessity
 - 忙 take possession of a factory during WWII (Carltona Ltd v CMR of Works)
 - 不忙 decide if lands are needed as residential lands-number of the decisions is few(NSW Aboriginal Land Council v Minister Administering the Crown Lands Act)
3. 是否影响个人权利 whether the decision will affect individual rights
 - 虽然影响了但是太忙了， 还是可以的 O'Reilly v CMRs of State Bank: issue a notice to a person to give evidence concerning his income tax assessment:
 - have an impact on sb's rights; but too many taxes-busy-practical necessity
4. 自由裁量的幅度和代理的可归责性 the breadth of the discretion and the accountability of the agent
 - 可以-部长可以对本部门的负责 Minister-Assistant secretary: in our system, ministers are ahead of a department, all the department's knowledge and actions is associated with the minister. They're basically completely tied together, so the minister can be held accountable in parliament.(Carltona Ltd v CMR of Works)
 - 涉及跨部门的不行 (下面的案子)

NSW Aboriginal Land Council v Minister Administering the Crown Lands Act: No

In this case, the law provides that the Crown Lands Minister has the power to personally determine whether a parcel of Crown land is needed or likely to be needed for residential purposes, which affects whether Aboriginal people can claim the land. 法律规定皇家土地部长有权自行判断某片皇家土地是否“需要或可能需要作为住宅用地”，该判断将影响原住民是否可以申请该土地

1. The Crown Lands Minister must decide personally as the role involves vast lands, planning departments, and inter-ministerial dispute resolution. 可能涉及大量土地，也可能涉及规划部门或其他部门，需要由能在政府内部不同部长之间协调争议的皇家土地部长亲自决定。
2. aboriginal land right is an important right so unsuitable for lower officials
3. Practical necessity-decide if lands are needed as residential lands-number of the decisions is few

Topic 4.1 Correct understanding of Act and probative material

Correct interpretation of legislation

Enfield v Development Assessment Commission

法院不用“尊重”行政机关怎么解释法律的 **No formal deference to the administrator's interpretation of legislation**

May v Military Rehabilitation and Compensation Commission

injury

法院要解释模糊的词的意思 The meaning of an ordinary word is a question of law. the court's role is to interpret the meanings of an ordinary word in a common legal standard especially the context of this act.

Probative basis for facts

Rule: Melbourne Stevedoring

完全没证据才能主张无效 Only the absence of any foundation in fact for the fulfilment of the conditions upon which in point of law the existence of the power depends can be a ground for invalidation

证据不足没事 insufficiency of evidence to support a conclusion of fact is not a ground for invalidation

例子

-有证据: 只是让员工短暂离开一会就说公司不适合注册 based merely on minor incidents like brief employee absences to support that the company was unfit for registration

-有证据: 部长的决定基于**个人或所属部门的知识**, 或基于属于**公众常识**。It is not no evidence that the Minister's decision is based on either their own or their department's knowledge,/ or on facts that fall within common knowledge.(Minister for Immigration v Viane)

-两个萨摩亚一样 American Samoans and Samoans are same in language, cultural, and welfare issues.

-想当然认为 This view has come out of nowhere.

-有证据 Repatriation Commission v Holden

-接受了有病的主张但没有诊断 AAT accepted that Holden had PTSD but no formal diagnosis.

-AAT **有别的手术**的临床记录+妻子描述他暴躁 there were some clinical notes and doctor's notes of meetings of a surgery and the description about his nastiness made by his wife.

Topic 4 Substantive conditions

considerations

Rule: Either failure to consider a mandatory matter or consideration of an irrelevant matter is a ground for review unless the breach is insignificant (Peko-Wallsend, Padfield principles, ADJR Act s5)

Peko-Wallsend principles

- a) 必须考虑“必须考虑”的 The decision-maker must be bound to consider the matter-mandatory consideration
- b) 必须考虑? -法律明示/暗示 Is the decision-maker bound to consider the matter? – **the matter must be expressed or implied by the Act**
- c) 没考虑的事重要才违法 Matter not considered must be significant-material to decision
- d) Court cannot review the merits of the decision
- e) Ground applies to Ministers – due allowance to be given for policy considerations

主题内容、适用范围和立法目的 (subject matter, scope and purpose of the act)

专员要考虑+部长根据专员决定=部长要考虑 According to the Act, the Land Commissioner must consider the detriment to persons of making a land grant, and the Minister's decision is based on the comment of the Land Commissioner, so the Minister is bound to consider the detriment to persons.(Peko-Wallsend principles)

必须考虑最新最准确的信息 The administrator has to consider the most accurate and up-to-date information relevant to the decision.(Peko-Wallsend principles)

法律明文规定唯一考虑因素是国家利益，国家利益包括保证 According to the Act, the only condition for the exercise of the power is national interest and national interest includes the assurance by the other country.(Plaintiff s156 v Minister for Immigration and Border Protection)

-不必考虑保证 Not bound to consider assurance

-不必考虑国际法 Australia's international law obligations

充分考虑了吗? Adequacy of consideration

Rule: 积极思考过程 active intellectual process (Tickner v Chapman)

-阅读识别理解评估文件 decision-maker is required to 'read, identify, understand and evaluate' relevant documents (Plaintiff M1)

-因为部长是男的所以没提供重要文件 The plaintiff didn't provide a material document because the Minister is male.(Tickner v Chapman)

-43分钟看100页 considered 100s of pages of documents in the 43 minutes (Carrascalao v Minister for Immigration)

-Minister for Immigration v McQueen

可以只看总结 The decision maker can only read the summary of the actual material

原告没证明到底哪点被遗漏了 any mandatory consideration was omitted

Irrelevant considerations

Padfield v Minister for Agriculture

纯政治原因 Purely political reason rather than engaging with the administrative decision is irrelevant consideration

- 不调查牛奶价格 not investigate Dispute between the regions regarding the price paid for the producers' milk

- 引起广泛问题 Complaint raised wide issues

- 害怕调查完发现他真的要做什么 Minister would be expected to act on the investigating committee's recommendations

Murphyores v Cth

考虑法律范围 scope of the regulation

- 出口问题考虑了环境因素因为范围大 Considered environmental issues when dealing with an export matter. The regulations deal with a range of things.

一时兴起，个人因素，腐败：无关因素 If the administrator considers something on a whim, a personal factor, or a corrupt consideration, they're irrelevant.