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Tribunal law update

Reasonableness and Reasons: lessons for good decision- making

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Overview

1. Legal reasonableness post-*Minister for Immigration and Citizenship v Li*
2. Construing a statutory duty to give reasons – *Wingfoot v Kocak*



Minister for Immigration and Citizenship v Li (2013) 249 CLR 232

MRT's refusal to grant an adjournment was unreasonable and resulted in jurisdictional error.

MIC v Li continued

- Presumption that the legislature intends discretionary powers will be exercised reasonably
- “*Wednesbury* is not the starting point for the standard of reasonableness, nor should it be considered the end point”

MIC v Li continued

A decision may be unreasonable where:

1. There is some identifiable error in reasoning process eg. failure to take a mandatory consideration into account; and/or
2. The outcome is so unreasonable that no reasonable authority could come to it – “outcome focused”.



MIC v Li continued

Within the “area of decisional freedom,” a decision may still be unreasonable where it is arbitrary, capricious or abandons common sense



MIC v Li continued

A decision will be unreasonable where it
“lacks an evident and intelligible
justification”



MIC v Li continued

A disproportionate exercise of an administrative discretion may be legally unreasonable.

Unreasonableness post-*Li*

Adjournment cases

- *Minister for Immigration and Border Protection v Singh* (2014) 308 ALR 280 (FC Fed Court)
 - Failure to give independent and active consideration to adjournment request unreasonable
- *Minister for Immigration and Border Protection v Pandey* [2014] FCA 640 (Fed Ct)
- *Chava v Minister for Immigration and Border Protection* [2014] FCA 313

Unreasonableness post-*Li* continued

Outcome focused unreasonableness:

- Decision is arbitrary, capricious or abandons common sense; and/or
- Decision lacks an evident and intelligible justification.

Unreasonableness post-*Li* continued

Standard of reasonableness also applies to process by which decision-maker reaches a state of satisfaction as a prerequisite to exercise of power:

- *D'Amore v ICAC* (2013) 303 ALR 242
- *Jones v Office of the Australian Information Commissioner* [2014] FCA 285

Reasonableness – Lessons for Decision Making

Lesson 1 – It's all about the legislation

“indicia of legal unreasonableness” are to be found in the scope, subject and purpose of the statutory provision

- How to reconcile multiple legislative “purposes” – *Li and Singh*
- Statutory requirement to act fairly “restrictive...not merely facultative” – *Toupozakis v Greater Geelong City Council* [2014] VSC 87

Reasonableness – Lessons for Decision Making

Lesson 2 – An exercise of discretion should be proportionate

Don't use a “sledgehammer to crack a nut”

- Refusal to grant adjournment disproportionate – *Singh*
- Open-ended ban disproportionate in *Toupozakis*

Reasonableness – Lessons for Decision Making

Lesson 3 – reasons in the assessment of reasonableness

- Where no reasons given – restricted to assessing reasonableness by reference to the outcome
- Where there are reasons – Court can assess for whether there is an “evident and intelligible justification”



Part 2 - Reasons

***Wingfoot Australia Partners Pty Limited v Kocak* [2013] HCA 43**

Construing the statutory requirement for a Medical Panel to give reasons under the *Accident Compensation Act 1985* (Vic)

Wingfoot v Kocak

- No free-standing common law duty to give reasons
- Duty to give reasons arose under s. 68 of the *AC Act* - content of statutory duty defines standard of written reasons required

***Wingfoot v Kocak* continued**

Two considerations of significance in determining standard required:

- The nature of the function performed by the Medical Panel; and
- The objective, within the scheme of the *AC Act*, of the requirement to give reasons

***Wingfoot v Kocak* continued**

Function performed by Medical Panel:

- To give opinion on medical questions referred applying medical experience and expertise
- *Not* – deciding a dispute
- Neither arbitral, nor adjudicative



Wingfoot v Kocak continued

Objective of requirement to give reasons

- Provide person affected with a statement of reasons adequate for a court to determine whether the opinion involves an error of law

***Wingfoot v Kocak* continued**

Standard required:

- Explain the actual path of reasoning by which the Medical Panel arrived at the opinion the Medical Panel formed on the medical question
- Sufficient detail to enable a court to see whether the opinion involves an error of law



Reasons and Unreasonableness

- *D'Amore v ICAC* (2013) 303 ALR 242
- *El-Kazzi v Allianz Insurance Limited* [2014] NSWSC 927