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5 NOVEMBER 2013

High Court discusses principles relating to a duty to give reasons and certiorari

In [Wingfoot Australia Partners Pty Ltd v Kocak \[2013\] HCA 43](#) (30 October 2013), the High Court gave a joint judgment (French CJ, Crennan, Bell, Gageler and Keane JJ) allowing the appeal. The Court held that certiorari was not available to quash an opinion of a medical panel where that opinion has no continuing legal consequences.

The Court also confirmed that the standard required of a written statement of reasons will be a question of statutory construction.

Background

The first respondent (the Worker) was employed by the appellants (the Employer) when he suffered an injury to his neck at work. In 2009 the Worker made a claim for statutory compensation under the *Accident Compensation Act 1985* (Vic). This claim was rejected.

The Worker then commenced 2 proceedings in the County Court of Victoria relating to that neck injury: one seeking leave to bring proceedings for common law damages; the other a statutory compensation application seeking a declaration of entitlement under the Act. The statutory compensation application was transferred to the Magistrates' Court, which referred 3 medical questions to a medical panel for determination under s 45(1)(b) of the Act.

As required by s 68 of the Act, the medical panel gave to the Magistrates' Court a certificate of its opinion on those 3 questions and a written statement of reasons for that opinion. The Magistrates' Court adopted and applied this opinion.

The Worker applied to the Supreme Court of Victoria for an order in the nature of certiorari quashing the opinion of the medical panel because the panel failed to give adequate reasons for the opinion. The primary judge dismissed the application, but the Court of Appeal allowed an appeal.

In allowing the appeal and restoring the decision of the primary judge, the High Court held that certiorari was not available for 2 independent reasons. The first was that certiorari will be unavailable where an exercise of power has no continuing legal effect. The second, which is the subject of this note, was that the medical panel had given adequate reasons for its opinion.

The duty to give reasons

The High Court acknowledged that the issue about the duty to give reasons raised a question of public importance (at [42]). The High Court confirmed the following basic points about how the content of a duty to give reasons is to be determined:

- In Australia there is no freestanding common law duty to give reasons for making a statutory decision (at [43]).
- The duty to give reasons and the content of that duty is 'no more and no less' than that imposed by the statute (at [43]).

- If there are no express standards to be found in the statute then the scope of the duty is left for implication (at [44]).
- Because this involves construing a particular statutory provision, general observations about functions served by the provision of reasons for administrative decisions are of limited utility (at [45]). Rather, it is necessary to focus on the standard of reasons required of a particular decision maker in a particular statutory context.

These propositions are relevant to all decision makers who are required to give reasons under a statute.

The High Court said 2 considerations were significant in determining by implication the standard of written reasons required in the present case. The first was the nature of the function that gave rise to the need to provide the written reasons. The second was the objective, within the scheme of the Act, of requiring a written statement of reasons.

As to the function, the High Court said the function performed by a medical panel in forming and giving an opinion was neither arbitral nor adjudicative and that the Act required that the actual path of reasoning be set out (at [48]).

As to the objective, the Court said the reasons must meet the standard of being ‘adequate to enable a Court to see whether the decision does or does not involve any error of law’ (at [49]).

The High Court concluded (at [55]) that under the Act the statement of reasons must explain the actual path of reasoning by which the medical panel arrived at the opinion in sufficient detail to enable a court to see whether the opinion does or does not involve any error of law.

Although the Court confined the relevance of their considerations to the performance by the panel of its statutory functions, the basic nature of these considerations suggest that they may be relevant generally to the giving of written reasons in discharge of a statutory requirement.

Implications for Commonwealth agencies

Although the provisions considered in this case were different from Commonwealth equivalents in its requirements to give reasons (for example, s 25D of the *Acts Interpretation Act* (Cth)) many of the more general comments in the joint judgment are applicable to Commonwealth decision makers required to give written reasons for certain decisions.

The judgment confirms that the content of the duty to give reasons is provided, whether expressly or impliedly, by the statute creating the duty. Not all duties to give reasons will require decision makers to meet a high standard of written reasons and the content of the duty may vary according to the context. The standard required will be a question of statutory construction.

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